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

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

Plaintiff,

vs.

TOTAL MERCHANT SERVICES, LLC, an  
unknown business entity; TOTAL  
MERCHANT SERVICES, INC., an  
unknown business entity; and DOES 1  
through 100, inclusive,

Defendants.

Case No.: BC722782

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  
(Edwin Aiwazian); Declaration of  
Proposed Class Representative (Farrah  
Fowler); and [Proposed] Order filed  
concurrently herewith]

Date: March 11, 2022  
Time: 11:00 a.m.  
Department: SSC10

Complaint Filed: September 27, 2018  
FAC Filed: January 10, 2022  
Trial Date: None Set

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

**PLEASE TAKE NOTICE** that on March 11, 2022 at 11:00 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, California 90012, Plaintiff Farrah Fowler (“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 Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Farrah Fowler 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 Costs to Class Counsel, Enhancement Award 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 (Edwin Aiwazian) and Proposed Class Representative (Farrah Fowler) 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 4, 2022

**LAWYERS for JUSTICE, PC**

By:



Edwin Aiwazian  
Attorneys for Plaintiff

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Farrah Fowler (“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 Total Merchant Services, LLC (“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 Total Settlement Amount of three million dollars and no cents (\$3,000,000.00).<sup>1</sup> The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount<sup>2</sup>; (2) the Enhancement Award of ten thousand dollars and no cents (\$10,000.00) to Plaintiff, (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 \$1,050,000.00, and reimbursement of litigation costs and expenses not to exceed twenty eight thousand dollars and no cents (\$28,000.00)<sup>3</sup>; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed nine thousand dollars and no cents (\$9,000.00);<sup>4</sup> and (5) the amount of seventy five thousand dollars and no cents (\$75,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$56,250.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$18,750.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.<sup>5</sup>

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

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<sup>1</sup> Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 8. ee.

<sup>2</sup> *Id.*, ¶ 8. o.

<sup>3</sup> *Id.*, ¶ 12.

<sup>4</sup> *Id.*, ¶ 14.

<sup>5</sup> *Id.*, ¶ 15.

All current and former hourly paid, non-exempt employees who worked for Total Merchant Services, LLC and/or Total Merchant Services, Inc. in California at any time from September 27, 2014 through December 1, 2020 (“Class” or “Class Members”).<sup>6</sup>

The Class is estimated to consist of approximately five hundred (500) individuals.<sup>7</sup>

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 Payment”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Total Merchant Services, LLC and/or Total Merchant Services, Inc. in California in a non-exempt or hourly-paid position during the period from September 27, 2014 through December 1, 2020 (“Workweeks”).<sup>8</sup>

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Claims of Plaintiff and Settlement Class Members against the Released Parties.<sup>9</sup>

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

Defendant is a payment processing company which enables small businesses to take a variety of forms of payment such as credit and debit cards, Apple Pay, and EBT. Plaintiff Farrah Fowler is a former employee of Defendant.

On September 27, 2018, Plaintiff filed a Class Action Complaint for Damages and Demand for Jury Trial in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On January 6, 2020, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Sets One & Two); and Form Interrogatories, (Set One), on Total Merchant Services, Inc. and on Total Merchant Services, LLC.

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<sup>6</sup> Settlement Agreement, ¶ 8.d. “Class Period” is defined as the period of time from September 27, 2014 through December 1, 2020. *See id.*, ¶ 8.f.

<sup>7</sup> Aiwazian Decl., ¶ 9.

<sup>8</sup> Settlement Agreement, ¶ 16.

<sup>9</sup> *See id.* At ¶ 8.w. for the full scope of the “Released Claims,” and *id.* at ¶ 8.x. for the definition of the “Released Parties.”

On September 16, 2020, the Parties participated in a formal, full-day mediation conducted by Mark Rudy, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On January 10, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages and for Enforcement Under the Private Attorneys General Act, California Labor Code §2698 *Et Seq.* in the Action ("Operative Complaint"). On January 14, 2022, Defendant filed an Answer to Plaintiff's First Amended Class Action Complaint for Damages and for Enforcement Under the Private Attorneys General Act, California Labor Code §2698 *Et Seq.*

The Parties have actively litigated the Action since it was commenced on September 27, 2018. Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* Plaintiff contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties, and attorneys' fees.

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

### **III. SUMMARY OF THE SETTLEMENT TERMS**

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released 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 Members) with respect

to the Released Parties.<sup>10</sup> 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 fifty thousand dollars and no cents (\$1,050,000.00) (i.e., up to 35% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed twenty eight thousand dollars and no cents (\$28,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs, which are currently estimated not to exceed nine thousand dollars and no cents (\$9,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$56,250.00 out of \$75,000.00) (“LWDA Payment”); and (4) payment in the amount of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Farrah Fowler (“Enhancement Award”).<sup>11</sup> The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix” 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 Payment”), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweeks Value,” and will multiply each Class member’s individual Workweeks by the Estimated Workweeks Value to yield each Class Member’s estimated Individual Settlement Share.<sup>12</sup>
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Final Workweeks Value,” and will multiply each Settlement Class Member’s individual Workweeks by the Final Workweeks Value to yield each Settlement Class Member’s Individual Settlement Share.<sup>13</sup>

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: one-third (1/3) as wages (the “wage portion”), which will be reported on an IRS Form W-2, and one-third (1/3) as penalties and one-third (1/3) as interest, which will be reported on

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<sup>10</sup> Settlement Agreement, ¶8.ee.

<sup>11</sup> *Id.*, ¶ 8.r.

<sup>12</sup> *Id.*, ¶ 16.a.

<sup>13</sup> *Id.*, ¶ 16.b.

an IRS Form 1099.<sup>14</sup> 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").<sup>15</sup> 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.<sup>16</sup> The Individual Settlement Payment checks issued to Settlement Class Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.<sup>17</sup> Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.<sup>18</sup>

The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to the State Controller's Office Unclaimed Property Division, in the name of the Participating Class Member whose check is cancelled and in the respective amount of the cancelled check.<sup>19</sup>

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a letter indicating that they want to exclude themselves ("Request for Exclusion").<sup>20</sup> To be timely, the Class Member must mail a written Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice ("Response Deadline").<sup>21</sup> A Request for Exclusion must: (a) contain the case name and number of the Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four (4) digits of the Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be included in the Settlement; and (e) be returned by

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<sup>14</sup> Settlement Agreement, ¶ 27.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Id.*, ¶ 8. ee.

<sup>17</sup> *Id.*, ¶ 21.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Id.*, ¶ 8. y.

<sup>21</sup> *Id.*, ¶ 8. z.

mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.<sup>22</sup>

Class Members who submit a valid and timely Request for Exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment.<sup>23</sup>

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.<sup>24</sup> Settlement Class Members who wish to object to the Settlement must submit their objection in writing (“Notice of Objection”) to the Settlement Administrator on or before the Response Deadline.<sup>25</sup> The Notice of Objection must contain: (a) the case name and number of the Action; (b) the objector’s full name, signature, address, and telephone number, and the last four digits of his or her Social Security number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based.<sup>26</sup> Settlement Class Members may also present their objection at the Final Approval Hearing.<sup>27</sup>

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.<sup>28</sup> The letter must: (a) contain the case name and number of the Action; (b) be signed by the disputing Class Member; (c) contain the full name, address, telephone number, and the last four (4) digits of the Social Security Number of the disputing Class Member; (d) clearly state that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number of Workweeks to be credited to him or her; (e) include information and/or attach documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her is correct; and

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<sup>22</sup> Settlement Agreement, ¶ 8.y.

<sup>23</sup> *Id.*, ¶ 23.

<sup>24</sup> *Id.*, ¶ 24

<sup>25</sup> *Ibid*

<sup>26</sup> *Id.*, ¶ 8.s.

<sup>27</sup> *Id.*, ¶ 24.

<sup>28</sup> *Id.*, ¶ 20

(f) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.<sup>29</sup>

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

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

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).

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<sup>29</sup> Settlement Agreement, ¶ 20.

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

9 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

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

22 The proponent of the settlement has the burden to show that it is fair and reasonable.  
23 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the  
24 settlement is reached through arm's-length bargaining; (2) investigation and discovery are  
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
26 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at  
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,  
28 1151.

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 September 27, 2018.  
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.<sup>30</sup>

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.<sup>31</sup> The volume of data and documents that Class Counsel reviewed and analyzed  
10          included and was not limited to: Plaintiff and other Class Members’ employment records, a  
11          detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s Team  
12          Member Handbook, Employee Handbook and Addenda thereto, company forms and  
13          acknowledgements (including but not limited to Second Meal Period Waiver, Team Member  
14          Handbook Acknowledgement of Receipt, and Employee Confidentiality Agreement), internal  
15          memoranda, Defendant’s operations and employment practices and procedures (including but  
16          not limited to Defendant’s Rules of Conduct, Employment Categories, and Department  
17          Performance Reviews), and policies (including but not limited to Defendant’s Meal and Rest  
18          Period Policy, Sick Leave Policy, and California-Specific Overtime Policy), among other  
19          information and documents.<sup>32</sup> Class Counsel interviewed Plaintiff and other Class Members to  
20          gather facts and to identify potential witnesses.<sup>33</sup> Class Counsel propounded multiple sets of  
21          formal written discovery requests on Defendant, including Form Interrogatories, Requests for  
22          Production and Special Interrogatories, and noticed the depositions of Defendant’s Person Most  
23          Knowledgeable designees regarding organizational structure and job duties.<sup>34</sup> Class Counsel  
24          reviewed Defendant’s informal discovery responses and supplemental responses thereto.  
25          Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues

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<sup>30</sup> Aiwazian Decl., ¶¶ 11-13.

27                     <sup>31</sup> *Id.*, ¶ 12.

28                     <sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

1 relating to the pleadings, discovery, and the production of documents and data prior to the  
2 mediation.<sup>35</sup> Class Counsel interviewed Plaintiff and other Class Members to gather facts and  
3 to identify potential witnesses.<sup>36</sup> Class Counsel also drafted pleadings and Plaintiff's mediation  
4 brief, prepared for and attended court proceedings, settlement negotiations, and the mediation,  
5 among other tasks.<sup>37</sup>

6 The Parties engaged in extensive settlement negotiations and participated in a formal,  
7 full-day mediation conducted by Mark Rudy, Esq., a well-respected mediator experienced in  
8 mediating complex labor and employment matters.<sup>38</sup> Prior to and during the mediation and  
9 settlement discussions, the Parties exchanged class information and engaged in an intensive  
10 discussion regarding their evaluations of the case and various aspects of the case, including but  
11 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding  
12 with class certification and/or representative adjudication, the law relating to off-the-clock  
13 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as  
14 well as the evidence produced and analyzed, and the possibility of appeals, among other things.<sup>39</sup>  
15 During all settlement discussions, the Parties conducted their negotiations at arm's length in an  
16 adversarial position.<sup>40</sup> Arriving at a settlement that was acceptable to both Parties was not easy.  
17 Defendant and its counsel felt strongly about their ability to prevail on the merits and at  
18 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class  
19 certification and prevail at trial.<sup>41</sup> After conducting investigations, significant formal and  
20 informal discovery and exchange of information, extensive settlement negotiations, and with  
21 the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for  
22 settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and  
23 risks to both sides that would attend further litigation.<sup>42</sup>

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25 <sup>35</sup> Aiwazian Decl., ¶ 12.

26 <sup>36</sup> *Ibid.*

27 <sup>37</sup> *Ibid.*

28 <sup>38</sup> *Id.*, ¶ 11.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Id.*, ¶¶ 11, 16-18.

<sup>42</sup> *Ibid.*

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.<sup>43</sup> The Parties have had the opportunity to interview and obtain information from their respective witnesses.<sup>44</sup> Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.<sup>45</sup> The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.<sup>46</sup>

**B. The Settlement is Fair, Reasonable, and Adequate.**

The Settlement, which provides for a Total Settlement Amount of three million dollars and no cents (\$3,000,000.00), represents a fair, adequate, and reasonable resolution of the matter.<sup>47</sup> The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.<sup>48</sup> The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.<sup>49</sup> Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.<sup>50</sup>

Assuming that the Attorneys' Fees and Costs, Enhancement Award, LWDA Payment, 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 eight hundred forty six thousand seven hundred fifty

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<sup>43</sup> Aiwazian Decl., ¶¶ 11, 16-18.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Id.*, ¶¶ 11-13 & 16-18.

<sup>46</sup> *Id.*, ¶¶ 6-7.

<sup>47</sup> *Id.*, ¶¶ 11, 13, 14 & 21.

<sup>48</sup> *Id.*, ¶¶ 11-13.

<sup>49</sup> *Id.*, ¶¶ 16-18.

<sup>50</sup> *Id.*, ¶¶ 11, 13, & 21.

dollars and no cents (\$1,846,750.00).<sup>51</sup> 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 Payment will be calculated based on his or her Workweeks.<sup>52</sup> There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members and the State of California.<sup>53</sup> 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.4<sup>th</sup> 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.<sup>54</sup> The discovery and information that Class Counsel obtained from Defendant, Plaintiff, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.<sup>55</sup> As outlined in the Declaration of Edwin

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<sup>51</sup> Aiwasian Decl., ¶ 14.

<sup>52</sup> Settlement Agreement, ¶ 16.

<sup>53</sup> Aiwasian Decl., ¶¶ 11, 13, & 21.

<sup>54</sup> *Id.*, ¶¶ 11-13 & 18.

<sup>55</sup> *Id.*, ¶ 18.

Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.<sup>56</sup>

**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.<sup>57</sup> 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.*

<sup>56</sup> Aiwazian Decl., ¶¶ 11-13 & 16-18.

<sup>57</sup> Settlement Agreement, ¶¶ 9, 10

1 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be  
2 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

3 This Action involves a class of approximately four hundred seventy-two (472)  
4 individuals.<sup>58</sup> This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126  
5 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity  
6 requirement as joinder is not practical at that point). Further, all Class Members can and will  
7 be identified by Defendant to the Settlement Administrator through a review of Defendant's  
8 employment records regarding non-exempt employees in California during the Class Period. As  
9 such, the Class is ascertainable and sufficiently numerous.

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

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

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

25 Here, common issues of fact and law predominate as to each of the claims alleged and  
26 asserted in the Operative Complaint. Based on the documents and information obtained through  
27 formal and informal discovery and exchange of information in this case, Plaintiff contends that  
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<sup>58</sup> Aiwazian Decl., ¶ 9.

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.<sup>59</sup> 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.<sup>60</sup>

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.<sup>61</sup> As a result of the alleged conduct, 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.<sup>62</sup>

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.

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

Class Counsel has litigated the matter for over two years, and was actively preparing the matter for class certification and trial.<sup>63</sup> The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant and noticing the depositions of Defendant's Person Most Knowledgeable designees. Plaintiff reviewed Defendant's informal discovery responses and supplemental responses thereto. Class

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<sup>59</sup> Aiwazian Decl., ¶ 16.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Id.*, ¶¶ 11-13.

Counsel also interviewed and obtained information from Plaintiff and other Class Members, including and not limited to the names of potential witnesses. Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, jurisdiction, motion practice, discovery, and the production of documents and data prior to the mediation. Class Counsel also drafted pleadings and Plaintiff's mediation brief, prepared for and attended court proceedings, reviewed thousands of pages of documents and data,<sup>64</sup> researched applicable law, and undertook damages/valuation calculations, among other tasks.<sup>65</sup> Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.<sup>66</sup>

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.<sup>67</sup>

The Settlement establishes a Total Settlement Amount of three million dollars and no cents (\$3,000,000.00), 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., \$1,050,000.00) and an amount not to exceed twenty eight thousand dollars and no cents (\$28,000.00) for costs and expenses.<sup>68</sup> The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members and the State of California, 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

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<sup>64</sup> Aiwasian Decl., ¶ 12.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Id.*, ¶ 11.

<sup>67</sup> *Id.*, ¶¶ 6-7.

<sup>68</sup> Settlement Agreement, ¶ 12

1 allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and  
2 Costs will be sought, as provided for by the Settlement.<sup>69</sup>

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

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

23 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,  
24 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*  
25 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45%  
26 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*  
27 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys'  
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<sup>69</sup> Settlement Agreement, Exh. A

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

7 Class Counsel has borne all of the risks and costs of litigation and will not receive any  
8 compensation until recovery is obtained in the Action.<sup>70</sup>

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

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

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

20 The proposed Class Notice<sup>71</sup> describes the Settlement, the deadlines and procedures to  
21 file and serve an objection to the Settlement, mail a request for exclusion from the Settlement,  
22 and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval  
23 Hearing.<sup>72</sup>

24 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.  
25 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class  
26 members to make an informed decision about their participation." *Manual for Complex*

27 <sup>70</sup> Aiwasian Decl., ¶ 19.

28 <sup>71</sup> Settlement Agreement, Exh. A.

<sup>72</sup> *Ibid.*

*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.<sup>73</sup> The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.<sup>74</sup> The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment is calculated and the number of Workweeks credited to them.<sup>75</sup>

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.<sup>76</sup> 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.<sup>77</sup> 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.<sup>78</sup> 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

<sup>73</sup> Settlement Agreement, Exh. A.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Id.*, ¶ 19.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

Settlement Administrator, may be extended beyond the original forty-five (45) calendar days from the date of initial mailing of the Class Notice via express agreement between Class Counsel and Defendant's Counsel.<sup>79</sup> The Settlement Administrator will receive and process requests for exclusion, objections, and any disputes regarding Workweeks.<sup>80</sup>

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 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 Costs, Enhancement Award, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.<sup>81</sup> The Settlement Administration Costs are currently estimated to be nine thousand dollars and no cents (\$9,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.<sup>82</sup>

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.<sup>83</sup>

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) Social Security number; and (4) the number of Workweeks worked for Total Merchant

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<sup>79</sup> Settlement Agreement, ¶ 8.z.

<sup>80</sup> *Id.*, ¶¶ 20, 22, 24

<sup>81</sup> *Id.*, ¶ 14.; Aiwazian Decl., ¶ 15.

<sup>82</sup> Settlement Agreement, ¶ 14

<sup>83</sup> *Id.*, ¶ 19

Services, LLC and/or Total Merchant Services, Inc. in California during the Class Period (collectively, “Class List”).<sup>84</sup>

Within fourteen (14) 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.<sup>85</sup> 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.<sup>86</sup> If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.<sup>87</sup> Class Members will have until the applicable Response Deadline to mail a request for exclusion, mail a dispute regarding Workweeks, and/or to file and serve an objection.<sup>88</sup>

Defendant will make a one-time deposit of the Total Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be established by the Settlement Administrator, within thirty (30) calendar days after the Effective Date.<sup>89</sup> Within seven (7) calendar days after the funding of the Total Settlement Amount, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Court-approved Enhancement Award to Plaintiff; (3) the Court-approved Attorneys’ Fees and Costs to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.<sup>90</sup>

The Individual Settlement Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.<sup>91</sup> Checks that are not negotiated within the 180-day period will be cancelled.<sup>92</sup> The funds associated with such cancelled checks will be transmitted to the State Controller’s Office Unclaimed Property Division in the names

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<sup>84</sup> Settlement Agreement, ¶¶ 8.c. & 18.

<sup>85</sup> *Id.*, ¶ 19.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> *Id.*, ¶ 8.z.

<sup>89</sup> *Id.*, ¶ 11

<sup>90</sup> *Ibid.*

<sup>91</sup> *Id.*, ¶ 21

<sup>92</sup> *Ibid.*

of the Settlement Class Members whose checks are cancelled.<sup>93</sup>

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR  
ENHANCEMENT AWARD**

Plaintiff Farrah Fowler respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Award in an amount up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Farrah Fowler.<sup>94</sup> 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 Award 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.<sup>95</sup> Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.<sup>96</sup> Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for her services on behalf of the Class, in addition to her Individual Settlement 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

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<sup>93</sup> Settlement Agreement, ¶ 21.

<sup>94</sup> *Id.*, ¶ 13

<sup>95</sup> Aiwasian Decl., ¶ 20; Declaration of Farrah Fowler in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Fowler Decl."), ¶¶ 3-4.

<sup>96</sup> Aiwasian Decl., ¶ 20; Fowler Decl., ¶¶ 3-6.

1 designate Plaintiff Farrah Fowler as Class Representative; appoint Phoenix Settlement  
2 Administrators as Settlement Administrator; preliminarily approve the allocations for  
3 Attorneys' Fees and Costs, Enhancement Award, LWDA Payment, and Settlement  
4 Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator  
5 to undertake the notice and settlement administration process in conformity with the deadlines  
6 and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing  
7 to take place in approximately six (6) months.

8 Dated: February 4, 2022

**LAWYERS for JUSTICE, PC**

9  
10 By:



Edwin Aiwanian  
Attorneys for Plaintiff