

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Yasmin Hosseini (SBN 326399)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

MAYRA CORTEZ individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

BARKSDALE, INC., a Delaware
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 21STCV29193

Honorable Carolyn B. Kuhl
Department 12

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
(Yasmin Hosseini); Declaration of
Proposed Class Representative (Mayra
Cortez); Declaration of Defendant (Marie
Dhaine); Declaration of Defendant's
Counsel (Robert S. Blumberg);
Declaration of Proposed Administrator
(Michael E. Moore); and [Proposed]
Order filed concurrently herewith]

Date: December 6, 2022
Time: 10:30 a.m.
Department: 12

Complaint Filed: August 9, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on December 6, 2022 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Carolyn B. Kuhl in Department 12 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Mayra Cortez (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting leave to file the [Proposed] First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“Operative Complaint”) which is attached “**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 Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Yasmin Hosseini, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Fees and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Administration Costs to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Mayra Cortez as Class Representative;
- Preliminarily appointing Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT B**” 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 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 the requests for the Class Counsel Fees and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payment for Plaintiff, and Administration Costs to Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini), Proposed Class Representative (Mayra Cortez), Defendant's Counsel (Robert S. Blumberg), Defendant (Marie Dhaine), and Proposed Administrator (Michael E. Moore) 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: September 30, 2022

LAWYERS for JUSTICE, PC

By: _____



Yasmin Hosseini
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Mayra Cortez (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Barksdale, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit 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 Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Service Payment of Ten Thousand Dollars (\$10,000.00) to Plaintiff³; (3) the Class Counsel Fees and Class Counsel Litigation Expenses Payment to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$420,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars (\$30,000.00)⁴; (4) the Administration Costs to the Administrator in the amount not to exceed Ten Thousand Dollars (\$10,000.00)⁵; and (5) the amount of Two Hundred Thousand Dollars (\$200,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Penalties”), of which 75% (i.e., \$150,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$50,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis, based on PAGA Pay Periods during the PAGA Period.⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), § 1.20.

² *Id.*, § 1.22.

³ *Id.*, § 3.2.1.

⁴ *Id.*, § 3.2.2.

⁵ *Id.*, § 3.2.3.

⁶ *Id.*, § 3.2.4.

1 All current and former hourly-paid or non-exempt employees who worked for
2 Defendant in the State of California at any time during the period from August 9,
3 2017 through May 31, 2022 (“Class” or “Class Members”).⁷

4 The Class is estimated to consist of approximately two hundred forty-eight (248) indi-
5 viduals.⁸

6 Class Members who do not submit a timely and valid request to be excluded from the
7 Settlement (“Participating Class Member”) will receive a share of the Net Settlement Amount
8 (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Class
9 Member was employed by Defendant in California in a non-exempt or hourly-paid position
10 during the Class Period (based on each Class Members’ employment for three (3) or more
11 calendar days during a work week based on hire and termination date, as follows: if a Class
12 Member’s hire date was within the Class Period and was on Monday, Tuesday, or Wednesday,
13 he or she will be credited for that Workweek (i.e., he or she worked three (3) or more calendar
14 days during this workweek); if a Class Member’s termination date was within the Class Period
15 and was on a Wednesday, Thursday, or Friday, he or she will be credited for that Workweek
16 (i.e., he or she worked three (3) or more calendar days during this workweek). If a Class
17 Member’s hire and/or termination date falls outside of the Class Period, the start and/or end
18 dates of the Class Period (i.e., August 9, 2017 and/or May 31, 2022) shall be deemed the start
19 and/or end dates for that Class Member) (“Workweeks”).⁹

20 All current and former hourly-paid or non-exempt employees who worked for Defendant
21 in the State of California at any time during the PAGA Period (“Aggrieved Employees”) will
22 receive a *pro rata* share of the 25% share of the PAGA Penalties (“Individual PAGA Payment”)
23 based on each Aggrieved Employees’ employment for five (5) or more calendar days during a
24 pay period based on hire and termination dates, as follows: if an Aggrieved Employee’s hire
25 date was within the PAGA Period and was on Monday, he or she will be credited for that PAGA
26 Pay Period (i.e., he or she worked five (5) or more calendar days during this pay period); if an

27 ⁷ Settlement Agreement, § 1.10. “Class Period” is defined as the period of time from August 9, 2017 through
28 September 22, 2021. *See id.*, § 1.31. The “PAGA Period” means the period from July 20, 2020 to May 31, 2022.

⁸ Hosseini Decl., ¶ 9.

⁹ Settlement Agreement, §§ 1.36, 1.23, and 1.45.

Aggrieved Employee’s termination date was within the PAGA Period and was on a Friday, he or she will be credited for that PAGA Pay Period (i.e., he or she worked five (5) or more calendar days during this pay period). If an Aggrieved Employee’s hire and/or termination date falls outside of the PAGA Period, the start and/or end dates of the PAGA Period (i.e., July 20, 2020 and/or May 31, 2022) shall be deemed the start and/or end dates for that Aggrieved Employee (“PAGA Pay Periods”).¹⁰

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a company that manufactures engineered industrial products for commercial vehicles. Plaintiff Mayra Cortez is a current employee of Defendant.

On July 20, 2021, Plaintiff provided written notice to the LWDA giving notice of her intent to pursue civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, Et. Seq. (“PAGA”), on behalf of herself and the State of California. A true and correct copy of Plaintiff’s July 20, 2021 letter pursuant to PAGA, is attached to the Declaration of Yasmin Hosseini as “Exhibit 3.”

On August 9, 2021, Plaintiff filed a Class Action Complaint for Damages (“Class Action Complaint”) in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit.

On September 23, 2021, Plaintiff filed a Complaint for Enforcement under the Private Attorneys General Act, California Labor Code § 2698 et seq., against Defendant, in Los Angeles County Superior Court, Case No. 21STCV35127 (the “PAGA Complaint”).

On December 7, 2021, Defendant filed an Answer to Plaintiff’s Complaint for Penalties pursuant to California Private Attorneys General Act, California Labor Code § 2698 et seq.

¹⁰ Settlement Agreement, §§ 1.3, 1.21, and 1.30.

¹¹ See *id.* at § 5.2, for the full scope of the “Released Class Claims,” *id.* at § 5.3 for the full scope of the “Released PAGA Claims,” and *id.* at § 1.42 for the definition of the “Released Parties.”

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, 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 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to civil penalties pursuant to PAGA. Plaintiff contends that she, the Class Members, and the Aggrieved Employees are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

The Parties have agreed that Plaintiff will seek leave to file a First Amended Consolidated Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.* ("Operative Complaint"), consolidating the Class Action Complaint and the PAGA Complaint.

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

The Parties have actively litigated the Actions since they were commenced on August 9, 2021. On May 17, 2022, the Parties participated in a formal, full-day mediation conducted by Mark S. Rudy, 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 in their entirety.

III. REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff to file an amended complaint in order to, *inter alia*, consolidate the Class Action Complaint and the PAGA Complaint. As such, Plaintiff

respectfully requests leave to file the First Amended Complaint (i.e, the Operative Complaint), attached “Exhibit A” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, so that the operative complaint in this action formally asserts the causes of action and allegations that have been investigated, litigated, mediated, and ultimately settled, by the Parties, and so that the terms of the Settlement may be effectuated.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Participating Class Member) and Released PAGA Claims of Plaintiff and Aggrieved Employees 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 of not more than thirty-five percent (35%) of the Gross Settlement Amount(i.e., \$420,000.00 if the Gross Settlement Amount remains \$1,200,000.00) and reimbursement of costs and expenses in an amount not to exceed Thirty Thousand Dollars 30,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs, which are not to exceed Ten Thousand Dollars (\$10,000.00) to the Administrator (“Administration Costs”); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$150,00.00 out of \$200,000.00) (“LWDA Payment”) and twenty-five percent (25%), or \$50,000, will be distributed to Aggrieved Employees on a *pro rata* basis; and (4) payment in the amount of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Mayra Cortez (“Class Representative Service Payment”).¹³ The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix” or “Administrator”) to handle the notice and settlement administration process.

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

- a. After Preliminary Approval of the Settlement, the Administrator will divide the Net

¹² Settlement Agreement, § 5.

¹³ *Id.*, §§ 3.2.2., 3.2.3., 3.2.4., and 3.2.1.

1 Settlement Amount by the total number of Workweeks worked by all Class Members
2 to yield the “Estimated Workweek Value,” and multiply each Class Member’s
3 individual Workweeks by the Estimated Workweek Value to yield his or her estimated
4 Individual Settlement Share that he or she may be eligible to receive under the Class
5 Settlement.¹⁴

- 6 b. After Final Approval of the Settlement, the Administrator will divide the final Net
7 Settlement Amount by the Workweeks of all Participating Class Members to yield the
8 “Final Workweek Value,” and multiply each Participating Class Member’s individual
9 Workweeks by the Final Workweek Value to yield his or her Individual Settlement
10 Share.¹⁵

11 The Parties have agreed that the Administrator will determine each Aggrieved’s *pro*
12 *rata* share of the 25% share of the PAGA Penalties (i.e., Individual PAGA Payment), in
13 accordance with the Settlement Agreement and as follows:

- 14 a. The Administrator will divide the 25% portion of the PAGA Penalties attributed to
15 Aggrieved Employees, i.e., \$50,000.00, by the PAGA Pay Periods worked by all
16 Aggrieved Employees during the PAGA Period resulting in the PAGA Pay Period
17 Value and then multiplying the PAGA Pay Period Value by the number of PAGA Pay
18 Periods worked by each individual Aggrieved Employee during the PAGA Period.¹⁶

19 Each Participating Class Member’s Individual Settlement Share will be allocated as
20 follows: twenty percent (20%) as wages (the “Wage Portion”), which will be reported on an IRS
21 Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage
22 damages (the “Non-Wage Portion”), which will be reported on an IRS Form 1099.¹⁷
23 Participating Class Members will be issued payment of their Individual Settlement Share subject
24 to reduction for the employee’s share of taxes and withholdings with respect to the wage portion
25 of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement
26 Payment”).¹⁸ The Individual PAGA Payments to Aggrieved Employees will be allocated as one
27 hundred percent (100%) penalties, will not be subject taxes or withholdings, and will be reported
28 on an IRS Form 1099-MISC, if necessary.¹⁹ The Administrator will have the option to pay the
Individual Settlement Payment and Individual PAGA Payment by way of a single check.
Defendant will pay the employer’s share of payroll taxes and contributions with respect to the

¹⁴ Settlement Agreement, § 3.2.5.a.

¹⁵ *Id.*, § 3.2.5.b.

¹⁶ *Id.*, § 3.2.6.

¹⁷ *Id.*, § 3.2.7.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

wage portion of Individual Settlement Shares separately and in addition to the Gross Settlement Amount.²⁰

Each Individual Settlement Payment and Individual PAGA Payment checks will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.²¹ Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.²² All funds from associated with such cancelled checks will be transmitted by the Administrator to the Legal Aid Foundation of Los Angeles.²³ The Parties and their counsel have no interest or relationship, financial or otherwise, with Legal Aid Foundation of Los Angeles.²⁴

Class Members who wishes to be excluded from the Class Settlement (i.e., opt out) must notify the Administrator in writing by sending a letter indicating that they want to exclude themselves.²⁵ To be timely, the Class Member must mail a written Request for Exclusion to the Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice (“Response Deadline”).²⁶ A Request for Exclusion must reasonably communicate the Class Member’s election to be excluded from the Class Settlement and includes the case name and number, Class Member’s full name, address, telephone number, approximate dates of employment, and social security number for verification purposes.²⁷ Class Members who submit a valid and timely request for exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment.²⁸ Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.²⁹

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²⁰ Settlement Agreement, § 3.1.

²¹ *Id.*, § 4.4.1.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Id.*, § 4.4.3; Hosseini Decl., ¶ 29; Declaration of Robert S Blumberg (“Blumberg Decl.”), ¶ 2; Declaration of Marie Dhaine (“Dhaine Decl.”), ¶ 2.

²⁵ Settlement Agreement, §7.5.

²⁶ *Id.*, § 1.44.

²⁷ *Id.*, Exh. A., § 6.

²⁸ *Id.*, § 7.5.1.

²⁹ *Id.*

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Participating Class Members) may object to the Class Settlement.³⁰ Participating Class Members who wish to object to the Class Settlement may send written objections to the Administrator by email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline.³¹ The objection must reasonably communicate to the Administrator what the Participating Class Member is objecting to, why they are objection, and any facts to support the objection and must include the case name and number, Participating Class Member's name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection.³²

Class Members and Aggrieved Employees who wish to dispute the number of Workweeks and/or PAGA Pay Periods credited to them in their Class Notice may do so by mailing a written letter to the Administrator via mail or email on or before the Response Deadline.³³ The letter must be supported by copies of pay stubs or other records.³⁴

V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's

³⁰ Settlement Agreement, § 7.7.1.

³¹ *Ibid.*

³² *Ibid.*

³³ *Id.*, Exh. A, § 3.

³⁴ *Ibid.*

1 decision to approve a class action settlement may be reversed only upon a strong showing of
2 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class*
3 *Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

24 **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

25 The trial court has broad powers to determine whether a proposed settlement is fair under
26 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
27 this fairness determination, courts must consider several relevant factors, including “the strength
28 of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the

1 risk of maintaining class action status through trial, the amount offered in settlement, the extent
2 of discovery completed and the stage of the proceedings, the experience and view of counsel,
3 the presence of a governmental participant, and the reaction of the class members to the
4 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
5 and the court is free to engage in a balancing and weighing of the factors depending on the
6 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
7 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
8 at 1027 (citation omitted).

9 The proponent of the settlement has the burden to show that it is fair and reasonable.
10 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
11 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
12 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
13 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
14 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
15 1151.

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

18 The Parties actively litigated the Actions since they were commenced on August 9, 2021.
19 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
20 the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁵

21 Prior to engaging in mediation, Class Counsel conducted significant investigation and
22 informal discovery regarding the facts of the case, including and not limited to, the exchange,
23 review, and analysis of thousands of pages of documents and data produced by Defendant.³⁶
24 The volume of data and documents that Class Counsel reviewed and analyzed included and was
25 not limited to: employment records of Plaintiff and other Class Members, a detailed sampling
26 of Class Members’ time and pay data, new hire information checklists, Defendant’s Employee
27

28 ³⁵ Hosseini Decl., ¶¶ 11-13.

³⁶ *Id.*, ¶ 12.

Handbook, financial information (including but not limited to pay statements and earning statements), company policy acknowledgements (including but not limited to, Acknowledgment of Appropriate Use of Information Technology, Control Products Policy regarding Access & Disclosure of Electronic Mail Acknowledgement, Annual Statement of Compliance with Conflicts of Interest Policy Acknowledgement, Protective Eye Equipment Policy Acknowledgment, Intellectual Property Acknowledgement and Agreement, Acknowledgement of Policy, Receipt of Consideration and Agreement to Comply, Personal Conduct Working Together Golden Rule Acknowledgment, Non Discrimination and Non Harassment Policy Acknowledgement, and Acknowledgement Regarding Protection of Trade Secrets), internal memoranda, job descriptions, new hire orientation documents, Defendants' operations and employment practices, forms, procedures, and policies (including but not limited to, Standard Operating Procedures, eMail Use Policy, Internet Use Policy, Password Policy, Social Media Policy, Protective Eye Wear Policy, Conflicts of Interest Policy, Non Discrimination and Non Harassment Policy, Policy Regarding Protection of Trade Secrets, Employees Dress Code Policy), among other information and documents.³⁷ Class Counsel interviewed Plaintiff 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 drafted Plaintiff's 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 conducted by Mark S. Rudy Esq., 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 class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but

³⁷ Hosseini Decl., ¶¶ 12.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶ 11.

not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴³ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁴ After conducting investigations, significant informal discovery and exchange of information, 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 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁵

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

⁴² Hosseini Decl., ¶ 11.

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 11, 16-18.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶¶ 11-13 & 16-18.

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

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

4 The Settlement, which provides for a Gross Settlement Amount of One Million Two
5 Hundred Thousand Dollars (\$1,200,000.00), represents a fair, adequate, and reasonable
6 resolution of the matter.⁵⁰ The Settlement was calculated using the information and data
7 uncovered during litigation, case investigation, as well as the informal exchange of
8 information.⁵¹ The Settlement takes into account the potential risks and rewards inherent in any
9 case and, in particular, in the case at issue.⁵² Moreover, considering all of the facts and
10 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
11 for the Class.⁵³

12 Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses
13 Payment, Class Representative Service Payment, PAGA Penalties, and Administration Costs
14 are approved by the Court and paid in the full amounts provided for by the Settlement, the
15 Settlement provides for a Net Settlement Amount that is currently estimated to be Five Hundred
16 Thirty Thousand Dollars (\$530,000.00).⁵⁴ Additionally, the 25% of the PAGA Penalties, which
17 is \$50,000 out of \$200,000, will be distributed to Aggrieved Employees. As discussed in Part
18 IV, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class
19 Members, in accordance with the Settlement Agreement. The amount of each Participating
20 Class Member's Individual Settlement Payment will be calculated based on his or her
21 Workweeks and each Aggrieved Employee's Individual PAGA Payment will be calculated
22 based on his or her PAGA Pay Periods.⁵⁵ There is no reason to doubt the fairness of the
23 proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even
24 at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis

25 ⁴⁹ Hosseini Decl., ¶¶ 6-7.

26 ⁵⁰ *Id.*, ¶¶ 11, 13, 14 & 21.

27 ⁵¹ *Id.*, ¶¶ 11-13.

28 ⁵² *Id.*, ¶¶ 16-18.

⁵³ *Id.*, ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶ 14.

⁵⁵ Settlement Agreement, §§ 1.30 and 1.45.

[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, Aggrieved Employees, and the State of California.⁵⁶ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

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

VII. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶⁰ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*

⁵⁶ Hosseini Decl., ¶¶ 11, 13, & 21.

⁵⁷ *Id.*, ¶¶ 11-13, 18, & 25-26.

⁵⁸ *Id.*, ¶ 18.

⁵⁹ *Id.*, ¶¶ 11-13 & 16-18.

⁶⁰ Settlement Agreement, § 12.1.

(2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

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

A. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. 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 action involves a class of approximately two hundred forty-one (241) 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 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.

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⁶¹ Hosseini Decl., ¶ 9.

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

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

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

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

27
28 ⁶² Hosseini Decl., ¶ 16.

⁶³ *Ibid.*

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁴ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁵

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

VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES
PAYMENT

Class Counsel has litigated the matter for over one (1) year and was actively preparing the matter for class certification and trial.⁶⁶ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery. Class Counsel reviewed thousands of pages of documents and data⁶⁷ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁸ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁹

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

⁶⁴ Hosseini Decl., ¶ 16.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶¶ 11-13.

⁶⁷ *Id.*, ¶ 12.

⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶ 11.

⁷⁰ *Id.*, ¶¶ 6-7.

The Settlement establishes a Gross Settlement Amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$420,000.00 if the Gross Settlement Amount remains \$1,200,000) and an amount not to exceed Thirty Thousand Dollars (\$30,000.00) for costs and expenses.⁷¹ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (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 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and that an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment 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

⁷¹ Settlement Agreement, §§ 3.1 and 3.2.2.

⁷² *Id.*, Exh. A.

1 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
2 settlement fund and the settlement agreement provides that the defendant agrees to paying the
3 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

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

24 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
25 and further argument at the time of filing Plaintiff’s motion for final approval of the Settlement
26 and application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses
27 Payment and at the Final Approval Hearing. Considering the work performed and the risks
28

⁷³ Hosseini Decl., ¶ 19.

1 incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel
2 are well within the range of reasonableness.

3 **IX. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

9 The proposed Class Notice⁷⁴ describes the Settlement, the deadlines and procedures to
10 submit an objection to the Class Settlement, mail a Request for Exclusion from the Class
11 Settlement, and/or submit a dispute regarding Workweeks and/or PAGA Pay Periods, and the
12 date and time set for the Final Approval Hearing.⁷⁵

13 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
14 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class
15 members to make an informed decision about their participation." *Manual for Complex*
16 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
17 proceedings to date and the terms and conditions of the Settlement in an informative and
18 coherent manner.⁷⁶ The proposed Class Notice recognizes that the Court has not yet granted
19 final approval of the settlement.⁷⁷ The proposed Class Notice also apprises the Class Members
20 of, *inter alia*, how their Individual Settlement Payment, and if applicable, their Individual PAGA
21 Payment are calculated and the number of Workweeks and/or PAGA Pay Periods credited to
22 them.⁷⁸

23 The proposed Class Notice satisfies all due process requirements and complies with the
24 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
25 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 ("The

26 ⁷⁴ Settlement Agreement, Exh. A.

27 ⁷⁵ *Ibid.*

28 ⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

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.

X. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

The 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 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 Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting a search of the National Change of Address database, and re-mail the Class Notice to the Class Member.⁸¹ The Response Deadline to submit a Request for Exclusion, objection, or dispute regarding Workweeks and/or PAGA Pay Periods shall be extended by fourteen (14) calendar days for those Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator.⁸² The Administrator will receive and process Requests for Exclusion, objections, and any disputes regarding Workweeks and/or PAGA Pay Periods.⁸³

The Administrator will calculate the amounts of the Individual Settlement 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 Participating Class Members and Individual PAGA Payment checks to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and LWDA Payment; and

⁷⁹ Settlement Agreement, § 4.4.1.

⁸⁰ *Id.*, § 4.4.2.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Id.*, § 7.8.2.

perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁴ The Settlement Administration Costs are currently estimated to be Ten Thousand Dollars (\$10,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁵

The Parties and their counsel have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlement.⁸⁶

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

XI. 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.⁸⁷

Within fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will provide the Administrator with the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; and (4) hire and termination dates reflecting the number of Class Period Workweek and PAGA Pay Periods (collectively, "Class Data").⁸⁸

Within three (3) business days of receipt of the Class Data, the Administrator will mail the Class Notice to the Class Members identified in the Class Data via First-Class United States Postal Service ("USPS").⁸⁹ If a Class Notice is returned to the Administrator with a forwarding

⁸⁴ Settlement Agreement, § 7.8.2; Hosseini Decl., ¶ 15.

⁸⁵ Settlement Agreement, § 3.2.3.

⁸⁶ *Id.*, § 7.1; Hosseini Decl., ¶ 15; Blumberg Decl., ¶ 3.

⁸⁷ Settlement Agreement, § 4.4.1.

⁸⁸ *Id.*, § 4.2.

⁸⁹ *Id.*, § 7.4.1.

1 address, the Administrator will re-send the Class Notice to the forwarding address.⁹⁰ If no
2 forwarding address is provided, then the Administrator will make reasonable efforts to obtain
3 an updated mailing address, including but not limited to conducting a search of the National
4 Change of Address database, and re-mail the Class Notice to the Class Member.⁹¹ Class
5 Members and Aggrieved Employees will have until the applicable Response Deadline to submit
6 a Request for Exclusion, dispute regarding Workweeks and/or PAGA Pay Periods, and/or an
7 objection.⁹²

8 Defendant will make a one-time deposit of the Gross Settlement Amount, together with
9 an amount sufficient to pay employer taxes, into an account to be established the Administrator,
10 within fourteen (14) calendar days after the Effective Date.⁹³ Within fourteen (14) calendar
11 days after Defendant funds the Gross Settlement Amount, the Administrator will distribute: (1)
12 the Individual Settlement Payments to Participating Class Members; (2) the Individual PAGA
13 Payments to Aggrieved Employees; (3) the Court-approved Class Representative Service
14 Payment to Plaintiff; (4) the Court-approved Class Counsel Fees Payment and Class Counsel
15 Litigation Expenses Payment to Class Counsel; (4) the LWDA Payment to the LWDA; and (5)
16 the Court-approved Administration Costs to itself.⁹⁴

17 The Individual Settlement Payment and Individual PAGA Payment checks will remain
18 negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹⁵
19 Checks that are not negotiated within the 180-day period will be cancelled.⁹⁶ The funds
20 associated with such cancelled checks will be tendered by the Administrator to the Legal Aid
21 Foundation of Los Angeles.⁹⁷

22 ///

23 ///

24
25 ⁹⁰ Settlement Agreement, § 4.4.2.

26 ⁹¹ *Ibid.*

27 ⁹² *Id.*, §§ 7.5.1., 7.6., and 7.7.2.

28 ⁹³ *Id.*, § 4.4.

⁹⁴ *Ibid.*

⁹⁵ *Id.*, § 4.4.1.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENT

Plaintiff Mayra Cortez respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Service Payment in an amount up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Mayra Cortez.⁹⁸ 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 Class Representative Service Payment is fair and appropriate. Plaintiff 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.⁹⁹ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.¹⁰⁰ Accordingly, it is appropriate and just for Plaintiff to each receive an Class Representative Service Payment for her services on behalf of the Class, State of California, and Aggrieved Employees, in addition to her individual settlement payments.

XIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests 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

⁹⁸ Settlement Agreement, § 3.2.1.

⁹⁹ Hosseini Decl., ¶ 20; Declaration of Mayra Cortez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Cortez Decl."), ¶ 4.

¹⁰⁰ Hosseini Decl., ¶ 20; Cortez Decl., ¶¶ 3-6.

1 designate Plaintiff Mayra Cortez as Class Representative; appoint Phoenix Settlement
2 Administrators as Administrator; preliminarily approve the allocations for Class Counsel Fees
3 Payment and Class Counsel Litigation Expenses Payment, Class Representative Service
4 Payment, PAGA Penalties, and Administration Costs; approve the proposed Class Notice; direct
5 the Administrator to undertake the notice and settlement administration process in conformity
6 with the deadlines and procedures provided by the Settlement Agreement; schedule a Final
7 Approval Hearing to take place in approximately five (5) months.

8 Dated: September 30, 2022

LAWYERS for JUSTICE, PC

9
10 By:



Yasmin Hosseini
Attorneys for Plaintiff