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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DOMINIQUE DAVIS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

BARKER MANAGEMENT, INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 21STCV04439

Honorable William F. Highberger
Department SSC10

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
(Brian J. St. John); Declaration of
Proposed Class Representative
(Dominique Davis); and [Proposed] Order
filed concurrently herewith]

Date: March 15, 2023
Time: 10:30 a.m.
Department: SSC10

Complaint Filed: February 4, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on March 15, 2023 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable William F. Highberger in Department SSC10 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Dominique Davis (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Dominique Davis 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 A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administration Solutions as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment for Plaintiff, 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 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 (Brian J. St. John) and Proposed Class Representative (Dominique Davis) 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: February 17, 2023

LAWYERS for JUSTICE, PC

By: _____


Brian J. St. John
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Dominique Davis (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“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 Barker Management, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle the lawsuits for a Total Settlement Amount of two million nine hundred thousand dollars and no cents (\$2,900,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of twelve thousand five hundred dollars and no cents (\$12,500.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or \$1,015,000.00, and reimbursement of litigation costs and expenses not to exceed forty thousand dollars and no cents (\$40,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount estimated to be twelve thousand dollars and no cents (\$12,000.00);⁵ and (5) the amount of five hundred thousand dollars and no cents (\$500,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$375,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$125,000.00) will be distributed to all Class Members employed by Defendant at any time during the period from July 6, 2020 through March 15, 2022 (“PAGA Employees”) on a *pro rata* basis.⁶

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¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwarzian (“St. John Decl.”), § 9.nn.

² *Id.*, § 9.t.

³ *Id.*, §§ 9.o & 14.

⁴ *Id.*, §§ 9.a & 13.

⁵ *Id.*, §§ 9.ll & 15.

⁶ *Id.*, §§ 9.x & 9.y.

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

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from February 4, 2017 through March 15, 2022 (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately six hundred eleven (611) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendant in California in a non-exempt or hourly-paid position during the period from February 4, 2017 through March 15, 2022 (“Workweeks”).⁹

The Settlement resolves the Released Class Claims of Plaintiff and Settlement Class Members and the Released PAGA Claims of Plaintiff, PAGA Employees, and the State of California, against the Released Parties.¹⁰

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is an organization that provides quality property management services to the affordable housing market, conventional housing, and commercial development. Plaintiff Dominique Davis is a former employee of Defendant.

On February 4, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (the “Class Action”).

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⁷ Settlement Agreement, § 9.d. “Class Period” is defined as the period of time from February 4, 2017 through March 15, 2022. *See id.*, § 9.f.

⁸ St. John Decl., ¶ 9.

⁹ Settlement Agreement, §§ 9.t, 9.mm, & 9.oo.

¹⁰ *See id.* at 9.ff, for the full scope of the “Released Class Claims,” *id.* at 9.gg, for the full scope of the “Released PAGA Claims,” and *id.* at § 9.hh for the definition of the “Released Parties.”

1 On July 6, 2021, Plaintiff submitted notice to the California Labor & Workforce
2 Development Agency (“LWDA”) and Defendant of her intent to pursue civil penalties under
3 the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“PAGA Letter”).

4 On September 9, 2021, Plaintiff filed a complaint against Defendant in Los Angeles
5 Superior Court, alleging violations of California Labor Code §2698, et seq., (California Labor
6 Code Private Attorneys General Act of 2004), Case No. 21STCV33269 (the “PAGA Action”)
7 (together with the Class Action, the “Actions”).

8 On May 20, 2022, by way of Court order, the Class Action and PAGA Action were
9 consolidated, with the Class Action designated the lead action.

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

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

24 The Parties have actively litigated the Actions since the Class Action was commenced
25 on February 4, 2021. On December 15, 2021, the Parties participated in a formal, full-day
26 mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in
27 mediating complex labor and employment matters. With the aid of the mediator’s evaluation,
28 the Parties ultimately reached the Settlement described herein to resolve the Actions in their

entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total 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., Settlement Class Member) and the Released PAGA Claims of Plaintiff, PAGA Employees, and the State of California, with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed one million fifteen thousand dollars and no cents (\$1,015,000.00) (i.e., up to 35% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed forty thousand dollars and no cents (\$40,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed twelve thousand dollars and no cents (\$12,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment PAGA Amount (\$500,000), of which 75% will be distributed to the LWDA (i.e., \$375,000.00) ("LWDA Payment") and the remaining 25% (i.e., \$125,000.00) will be distributed to PAGA Employees on a *pro rata* basis; and (4) payment in the amount of up to twelve thousand five hundred dollars and no cents (\$12,500.00) to Plaintiff Dominique Davis ("Enhancement Payment").¹² The Parties have agreed to retain Phoenix Class Action Administration Solutions ("Phoenix Class Action Administration Solutions " or "Settlement Administrator") to handle the notice and settlement administration process.

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

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated

¹¹ Settlement Agreement, §§ 33 & 34.

¹² *Id.*, §§ 9.a, 9.o, 9.x, 9.y, 9.11, 13, 14, & 15.

Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹³

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

The Parties have agreed that the Settlement Administrator will determine each PAGA Employee’s share of the available 25% portion of the PAGA Amount (“Individual PAGA Amount”), in accordance with the Settlement Agreement and as follows: the Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the total number of Workweeks during the PAGA Period (“PAGA Workweeks”) of all PAGA Employees to yield the “PAGA Workweek Value,” and multiply each PAGA Employee’s individual PAGA Workweeks by the PAGA Workweek Value to yield his or her Individual PAGA Payment.¹⁵

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁶ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.¹⁷ 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”).¹⁸ 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 Total Settlement Amount.¹⁹

¹³ Settlement Agreement, § 17.a.

¹⁴ *Id.*, § 17.b.

¹⁵ *Id.*, § 18.

¹⁶ *Id.*, § 28.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

1 The Individual Settlement Payment checks issued to Settlement Class Members will be
2 cashable for one hundred eighty (180) calendar days from the date of issuance.²⁰ Individual
3 Settlement Payment checks that are not cashed within the 180-day period will be cancelled.²¹
4 The funds from associated with such cancelled checks will be transmitted by the Settlement
5 Administrator after the expiration of the 180-day period, and sent to the Legal Aid at Work.²²

6 Class Members who wishes to be excluded from the Settlement (i.e., opt out) must notify
7 the Settlement Administrator in writing by sending a letter indicating that they want to exclude
8 themselves.²³ To be timely, the Class Member must mail a written request for exclusion to the
9 Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from
10 the initial mailing of the Class Notice (“Response Deadline”).²⁴ A request for exclusion must
11 contain: (a) the Class Member’s name, address, signature, and the last four (4) digits of his or
12 her Social Security number; (b) the case name and number of the Class Action; and (c) a
13 statement clearly indicating that he or she wishes to opt out of the Settlement.²⁵ Class Members
14 who submit a valid and timely request for exclusion will not be bound by the terms of the Class
15 Settlement.²⁶ Notwithstanding the above, all PAGA Employees will be bound to the PAGA
16 Settlement and will be issued their Individual PAGA Payment, irrespective of whether they
17 submit a Request for Exclusion.²⁷

18 Only Class Members who do not exclude themselves from the Settlement (i.e.,
19 Settlement Class Members) have standing to object to the Settlement.²⁸ Settlement Class
20 Members who wish to object to the Settlement must file with the Court, and serve the Settlement
21 Administrator with a notice of objection (“Notice of Objection”) on or before the Response
22 Deadline.²⁹ The Notice of Objection must contain: (a) the Settlement Class Member’s name,

23
24 ²⁰ Settlement Agreement, § 23.

25 ²¹ Ibid.

26 ²² Ibid.

27 ²³ *Id.*, § 24.

28 ²⁴ *Id.*, § 9,jj.

²⁵ *Id.*, § 9.ii.

²⁶ *Id.* § 24.

²⁷ Ibid.

²⁸ *Id.*, § 25.

²⁹ Ibid.

1 address, signature, and the last four (4) digits of his or her Social Security number; (b) the case
2 name and number of the Class Action; (c) a statement clearly indicating that he or she objects
3 and providing the reasons why he or she objects; and include copies of any papers, briefs, or
4 other documents upon which the objection is based.³⁰ In addition to or as an alternative to
5 submitting a written Notice of Objection, Settlement Class Members, individually or through
6 counsel, may present their objection orally at the Final Approval Hearing.³¹

7 Class Members who wish to dispute the number of Workweeks credited to them in their
8 Class Notice may do so by mailing a written letter to the Settlement Administrator on or before
9 the Response Deadline.³² The letter must contain: (a) the Class Member's name, address,
10 signature, and the last four (4) digits of his or her Social Security number; (b) the case name and
11 number of the Class Action; (c) a statement clearly indicating that he or she wishes to dispute
12 the number of Workweeks credited to him or her; and (d) any and all supporting documents.³³

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

15 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
16 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
17 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
18 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
19 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*
20 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair
21 and reasonable, whether certification of the class was proper, and whether the attorney fee award
22 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
23 decision to approve a class action settlement may be reversed only upon a strong showing of
24 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
25 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

26
27 ³⁰ Settlement Agreement., § 9.ww.

28 ³¹ *Id.*, § 25.

³² *Id.*, § 22.

³³ *Ibid.*

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

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the

proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties actively litigated the Actions since the Class Action was commenced on February 4, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.³⁴

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.³⁵ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members’ time and pay data, Barker Management Employee Handbook, company policy acknowledgements, internal memoranda, job descriptions, new hire orientation checklists, operations and employment practices, forms, procedures, and policies (including but

³⁴ St. John Decl., ¶¶ 11-13.

³⁵ *Id.*, ¶ 12.

not limited to, Meal & Rest Periods & Acknowledgement Form, Attendance and Punctuality policy, Attire and Grooming policy, and Hours of Work and Overtime policy), among other information and documents.³⁶ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁷ Counsel for the Parties also 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.³⁸ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁹

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁴⁰ In the course of litigation and in connection with mediation and settlement negotiations, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the cases and various aspects of the matter, including but not limited to, Defendant's financial condition, 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 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. 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.⁴³ After conducting investigations, significant informal discovery, extensive settlement negotiations, and

³⁶ St. John Decl., ¶ 12.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ *Id.*, ¶ 11.

⁴¹ Ibid.

⁴² Ibid.

⁴³ *Id.*, ¶¶ 11, 16-18.

1 with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited
2 for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs
3 and risks to both sides that would attend further litigation.⁴⁴

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

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

16 The Settlement, which provides for a Total Settlement Amount of two million nine
17 hundred thousand dollars and no cents (\$2,900,000.00), represents a fair, adequate, and
18 reasonable resolution of the matter.⁴⁹ The Settlement was calculated using the information and
19 data uncovered during litigation, case investigation, as well as the informal exchange of
20 information.⁵⁰ The Settlement takes into account the potential risks and rewards inherent in any
21 case and, in particular, in the matter at issue.⁵¹ Moreover, considering all of the facts and
22 circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate
23 recovery for the Class.⁵²

24 ⁴⁴ St. John Decl., ¶¶ 11, 16-18.

25 ⁴⁵ Ibid.

26 ⁴⁶ Ibid.

27 ⁴⁷ *Id.*, ¶¶ 11-13 & 16-18.

28 ⁴⁸ *Id.*, ¶¶ 6-7.

⁴⁹ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵⁰ *Id.*, ¶¶ 11-13.

⁵¹ *Id.*, ¶¶ 16-18.

⁵² *Id.*, ¶¶ 11, 13, & 21.

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be one million three hundred twenty thousand five hundred dollars and no cents (\$1,320,500.00).⁵³ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks and the amount of each PAGA Employee's Individual PAGA Payment will be calculated based 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.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 informal discovery and exchanged thousands of pages of documents, data, and information in the course of litigation and in connection with mediation and settlement

⁵³ St. John Decl., ¶ 14.

⁵⁴ Settlement Agreement, § 17.

⁵⁵ St. John Decl., ¶¶ 11, 13, & 21.

negotiations.⁵⁶ The discovery and information that Class Counsel obtained from Defendant 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 Defendant's defenses thereto.⁵⁷ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

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

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⁵⁶ St. John Decl., ¶¶ 11-13 & 18.

⁵⁷ *Id.*, ¶ 18.

⁵⁸ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁹ Settlement Agreement, § 35.a.

1 **A. The Class Is Ascertainable and Sufficiently Numerous.**

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

9 This matter involves a class of approximately six hundred eleven (611) individuals.⁶⁰
10 This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
11 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as
12 joinder is not practical at that point). Further, all Class Members can and will be identified by
13 Defendant to the Settlement Administrator through a review of Defendant’s employment
14 records regarding non-exempt employees in California during the Class Period. As such, the
15 Class is ascertainable and sufficiently numerous.

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

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

26 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
27 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155

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⁶⁰ St. John Decl., ¶ 9.

Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Class Action and PAGA Action Complaints. Based on the documents and information obtained through informal discovery and exchange of information in the cases, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶¹ Plaintiff’s claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶²

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.⁶³ 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.⁶⁴

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.

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⁶¹ St. John Decl., ¶ 16.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

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

Class Counsel has litigated the matter for over a year and a half, and was actively preparing the matter for class certification and 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 informal discovery. Class Counsel reviewed thousands of pages of documents and data⁶⁶ and also interviewed and obtained information from Defendant, Plaintiff, and other sources, 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.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 Total Settlement Amount of two million nine hundred thousand dollars and no cents (\$2,900,000.00), 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 Total Settlement Amount (i.e., \$1,015,000.00) and an amount not to exceed forty thousand dollars and no cents (\$40,000.00) 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 (6) the other cases

⁶⁵ St. John Decl., ¶¶ 11-13.

⁶⁶ *Id.*, ¶ 12.

⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 11.

⁶⁹ *Id.*, ¶¶ 6-7.

⁷⁰ Settlement Agreement, §§ 9.a, 9.nn, & 13.

that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷¹

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

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45%

⁷¹ Settlement Agreement, Exh. A.

of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “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 has 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 Plaintiff’s 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 mail an objection to the Settlement, mail a request for exclusion from the Settlement, and/or mail a dispute regarding Workweeks, 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

⁷² St. John Decl., ¶ 19.

⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Ibid.*

members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.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 CLASS ACTION ADMINISTRATION SOLUTIONS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix Class Action Administration Solutions to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁷⁸ Any undeliverable Class Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.⁷⁹ With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁸⁰ The Response

⁷⁵ Settlement Agreement, Exh. A.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Id.*, § 21.a.

⁷⁹ *Id.*, § 21.b.

⁸⁰ *Ibid.*

Deadline to submit a request for exclusion, objection, or dispute regarding Workweeks for Class Members to whom a Class Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be extended fifteen (15) calendar days.⁸¹ The Settlement Administrator will receive and process requests for exclusion, objections, and any disputes regarding Workweeks.⁸²

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and PAGA Amount; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸³ The Settlement Administration Costs are currently estimated to be twelve thousand dollars and no cents (\$12,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁸⁴

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁵

Within twenty-one (21) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) last known mailing

⁸¹ Settlement Agreement., § 9.jj.

⁸² *Id.*, § 15.

⁸³ *Id.*, § 15.; St. John Decl., ¶ 15.

⁸⁴ Settlement Agreement, § 15.

⁸⁵ *Id.*, § 21 .

1 address and phone number; (3) Social Security number; (4) start and end dates of active
2 employment as an hourly and/or non-exempt employee of Defendant in California during the
3 Class Period; and (5) such other information as is necessary for the Settlement Administrator to
4 calculate Workweeks and PAGA Workweeks (collectively, “Class List”).⁸⁶

5 Within seven (7) calendar days of receipt of the Class List, the Settlement Administrator
6 will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁷ If a Class Notice
7 is returned to the Settlement Administrator with a forwarding address, the Settlement
8 Administrator will re-send the Class Notice to the forwarding address.⁸⁸ If no forwarding
9 address is provided, then the Settlement Administrator will make reasonable efforts to obtain an
10 updated mailing address, including but not limited to conducting one skip-trace, and re-mail the
11 Class Notice to the Class Member.⁸⁹ Class Members will have until the applicable Response
12 Deadline to mail a request for exclusion, mail a dispute regarding Workweeks, and/or to file and
13 serve an objection.⁹⁰

14 Within thirty (30) calendar days of Final Approval, Defendant will make a deposit of
15 fifty percent of the Total Settlement Amount (i.e., \$1,450,000.00), plus an amount sufficient to
16 pay Employer Taxes, into the qualified settlement account established by the Settlement
17 Administrator (“First Installment”).⁹¹ Eight (8) months after the funding of the First Installment,
18 Defendant will make a deposit of the remaining fifty percent of the Total Settlement Amount
19 (i.e., \$1,450,000.00), plus an amount sufficient to pay Employer Taxes, into the qualified
20 settlement account established by the Settlement Administrator (“Second Installment”).⁹²

21 Within seven (7) calendar days of the funding of the First Installment, the Settlement
22 Administrator will issue the Individual Settlement Payments to Settlement Class Members and
23 Enhancement Payment to Plaintiff. The Settlement Administrator shall also set aside the
24 Employer Taxes and all employee-side payroll taxes, contributions, and withholdings, and

25 ⁸⁶ Settlement Agreement, §§ 9.c & 20.

26 ⁸⁷ *Id.*, § 21.

27 ⁸⁸ *Ibid.*

28 ⁸⁹ *Ibid.*

⁹⁰ *Id.*, §§ 22, 24, & 25.

⁹¹ *Id.*, § 12.b.i.

⁹² *Id.*, § 12.b.ii.

timely forward these to the appropriate government authorities.⁹³ Within seven (7) calendar days of the funding of the Second Installment, the Settlement Administrator will issue the Individual PAGA Payments to PAGA Employees, LWDA Payment to the LWDA, Attorneys' Fees and Costs to Class Counsel, and the Settlement Administration Costs to itself.⁹⁴

The Individual Settlement Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹⁵ Checks that are not negotiated within the 180-day period will be cancelled.⁹⁶ The funds associated with such cancelled checks will be tendered by the Settlement Administrator after the last day of the 180-day period to the Legal Aid at Work.⁹⁷

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Dominique Davis respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to twelve thousand five hundred dollars and no cents (\$12,500.00) to Plaintiff Dominique Davis.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 Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing

⁹³ Settlement Agreement, § 12.c.i.

⁹⁴ *Id.*, § 12.c.ii.

⁹⁵ *Id.*, § 23.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Id.*, § 14.

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 facilitate the pursuit of class and PAGA claims.¹⁰⁰ Accordingly, it is appropriate and just for Plaintiff to receive Enhancement Payment for her services on behalf of the Class, in addition to her Individual Settlement Payment and Individual PAGA Payment.

XII. 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 designate Plaintiff Dominique Davis as Class Representative; appoint Phoenix Class Action Administration Solutions as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, 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; schedule a Final Approval Hearing to take place in approximately five (5) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: February 17, 2023

LAWYERS for JUSTICE, PC

By: _____



Brian J. St. John
Attorneys for Plaintiff

⁹⁹ St. John Decl., ¶ 20; Declaration of Dominique Davis in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Davis Decl."), ¶ 4.

¹⁰⁰ St. John Decl., ¶ 20; Davis Decl., ¶¶ 3-6.