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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

MARGARET TAYLOR, individually, and
on behalf of other members of the general
public similarly situated and other aggrieved
employees pursuant to the California Private
Attorneys General Act,

Plaintiff,

vs.

BARBIER SECURITY GROUP, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 2000399

Honorable Stephen Freccero
Department A

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 (Margaret
Macedo); and [Proposed] Order filed
concurrently herewith]

Date: _____
Time: _____
Department: A

Complaint Filed: January 31, 2020
FAC Filed: June 23, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on _____ at
_____ or as soon thereafter as the matter may be heard before the Honorable Stephen
Freccero in Department A of the Superior Court of California for the County of Marin, located
at 3501 Civic Center Drive, San Rafael, California 94903, Plaintiff Margaret Macedo (formerly
Margaret Taylor) (“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 Brian J. St. John, 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 Litigation Costs to Class Counsel, Enhancement Payment to
Plaintiff, and Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Margaret Macedo 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 Settlement Administrators as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Payment for Plaintiff, and 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 (Margaret Macedo) 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: August 1, 2022

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 Margaret Macedo (formerly Margaret Taylor) (“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 Barbier Security Group (“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 Maximum Settlement Amount of seven hundred ten thousand dollars (\$710,000.00).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of seven thousand dollars (\$7,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Litigation Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or \$248,500.00, and reimbursement of litigation costs and expenses not to exceed twenty eight thousand dollars (\$28,000.00)⁴; (4) the Administration Costs to the Settlement Administrator in the amount estimated to be no more than eleven thousand dollars (\$11,000.00);⁵ and (5) the amount of seventy thousand dollars (\$70,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$52,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$17,500.00) will be distributed to PAGA Group Members on a *pro rata* basis (“PAGA Penalties”).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 Brian J. St. John (“St. John Decl.”), §V III.A.

² *Id.*, §§ I.J & XII.A.

³ *Id.*, § XV.

⁴ *Id.*, § XIV.

⁵ *Id.*, § IX.

⁶ *Id.*, § I.P & XVII.

1 All current and former hourly-paid or non-exempt employees who worked for
2 Defendant within the State of California at any time during the period from January
3 31, 2016 through July 1, 2022 (“Class” or “Class Members”).⁷

4 The Class is estimated to consist of approximately one thousand ninety-two (1,092)
5 individuals.⁸

6 Class Members who do not submit a timely and valid request to be excluded from the
7 Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount
8 (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of weeks that a
9 Class Member worked for Defendant as an hourly-paid or non-exempt employee in California
10 during the Class Period (“Workweeks”).⁹ All current and former hourly-paid or non-exempt
11 employees who worked for Defendant within the State of California at any time during the
12 PAGA Period (“PAGA Group Members”) will receive a share of the 25% portion of the PAGA
13 Penalties (“Individual PAGA Payment”) on a *pro rata* basis based upon the number of
14 Workweeks that a PAGA Group Member worked for Defendant during the period from August
15 31, 2020 through July 1, 2022 (“PAGA Period”).¹⁰

16 The Settlement, if granted preliminary and final approval by the Court, will operate to
17 resolve the Released Class Claims of Plaintiff and Settlement Class Members and the Released
18 PAGA Claims of Plaintiff, the State of California, and PAGA Group Members, against the
19 Released Parties.¹¹

20 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

21 Defendant provides security services to corporations, nonprofit organizations, Fortune
22 500 companies, individuals, and governmental organizations. Plaintiff Margaret Macedo
23 (formerly Margaret Taylor) is a former employee of Defendant.

24 ///

25 _____
26 ⁷ Settlement Agreement, § I.C. “Class Period” is defined as the period of time from January 31, 2016 through July
1, 2022. *See id.*, § I.D.

27 ⁸ St. John Decl., ¶ 9.

⁹ Settlement Agreement, §§ I.J, I.V, I.T, & XII.A,

28 ¹⁰ *Id.*, §§ I.K, I.N, I.O, & XVII.

¹¹ *See id.* at § VII.A, for the full scope of the “Released Class Claims,” and definition of the “Released Parties,”
and *id.* at § VII.B for the full scope of the “Released PAGA Claims.”

1 On January 31, 2020, Plaintiff filed a Class Action Complaint for Damages in the Marin
2 County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

3 On June 8, 2020, Defendant filed an Answer to Plaintiff’s Class Action Complaint.

4 On November 6, 2020, Class Counsel propounded multiple sets of formal written
5 discovery requests, Requests for Production of Documents (Set One & Set Two), Special
6 Interrogatories (Set One, Set Two & Set Three), and Form Interrogatories (Set One), on
7 Defendant, and noticed the deposition of Defendant’s person(s) most knowledgeable regarding
8 job duties and organizational structure of Defendant. Thereafter, on February 19, 2021
9 Defendant responded to Plaintiff’s discovery requests.

10 On October 7, 2020, Defendant propounded multiple sets of discovery, including Form
11 Interrogatories (Set One – Employment Law) and Requests for Admission. Thereafter, on
12 December 15, 2020 and January 15, 2021, Plaintiff responded to Defendant’s discovery
13 requests.

14 On June 23, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages
15 & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*
16 (“Operative Complaint”).

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

27 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
28 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 Action since it was commenced on January 31, 2020. On January 12, 2022, the Parties participated in a formal, full-day mediation conducted by Cary G. Palmer, 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 Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Maximum 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) 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 Maximum Settlement Amount: (1) attorneys' fees in an amount not to exceed two hundred forty eight thousand five hundred dollars (\$248,500.00) (i.e., up to 35% of the Maximum Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed twenty eight thousand dollars (\$28,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Litigation Costs"); (2) settlement administration costs, which are currently estimated not to exceed eleven thousand dollars (\$11,000.00) to the Settlement Administrator ("Administration Costs"); (3) PAGA Penalties in the amount of seventy thousand dollars (\$70,000), of which seventy-five percent (75%), or \$52,500.00, will be paid to the LWDA ("LWDA Payment") and twenty-five percent (25%), or \$17,500.00, will be distributed to the PAGA Members on a *pro rata* basis ("Employee PAGA Amount"); and (4) payment in the amount of up to seven thousand hundred dollars (\$7,000.00) to Plaintiff ("Enhancement Payment").¹³ The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.¹⁴

¹² Settlement Agreement, § VIII.A.

¹³ *Id.*, §§ I.M and 26; see also, §§ VIII, IX, & XIV-XVII.

¹⁴ *Id.*, §§ I.S & IX.

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

- a. The Settlement Administrator will determine the value of each Workweek by dividing the Net Settlement Amount by the total number of Workweeks of all Settlement Class Members ("Class Workweek Point Value").¹⁵
- b. The Settlement Administrator will multiply each Settlement Class Member's individual Workweeks by the Class Workweek Point Value to arrive at his or her Individual Settlement Payment.¹⁶

The Parties have agreed that the Settlement Administrator will determine each PAGA Group Member's share of the Employee PAGA Amount (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will determine the value of each PAGA Workweek by dividing the Employee PAGA Amount by the total number of PAGA Workweeks of all PAGA Group Members ("PAGA Workweek Point Value").¹⁷
- b. The Settlement Administrator will multiply each PAGA Group Member's individual PAGA Workweeks by the PAGA Workweek Point Value to arrive at his or her Individual PAGA Payment.¹⁸

Each Settlement Class Member's Individual Settlement Payment 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 1099.¹⁹ Settlement Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment (the net payment is referred to as an "Individual Settlement Payment").²⁰ The Parties further agree that the Individual PAGA Payments distributed to each PAGA Group Member will be allocated as one hundred percent (100%) penalties, will be paid without reduction for taxes and withholdings, and will be reported on an IRS Form 1099 (if necessary).²¹ Defendant

¹⁵ Settlement Agreement, § XII.A.2.

¹⁶ *Id.*, § XII.A.3.

¹⁷ *Id.*, § XII.B.2.

¹⁸ *Id.*, § XII.B.3.

¹⁹ *Id.*, § XVI.C.

²⁰ *Id.*, § XII.A.3.

²¹ *Id.*, § XVI.D.

1 will pay the employer's share of payroll taxes and contributions with respect to the wage portion
2 of Individual Settlement Shares ("Employer Taxes") in addition to the Maximum Settlement
3 Amount.²²

4 The Individual Settlement Payment and Individual PAGA Payment checks issued to
5 Settlement Class Members and PAGA Group Members will be negotiable for one hundred
6 eighty (180) calendar days from the date of issuance.²³ Individual Settlement Payment and
7 Individual PAGA Payment checks that are not negotiated within the 180-day period will be
8 cancelled.²⁴ The funds associated with such cancelled checks will be transmitted by the
9 Settlement Administrator to Legal Aid at Work, in the name of the Settlement Class Member
10 and PAGA Group Member whose check is cancelled and in the respective amount of the
11 cancelled check.²⁵

12 Class Members who wish to be excluded (i.e., opt out) from the settlement and release
13 of the Released Class Claims ("Class Settlement") must notify the Settlement Administrator in
14 writing by sending a letter indicating that they want to exclude themselves ("Request for
15 Exclusion").²⁶ To be timely, the Class Member must mail a written Request for Exclusion to
16 the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar
17 days from the initial mailing of the Class Notice ("Response Deadline").²⁷ A Request for
18 Exclusion must: (a) contain the Class Member's full name, address, telephone number, and the
19 last four (4) digits of his or her Social Security number; (b) contain the case name and number
20 of the Action; (c) be signed by the Class Member or his or her authorized representative; and
21 (d) contain a statement clearly indicating that he or she wishes to opt out of the Class
22 Settlement.²⁸ Class Members who submit a valid and timely Request for Exclusion will not be
23 entitled to an Individual Settlement Payment, will not be bound by the Class Settlement, and
24

25 _____
26 ²² Settlement Agreement, § VIII.A.

27 ²³ *Id.*, § XII.D.3.

28 ²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Id.*, § X.C.1.

²⁷ *Id.*, § X.A.5.

²⁸ *Ibid.*

will not have any right to object, appeal, or comment thereon.²⁹ Any Class Member who does not submit a timely and valid Request for Exclusion to the Settlement Administrator will be deemed bound to the Class Settlement in accordance with this Settlement.³⁰ All PAGA Group Members shall be bound to the PAGA Settlement and shall receive their Individual PAGA Payment regardless of their decision to participate in the Class Settlement.³¹

Only Class Members who do not exclude themselves (i.e., Settlement Class Members) have standing to object to the Class Settlement.³² Settlement Class Members who wish to object to the Class Settlement may send a written objection (“Notice of Objection”) to the Settlement Administrator on or before the Response Deadline or appear at the Final Approval Hearing (with or without submitting a written objection to the Class Settlement).³³ The Notice of Objection must: (a) contain the Settlement Class Member’s name, address, full name, signature, and the last four (4) digits of his or her Social Security number; (b) contain the case name and number of the Action; (c) clearly state the grounds for the objection; and (d) state whether the Settlement Class Member intends to appear at the Final Approval Hearing.³⁴

Class Members and/or PAGA Group Members who wish to dispute the number of Workweeks and/or PAGA Workweeks credited to them in their Class Notice may do so by mailing a written letter (“Workweek Dispute”) to the Settlement Administrator on or before the Response Deadline.³⁵ The letter must contain: (a) the Class Member’s full name, address, signature, and the last four (4) digits of his or her Social Security number; (b) the case name and number of the Action; (c) a statement clearly indicating that he or she wishes to dispute the number of Workweeks and/or PAGA Workweeks credited to him or her; and (d) any and all supporting documents.³⁶

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²⁹ Settlement Agreement, § X.C.2.

³⁰ *Id.* § X.C.3.

³¹ *Ibid.*

³² *Id.*, § X.B.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Id.*, § XI.A.

³⁶ *Ibid.*

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

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

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

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

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

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

3 The Parties actively litigated the Action since it was commenced on January 31, 2020.
4 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
5 the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁷

6 Prior to engaging in mediation, Class Counsel conducted significant investigation and
7 formal and informal discovery regarding the facts of the case, including and not limited to, the
8 exchange, review, and analysis of thousands of pages of documents and data produced by
9 Defendant.³⁸ The volume of data and documents that Class Counsel reviewed and analyzed
10 included and was not limited to: employment records of Plaintiff and other Class Members, a
11 detailed sampling of Class Members’ time and pay data, multiple iterations of the Barbier
12 Security Group Handbook, company policy acknowledgements, internal memoranda, job
13 descriptions, new hire orientation checklists, operations and employment practices, Mutual
14 Voluntary Agreement For Individual Arbitration agreement, Off Duty Meal Period Waiver and
15 Second Meal Waiver forms, Authorization Form For Payment Of Missed Meal Period Or Rest
16 Break forms, Paycheck Deduction Agreement, procedures and policies, among other
17 information and documents.³⁹ Class Counsel interviewed Plaintiff and other Class Members to
18 gather facts and to identify potential witnesses.⁴⁰ Class Counsel propounded multiple sets of
19 formal written discovery requests on Defendant, reviewed Defendant’s responses thereto,
20 noticed the depositions of Defendant’s Person Most Knowledgeable designees regarding
21 organizational structure and job duties, and worked with Plaintiff to provide responses and
22 supplemental responses to multiple sets of discovery requests that were propounded by
23 Defendant.⁴¹ Counsel for the Parties also met and conferred on numerous occasions, e.g., to
24 discuss issues relating to the pleadings, discovery, and the production of documents and data

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³⁷ St. John Decl., ¶¶ 11-13.

27 ³⁸ *Id.*, ¶ 12.

28 ³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

1 prior to the mediation.⁴² Class Counsel also drafted pleadings and Plaintiff's mediation brief
2 and prepared for and attended court proceedings, settlement negotiations, and the mediation,
3 among other tasks.⁴³

4 The Parties engaged in extensive settlement negotiations and participated in a formal,
5 full-day mediation conducted by Cary G. Palmer, Esq., a well-respected mediator experienced
6 in mediating complex labor and employment matters.⁴⁴ Prior to and during the mediation and
7 settlement discussions, the Parties exchanged class information and engaged in an intensive
8 discussion regarding their evaluations of the case and various aspects of the case, including but
9 not limited to, Defendant's financial condition, the risks and delays of further litigation, the risks
10 to the Parties of proceeding with class certification and/or representative adjudication, the law
11 relating to Plaintiff's off-the-clock theory, meal and rest periods, wage-and-hour enforcement,
12 and PAGA representative claims, as well as the evidence produced and analyzed, and the
13 possibility of appeals, among other things.⁴⁵ During all settlement discussions, the Parties
14 conducted their negotiations at arm's length in an adversarial position.⁴⁶ Arriving at a settlement
15 that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about
16 their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed
17 that they would be able to obtain class certification and prevail at trial.⁴⁷ After conducting
18 investigations, significant formal and informal discovery, extensive settlement negotiations, and
19 with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited
20 for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs
21 and risks to both sides that would attend further litigation.⁴⁸

22 The Settlement takes into account the strengths and weaknesses of each side's position
23 and the uncertainty of how the case might have concluded at certification and trial.⁴⁹ The Parties
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25 ⁴² St. John Decl., ¶ 12.

26 ⁴³ *Ibid.*

27 ⁴⁴ *Id.*, ¶ 11.

28 ⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 11, 16-18.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

1 have had the opportunity to interview and obtain information from their respective witnesses.⁵⁰
2 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
3 the Class Members' employment with Defendant and performed significant research into the
4 law concerning class certification, PAGA representative actions, Plaintiff's off-the-clock theory,
5 meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses
6 thereto, as well as facts discovered.⁵¹ The Parties have reached the Settlement based on this
7 large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive
8 experience in employment class actions, including significant experience in California wage-
9 and-hour litigation.⁵²

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

11 The Settlement, which provides for a Maximum Settlement Amount of seven hundred
12 ten thousand dollars (\$710,000.00), represents a fair, adequate, and reasonable resolution of the
13 matter.⁵³ The Settlement was calculated using the information and data uncovered during
14 litigation, case investigation, as well as the formal and informal exchange of information.⁵⁴ The
15 Settlement takes into account the potential risks and rewards inherent in any case and, in
16 particular, in the case at issue.⁵⁵ Moreover, considering all of the facts and circumstances of the
17 lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁶

18 Assuming that the Attorneys' Fees and Litigation Costs, Enhancement Payment,
19 allocation for PAGA Penalties, and Administration Costs are approved by the Court and paid in
20 the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement
21 Amount that is currently estimated to be three hundred forty five thousand five hundred dollars
22 (\$345,500.00).⁵⁷ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully
23 paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The
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25 ⁵⁰ St. John Decl., ¶¶ 11, 16-18.

26 ⁵¹ *Id.*, ¶¶ 11-13 & 16-18.

27 ⁵² *Id.*, ¶¶ 6-7.

28 ⁵³ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵⁴ *Id.*, ¶¶ 11-13.

⁵⁵ *Id.*, ¶¶ 16-18.

⁵⁶ *Id.*, ¶¶ 11, 13, & 21.

⁵⁷ *Id.*, ¶ 14.

1 amount of each Settlement Class Member's Individual Settlement Payment will be calculated
2 based on his or her Workweeks during the Class Period.⁵⁸ There is no reason to doubt the
3 fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary
4 approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable,
5 rational basis [to warrant approval], particularly if recommended by experienced and competent
6 class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y.
7 2001) 127 F.Supp.2d 418, 429-30.

8 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
9 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁹
10 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
11 the recommendations into account, particularly if Class Counsel appears to be competent, and
12 has experience with this type of litigation, and investigation have been completed, as is the case
13 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
14 Settlement.

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

16 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted
17 significant formal and informal discovery and exchanged thousands of pages of documents,
18 data, and information prior to mediation.⁶⁰ The documents and information that Class Counsel
19 obtained from Defendant and through other sources allowed Class Counsel to develop valuation
20 models in order to evaluate the potential value and merit of the claims, and perform a complete
21 evaluation of Defendant's defenses thereto.⁶¹ As outlined in the Declaration of Brian J. St. John,
22 Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior
23 to entering into the Settlement.⁶²

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26 ⁵⁸ Settlement Agreement, § XII.A.

27 ⁵⁹ St. John Decl., ¶¶ 11, 13, & 21.

28 ⁶⁰ *Id.*, ¶¶ 11-13 & 18.

⁶¹ *Id.*, ¶ 18.

⁶² *Id.*, ¶¶ 11-13, 16-18, & 21-25.

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.⁶³ 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 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.

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⁶³ Settlement Agreement, § IV.B.

This action involves a class of approximately one thousand ninety-two (1,092) individuals.⁶⁴ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and

⁶⁴ St. John Decl., ¶ 9.

1 employment practices, policies, and procedures during the time period at issue.⁶⁵ Plaintiff's
2 claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to
3 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
4 wages for all hours worked, failing to provide compliant meal and rest periods and associated
5 premium pay, failing to timely pay wages during employment and upon termination of
6 employment, failing to provide complaint wage statements, failing to keep requisite payroll
7 records, and failing to reimburse necessary business-related expenses.⁶⁶

8 Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect
9 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁷
10 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
11 compensation due to them from Defendant during the time period at issue.⁶⁸

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

16 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
17 **ATTORNEYS' FEES AND LITIGATION COSTS**

18 Class Counsel has litigated the matter for over two years, and was actively preparing the
19 matter for class certification and trial.⁶⁹ The ongoing work has been extensive, demanding, and
20 ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted
21 extensive investigations into the facts of the case and formal and informal discovery, including,
22 and not limited to, propounding multiple formal written discovery requests onto Defendant.
23 Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable
24 designees. Class Counsel reviewed thousands of pages of documents and data⁷⁰ and also

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26 ⁶⁵ St. John Decl., ¶ 16.

27 ⁶⁶ *Ibid.*

28 ⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶¶ 11-13.

⁷⁰ *Id.*, ¶ 12.

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.⁷¹ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷²

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷³

The Settlement establishes a Maximum Settlement Amount of seven hundred ten thousand dollars (\$710,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Litigation Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$248,500.00) and an amount not to exceed twenty eight thousand dollars (\$28,000.00) for costs and expenses.⁷⁴ The attorneys' fees provided for by the Settlement are 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 Attorneys' Fees and Litigation Costs, and that an award of the Attorneys' Fees and Litigation Costs will be sought, as provided for by the Settlement.⁷⁵

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

⁷¹ St. John Decl., ¶ 12.

⁷² *Id.*, ¶ 11.

⁷³ *Id.*, ¶¶ 6-7.

⁷⁴ Settlement Agreement, §§ VIII.A & XIV.

⁷⁵ *Id.*, Exh. A.

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 pay 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% 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).

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1 Class Counsel has borne all of the risks and costs of litigation and will not receive any
2 compensation until recovery is obtained.⁷⁶

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

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

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

14 The proposed Class Notice⁷⁷ describes the Settlement, the deadlines and procedures to
15 mail a Notice of Objection, a Request for Exclusion, and/or a Workweeks Dispute, and the date
16 and time set for the Final Approval Hearing.⁷⁸

17 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
18 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class
19 members to make an informed decision about their participation." *Manual for Complex*
20 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
21 proceedings to date and the terms and conditions of the Settlement in an informative and
22 coherent manner.⁷⁹ The proposed Class Notice recognizes that the Court has not yet granted
23 final approval of the settlement.⁸⁰ The proposed Class Notice also apprises the Class Members
24 and PAGA Group Members of, *inter alia*, how their Individual Settlement Payment and/or
25 Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA

26 ⁷⁶ St. John Decl., ¶ 19.

27 ⁷⁷ Settlement Agreement, Exh. A.

28 ⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

Workweeks credited to them.⁸¹

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁸² 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.⁸³ 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.⁸⁴ The Response 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 from the original forty-five (45) calendar day deadline.⁸⁵ The Settlement Administrator will receive and process requests for exclusion, objections, and any disputes regarding Workweeks.⁸⁶

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage

⁸¹ Settlement Agreement, Exh. A.

⁸² Settlement Agreement, § X.A.2.

⁸³ *Id.*, § X.A.4.

⁸⁴ *Ibid.*

⁸⁵ *Id.*, § X.A.5.

⁸⁶ *Id.*, § IX, X.B, X.C, & XI.

portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Litigation Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁷ The Administration Costs are currently estimated to be eleven thousand dollars (\$11,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁸⁸

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

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.⁸⁹

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 address; (3) last known telephone number; (4) number of Workweeks; (5) number of PAGA Workweeks; (6) Social Security number; and (7) last known email address (collectively, "Class List").⁹⁰

Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁹¹ If a Class Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address.⁹² If no forwarding

⁸⁷ Settlement Agreement, § IX; St. John Decl., ¶ 15.

⁸⁸ Settlement Agreement, § IX.

⁸⁹ *Id.*, § X.A.2.

⁹⁰ *Id.*, §§ X.A.1.

⁹¹ *Id.*, § X.A.2.

⁹² *Id.*, § X.A.4.

address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁹³ Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute.⁹⁴

Defendant will deposit fifty percent (50%) of the Maximum Settlement Amount, into an interest-bearing account to be established by the Settlement Administrator, within twenty-one (21) calendar days after the Effective Date.⁹⁵ Defendant will deposit the remaining fifty percent (50%) of the Maximum Settlement Amount, into an interest-bearing account to be established by the Settlement Administrator, within one (1) year of the Effective Date.⁹⁶ Within ten (10) calendar days of the full funding of the Maximum Settlement Amount, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) Individual PAGA Payments to PAGA Group Members; (3) the Court-approved Enhancement Payment to Plaintiff; (4) the Court-approved Attorneys' Fees and Litigation Costs to Class Counsel; (5) the LWDA Payment to the LWDA; and (5) the Court-approved Administration Costs to itself.⁹⁷

The Individual Settlement Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹⁸ Checks that are not negotiated within the 180-day period will be cancelled.⁹⁹ The funds associated with such cancelled checks will be tendered by the Settlement Administrator to Legal Aid at Work.¹⁰⁰

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Margaret Macedo respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to seven

⁹³ Settlement Agreement, § X.A.4.

⁹⁴ *Id.*, § X.A.5.

⁹⁵ *Id.*, § XII.C.

⁹⁶ *Ibid.*

⁹⁷ *Id.*, § XII.D.1.

⁹⁸ *Id.*, § XII.D.3.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

thousand dollars (\$7,000.00) to Plaintiff Margaret Macedo.¹⁰¹ 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 the facts and evidence necessary to attempt to prove the allegations, by way of working with Class Counsel to prepare responses to written discovery requests that were propounded by Defendant.¹⁰² Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.¹⁰³ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for her services on behalf of the Class, PAGA Group Members, and the State of California, 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; preliminarily appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Margaret Macedo as Class Representative; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Attorneys’ Fees and Litigation Costs, Enhancement Payment, LWDA Payment, and

¹⁰¹ Settlement Agreement., § XV.

¹⁰² St. John Decl., ¶ 26; Declaration of Margaret Macedo in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Taylor Decl.”), ¶ 4.

¹⁰³ St. John Decl., ¶ 26; Taylor Decl., ¶¶ 3-6.

Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: August 1, 2022

LAWYERS for JUSTICE, PC

By:



Brian J. St. John
Attorneys for Plaintiff