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

SONNY LE, 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.

BALBOA WATER GROUP LLC, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 30-2019-01042358-CU-OE-CXC

Honorable Peter J. Wilson
Department CX102

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 (Sonny Le); and
[Proposed] Order filed concurrently
herewith]

Date: April 21, 2022
Time: 2:00 p.m.
Department: CX102

Complaint Filed: January 7, 2019
FAC Filed: March 28, 2019
SAC Filed: December 30, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 21, 2022 at 2:00 p.m. or as soon thereafter as the matter may be heard before the Honorable Peter J. Wilson in Department CX102 of the Superior Court of California for the County of Orange, located at Civil Complex Center, 751 W. Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Sonny Le (“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 and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as **“EXHIBIT 1”** to the Declaration of Edwin Aiwarzian in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, 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, Service Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Sonny Le as Class Representative;
- Preliminarily appointing Edwin Aiwarzian, Arby Aiwarzian, and Joanna Ghosh of *Lawyers for Justice, PC* as Class Counsel;
- Approving the proposed Notice of Class and Representative Action Settlement (“Class Notice”), Request for Exclusion Form (“Exclusion Form”), and Notice of Objection Form (“Objection Form”), attached as **“EXHIBIT 1,” “EXHIBIT 2,”** and **“EXHIBIT 3,”** respectfully, to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice Packet to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;

- Approving Simpluris, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Service Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and Proposed Class Representative (Sonny Le) 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:

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff

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TABLE OF CONTENTS

I. SUMMARY OF MOTION.....1

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....3

III. SUMMARY OF THE SETTLEMENT TERMS5

**IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENTS.....8**

**V. THE COURT SHOULD PRELIMINARILY APPROVE THE
SETTLEMENT9**

**A. The Settlement Resulted from Arm’s-Length Negotiations Based
Upon Extensive Investigation and Discovery.10**

B. The Settlement Is Fair, Reasonable, and Adequate.....13

C. The Settlement Is of Significant Value.....14

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE14

A. The Class Is Ascertainable and Sufficiently Numerous.15

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

**VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR
ATTORNEYS’ FEES AND COSTS17**

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE20

**IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT
ADMINISTRATOR.....21**

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS22

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION
FOR SERVICE AWARD.....23**

XII. CONCLUSION24

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	10
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	15
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	19
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 .	16
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	20, 21
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	19
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	9
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	9
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 10
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	19
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	9, 10
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	15
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	13
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	19
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	18
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	14
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	19
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	18, 19
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	15
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	20
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	19
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	9
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	15
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	14, 15, 16

1	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	8
2	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	23
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	8, 10
4	Statutes	
5	Cal. Code Civ. Proc. § 1781.....	20
6	Cal. Code Civ. Proc. § 1781(f).....	8
7	Other Authorities	
8	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	9
9	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	22
10	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	14
11	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	19
12	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	21
13	Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	21
14	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	20
15	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	21
16	Rules	
17	Fed. R. Civ. P. 23(c)(2)	20
18	Fed. R. Civ. P. 23(e).....	18

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Sonny Le (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“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 Balboa Water Group 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 Gross Settlement Amount of one million three hundred sixty-two thousand five hundred dollars and no cents (\$1,362,500.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Service Award of seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$476,875.00, and reimbursement of litigation costs and expenses not to exceed thirty-five thousand dollars and no cents (\$35,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed thirteen thousand dollars and no cents (\$13,000.00);⁵ and (5) the amount of one hundred fifty thousand dollars and no cents (\$150,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$112,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$37,500.00) will be distributed to all

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 6.s. If it is determined that, for the period January 7, 2015 to June 24, 2021, the total number of Class Members exceeds 1,109 by more than 10% (i.e., more than 1,220) or the number of Workweeks exceeds 78,177 by more than 10% (i.e., more than 85,995), then the Gross Settlement Amount will increase on a proportional basis to the extent either threshold is exceeded. *See id.*, § 36.

² *Id.*, § 6.u.

³ *Id.*, § 11.

⁴ *Id.*, § 10.

⁵ *Id.*, § 12.

1 individuals who worked for Defendant in California as non-exempt employees at any time
2 during the PAGA Period (“PAGA Members”).⁶

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

5 All individuals who worked for Defendant in California at non-exempt employees
6 at any time during the Class Period (“Class” or “Class Members”).⁷

7 As of June 24, 2021, the Class is estimated to consist of at least one thousand and ninety-
8 one (1,091) individuals.⁸

9 Class Members who do not submit a timely and valid request to be excluded from the
10 Class Settlement (“Settlement Class Members”) will receive a *pro rata* share of the Net
11 Settlement Amount (“Individual Settlement Share”), based upon the number of weeks worked
12 by Class Members during the Class Period, which Defendant will calculate in a manner that
13 credits one (1) Workweek for any period of seven consecutive calendar days, beginning on
14 Sunday at midnight and ending on Saturday at 11:59:59 PM, during which a Class Member
15 began at least one shift (“Workweek(s)").⁹

16 The Settlement, if granted preliminary and final approval by the Court, will operate to
17 resolve the Class Released Claims of Plaintiff and Settlement Class Members and PAGA
18 Released Claims of PAGA Members, against the Released Parties.¹⁰

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

23
24 ⁶ Settlement Agreement, § 13. “PAGA Period” is defined as the period from August 5, 2020 through December 20,
2021. *See id.*, § 6.gg.

25 ⁷ *Id.*, § 6.d. “Class Period” is defined as the period from January 7, 2015 through December 20, 2021. *See id.*, § 6.f.

26 ⁸ Aiwazian Decl., ¶ 9.

27 ⁹ Settlement Agreement, §§ 6.v, 6.uu & 6.vv. “Class Settlement” is defined as the settlement and resolution of all
28 Class Released Claims. *See id.*, § 6.i.

¹⁰ *See id.* at § 6.ll, for the full scope of the “Released Claims,” *id.* at § 6.h, for the full scope of the “Class Released
Claims,” *id.* at § 6.hh, for the full scope of the “PAGA Released Claims,” and *id.* at § 6.mm, for the definition of
the “Released Parties.” Only those Settlement Class Members who cash or deposit their Individual Settlement
Payment check shall be deemed to opt-in to the Settlement and release of Class Released Claims that arise under
the Fair Labor Standards Act. *See id.*, § 30.a.

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

2 Defendant specializes in the design and manufacture of leisure water products and its
3 headquarters are located in Costa Mesa, California. Plaintiff Sonny Le is a former employee of
4 Defendant.

5 On January 7, 2019, Plaintiff filed a Class Action Complaint for Damages in the Orange
6 County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

7 On March 28, 2019, Plaintiff filed a First Amended Class Action Complaint for Damages
8 (“FAC”).

9 On July 16, 2019, Defendant filed an Answer to Plaintiff’s FAC, and thereafter, on
10 August 6, 2019, Defendant filed an Amended Answer to Plaintiff’s FAC.

11 On September 10, 2021, Plaintiff provided written notice by certified mail to the LWDA
12 and Defendant of the specific provisions of the California Labor Code that were violated, and
13 on September 15, 2021, Plaintiff provided a follow-up notice as well.

14 On December 30, 2021, Plaintiff filed a Second Amended Class Action Complaint for
15 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
16 2698, *Et Seq.* (“Operative Complaint”).

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

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

5 On February 18, 2019, Defendant propounded multiple sets of discovery including
6 Request for Admissions, (Set One); Request for Production of Documents, (Set One); and
7 Special Interrogatories, (Set One), on Plaintiff. Thereafter, on March 25, 2019, and July 10,
8 2019, Plaintiff responded to Defendant's discovery requests.

9 On July 18, 2019, Plaintiff propounded multiple sets of discovery including Requests
10 for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form
11 Interrogatories, (Set One), on Defendant and noticed the depositions of Defendant's Person
12 Most Knowledgeable regarding job duties and organizational structure of Defendant.
13 Thereafter, on August 5, 2019, and October 7, 2019, Defendant responded to Plaintiff's
14 discovery requests.

15 On October 15, 2019, Plaintiff propounded additional sets of Request for Production of
16 Documents, (Set Two); and Special Interrogatories, (Set Three) on Defendant, and noticed the
17 deposition of Defendant's Person Most Knowledgeable regarding affirmative defenses of
18 Defendant. Thereafter, on November 20, 2019, and January 30, 2020, Defendant responded to
19 Plaintiff's discovery requests.

20 The Parties have actively litigated the Action since it was commenced on January 7,
21 2019. On August 5, 2021, the Parties participated in a formal, full-day mediation conducted by
22 Jeffrey A. Ross, Esq., a well-regarded mediator experienced in mediating complex labor and
23 employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached
24 the Settlement described herein to resolve the Action in its entirety.

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

2 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to
3 resolve the Released Claims of Plaintiff, Settlement Class Members, and PAGA Members with
4 respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount
5 will be calculated by deducting the following amounts from the Gross Settlement Amount: (1)
6 attorneys' fees in an amount not to exceed four hundred seventy-six thousand eight hundred
7 seventy-five dollars and no cents (\$476,875.00) (i.e., up to 35% of the Gross Settlement
8 Amount) and reimbursement of costs and expenses in an amount not to exceed thirty-five
9 thousand dollars and no cents (\$35,000.00) to Class Counsel (collectively referred to as the
10 "Attorneys' Fees and Costs"); (2) settlement administration costs, which are not to exceed
11 thirteen thousand dollars and no cents (\$13,000.00) to the Settlement Administrator
12 ("Settlement Administration Costs"); (3) one hundred fifty thousand dollars and no cents
13 (\$150,000.00) for penalties under PAGA ("PAGA Allocation"); and (4) payment in the amount
14 of up to seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff Sonny Le
15 ("Service Award").¹² The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or
16 "Settlement Administrator") to handle the notice and settlement administration process.

17 The Parties have agreed that the Settlement Administrator will determine each
18 Settlement Class Member's Individual Settlement Share, in accordance with the Settlement
19 Agreement, which will equal the total of the following: (a) his or her individual number of
20 Released Workweeks multiplied by the Released Workweek Value and (b) his or her individual
21 number of Non-Released Workweeks multiplied by the Non-Released Workweek Value.¹³

22
23
24 ¹¹ Settlement Agreement, §§ 30 & 31.

25 ¹² *Id.*, §§ 6.x, 10, 11, 12 & 13.

26 ¹³ *Id.*, § 14. "Released Workweek(s)" is defined as the Workweeks of Class Members who signed an individual
27 release and severance agreement with Defendant. *See id.*, § 6.nn. "Released Workweek Value" is defined as the
28 value of a Released Workweek, calculated as twenty-eight point forty-four percent (28.44%) of the Net
Settlement Amount divided by all Released Workweeks for all Class Members. *See id.*, § 6.oo. "Non-Released
Workweek(s)" is defined as the Workweeks of Class Members who did not sign an individual release and
severance agreement with Defendant. *See id.*, § 6.y. "Non-Released Workweek Value" is defined as the value of
a Non-Released Workweek, calculated as seventy-one point fifty-six percent (71.56%) of the Net Settlement
Amount divided by all Non-Released Workweeks of all Class Members. *See id.*, § 6.z.

1 The Parties have also agreed that the Settlement Administrator will determine each
2 PAGA Member's *pro rata* share of the twenty-five percent (25%) portion of the PAGA
3 Allocation ("PAGA Member Amount") that a PAGA Member is eligible to receive for the
4 PAGA Settlement ("Individual PAGA Payment"), in accordance with the Settlement Agreement
5 and as follows: the PAGA Member Amount will be divided by the total number of Workweeks
6 worked by all PAGA Members during the PAGA Period to produce a "Weekly PAGA Value;"
7 the Weekly PAGA Value will be multiplied by the number of Workweeks attributable to the
8 individual PAGA Member to derive his or her Individual PAGA Payment.¹⁴

9 Each Individual Settlement Share will be allocated as follows: one-third (1/3) wages,
10 which will be reported on an IRS Form W-2; and the two-thirds (2/3) as penalties, interest, and
11 non-wage damages, which will be reported on an IRS Form 1099.¹⁵ Settlement Class Members
12 will be issued payment of their Individual Settlement Share subject to reduction for the
13 employee's share of taxes and withholdings with respect to the wage portion of each Individual
14 Settlement Share (the net payment is referred to as an "Individual Settlement Payment").¹⁶
15 Defendant will pay the employer's share of taxes and contributions in connection with the wages
16 portion of Individual Settlement Shares ("Employer Taxes") in addition to the Gross Settlement
17 Amount.¹⁷ Each Individual PAGA Payment will be allocated as one hundred percent (100%)
18 penalties and will be reported on an IRS Form-1099 (if applicable).¹⁸

19 Each Individual Settlement Payment and Individual PAGA Payment check will be valid
20 and negotiable for one hundred eighty (180) calendar days from the date the checks are issued,
21 and thereafter, shall be cancelled.¹⁹ The Settlement Administrator shall perform a skip-trace
22 search on any checks that are returned as undeliverable within ninety (90) days of the initial
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26 ¹⁴ Settlement Agreement, § 6.t., 6.ff & 15. "PAGA Settlement" is defined as the settlement and resolution of
PAGA Released Claims. *See id.*, § 6.ii.

27 ¹⁵ *Id.*, § 25.

¹⁶ *Id.*, §§ 6.u & 25.

¹⁷ *Id.*, § 6.n.

¹⁸ *Id.*, § 25.

¹⁹ *Id.*, § 20.

mailing, and perform a single re-mailing to any address located.²⁰ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to Legal Aid at Work.²¹

Any Class Member wishing to be excluded from the Class Settlement must submit an Exclusion Form or timely and valid letter indicating a request to be excluded from the Class Settlement (both of which are referred to as a “Request for Exclusion”), by mail or fax, within forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator (“Response Deadline”).²² The Request for Exclusion must: (a) contain the case name and number of the Action; (b) contain the full name, signature, and the last four digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be submitted by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or faxed on or before the Response Deadline.²³ A Class Member who submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will not be issued an Individual Settlement Payment, however, if the Class Member is also a PAGA Member, he or she will be bound to the PAGA Settlement and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.²⁴

To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) must submit an Objection Form or a written objection (both of which are referred to as a “Notice of Objection”) to the Settlement Administrator, by fax or mail, on or before the Response Deadline.²⁵ The Notice of Objection must include: (a) the case name and number of the Action; (b) the objector’s full name, signature, address, telephone number, and last four (4) digits of Social Security Number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection;

²⁰ Settlement Agreement, § 20.

²¹ *Ibid.*

²² *Id.*, §§ 6.pp, 6.qq & 21.

²³ *Id.*, § 6.pp.

²⁴ *Ibid.*

²⁵ *Id.*, §§ 6.aa & 22.

(d) copies of any papers, briefs, or other documents upon which the objection is based; and (e) be submitted by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or faxed on or before the Response Deadline.²⁶ Settlement Class Members may also present their objection orally at the Final Approval Hearing.²⁷

Class Members will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notices.²⁸ In order to dispute Workweeks, Class Members must submit a written letter to the Settlement Administrator that: (a) contains the case name and number of the Action; (b) is signed by the Class Member; (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member; (d) clearly states that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (e) includes information and/or attaches documentation demonstrating that the number Workweeks that he or she contends should be credited to him or her are correct; and (f) is returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or fax-stamped on or before the Response Deadline.²⁹

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

²⁶ Settlement Agreement, § 6.aa

²⁷ *Id.*, § 22.

²⁸ *Id.*, § 19.

²⁹ *Ibid.*

1 was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s
2 decision to approve a class action settlement may be reversed only upon a strong showing of
3 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
4 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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

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

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

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

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

The Parties actively litigated the Action since it was commenced on January 7, 2019. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁰

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.³¹ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a detailed sampling of Class

³⁰ Aiwazian Decl., ¶¶ 11-13.

³¹ *Id.*, ¶ 12.

Members' time and pay data, multiple iterations of Defendant's Employee Handbook, company policy acknowledgements and agreements (including, but not limited to, Defendant's Acknowledgement & Receipt of Company Handbook and Agreement to Resolve by Reference Employment Disputes), internal memoranda, job descriptions, new hire orientation checklists and guidelines, Defendant's operations and employment practices, forms, procedures, and policies (including, but not limited to, Defendant's Rest & Meal Periods, Reporting to Work When There is No Work, Overtime, and Expense Reimbursement policies), among other information and documents.³² Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³³ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses thereto, noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure, job duties, and affirmative defenses, and worked with Plaintiff to provide responses and supplemental responses to multiple sets of discovery requests that were propounded by Defendant.³⁴ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁵ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁶

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation on August 5, 2021, conducted by Jeffrey A. Ross, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁷ Prior to and during the mediation and settlement discussions, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties

³² Aiwazian Decl., ¶ 12.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Id.*, ¶ 11.

of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, federal and state wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁸ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁹ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁰ After conducting investigations, extensive formal and informal discovery, exchanged of information, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴¹

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.⁴² The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴³ 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, federal and state wage-and-hour law and enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁴ 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.⁴⁵

³⁸ Aiwazian Decl., ¶ 11.

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶¶ 11, 16-18.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁵ *Id.*, ¶¶ 6-7.

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

2 The Settlement, which provides for a Gross Settlement Amount of one million three
3 hundred sixty-two thousand five hundred dollars and no cents (\$1,362,500.00), represents a fair,
4 adequate, and reasonable resolution of the matter.⁴⁶ The Settlement was calculated using the
5 information and data uncovered during litigation, case investigation, as well as the formal and
6 informal exchange of information.⁴⁷ The Settlement takes into account the potential risks and
7 rewards inherent in any case and, in particular, in the case at issue.⁴⁸ Moreover, considering all
8 of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and
9 adequate recovery for the Class.⁴⁹

10 Assuming that the Attorneys' Fees and Costs, Service Award, PAGA Allocation, and
11 Settlement Administration Costs are approved by the Court and paid in the full amounts
12 provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is
13 currently estimated to be six hundred eighty thousand one hundred twenty-five dollars and no
14 cents (\$680,125.00).⁵⁰ As discussed in Part III, *supra*, the entire Net Settlement Amount will
15 be fully paid out to the Settlement Class Members, in accordance with the Settlement
16 Agreement. The amount of each Settlement Class Member's Individual Settlement Share and
17 the amount of each PAGA Member's Individual PAGA Payment will be calculated based on
18 his or her Workweeks.⁵¹ There is no reason to doubt the fairness of the proposed plan of
19 allocation of the settlement funds for purposes of preliminary approval. Even at the final
20 approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant
21 approval], particularly if recommended by experienced and competent class counsel." *In re*
22 *American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d
23 418, 429-30.

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25
26 ⁴⁶ Aiwazian Decl., ¶¶ 11, 13, 14 & 21.

27 ⁴⁷ *Id.*, ¶¶ 11-13.

28 ⁴⁸ *Id.*, ¶¶ 16-18.

⁴⁹ *Id.*, ¶¶ 11, 13, & 21.

⁵⁰ *Id.*, ¶ 14.

⁵¹ Settlement Agreement, §§ 14 & 15.

1 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
2 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA
3 Members, and the State of California.⁵² Although the recommendations of Class Counsel are
4 not conclusive, the Court can properly take the recommendations into account, particularly if
5 Class Counsel appears to be competent, and has experience with this type of litigation, and
6 investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the
7 Court should grant preliminary approval of the Settlement.

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

9 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
10 conducted extensive formal and informal discovery and exchanged thousands of pages of
11 documents, data, and information prior to mediation.⁵³ The documents, discovery, and
12 information that Class Counsel obtained from Defendant, Plaintiff, and other sources allowed
13 Class Counsel to develop valuation models in order to evaluate the potential value and merit of
14 the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁴ As outlined
15 in the Declaration of Edwin Aiwasian in Support of Plaintiff's Motion for Preliminary Approval
16 of Class Action Settlement, Class Counsel performed an extensive analysis of each and every
17 claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁵

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

19 For settlement purposes, the requisites for establishing class certification are met, and
20 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁶
21 California Code of Civil Procedure Section 382 "authorizes class actions when the question is
22 one of a common or general interest, of many persons, or when the Parties are numerous, and it
23 is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court*
24 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
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26 ⁵² Aiwasian Decl., ¶¶ 11, 13, & 21.

27 ⁵³ *Id.*, ¶¶ 11-13 & 18.

28 ⁵⁴ *Id.*, ¶ 18.

⁵⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁶ Settlement Agreement, § 32.

“both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This Action involves a class of at least one thousand and ninety-one (1,091) individuals.⁵⁷ 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 their non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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⁵⁷ Aiwazian Decl., ¶ 9.

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

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

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

16 Here, Plaintiff contends that common issues of fact and law predominate as to each of
17 the claims alleged and asserted in the Operative Complaint. Based on the documents and
18 information obtained through formal and informal discovery and exchange of information in
19 this case, Plaintiff contends that Class Members were subject to the same or similar job duties
20 and uniform operations and employment practices, policies, and procedures during the time
21 period at issue.⁵⁸ Plaintiff’s claims arise from Defendant’s alleged uniform policy and
22 systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to
23 properly pay overtime and minimum wages for all hours worked, failing to provide compliant
24 meal and rest periods and associated premium pay, failing to timely pay wages during
25 employment and upon termination of employment, failing to provide complaint wage
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⁵⁸ Aiwazian Decl., ¶ 16.

statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁵⁹

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.⁶⁰ 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.⁶¹

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 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 three years, and was actively preparing the matter for class certification and trial.⁶² 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 reviewing Defendant's responses thereto. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data⁶³ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁴ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a

⁵⁹ *Ibid.*

⁶⁰ Aiwasian Decl., ¶ 16.

⁶¹ *Ibid.*

⁶² *Id.*, ¶¶ 11-13.

⁶³ *Id.*, ¶ 12.

⁶⁴ *Ibid.*

1 formal, full-day mediation.⁶⁵

2 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
3 experience to obtain a great result for the Class.⁶⁶

4 The Settlement establishes a Gross Settlement Amount of one million three hundred sixty-
5 two thousand five hundred dollars and no cents (\$1,362,500.00), and provides for Class Counsel
6 to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount
7 not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$476,875.00) and
8 an amount not to exceed thirty-five thousand dollars and no cents (\$35,000.00) for costs and
9 expenses.⁶⁷ The attorneys' fees provided for by the Settlement is commensurate with: (1) the
10 risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and
11 expense that Class Counsel dedicated to the case, (3) the skill and determination that Class
12 Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5)
13 the value of the Settlement that Class Counsel has achieved for the Class Members, PAGA
14 Members, and the State of California, and (6) the other cases that Class Counsel had to turn
15 down in order to devote its time and efforts to this matter. The proposed Class Notice provides
16 Class Members with information about the amount allocated toward the Attorneys' Fees and
17 Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the
18 Settlement.⁶⁸

19 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
20 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
21 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
22 "experienced trial judge is the best judge of the value of professional services rendered in his
23 court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
24 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
25 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
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27 ⁶⁵ *Id.*, ¶ 11.

28 ⁶⁶ Aiwazian Decl., ¶¶ 6-7.

⁶⁷ Settlement Agreement, § 10.

⁶⁸ *Id.*, Exh. A.

1 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
2 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
3 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
4 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
5 settlement fund and the settlement agreement provides that the defendant agrees to paying the
6 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

25 Class Counsel has borne all of the risks and costs of litigation and will not receive any
26 compensation until recovery is obtained.⁶⁹

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⁶⁹ Aiwazian Decl., ¶ 19.

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice⁷⁰ describes the Settlement, the deadlines and procedures to submit a Notice of Objection, Request for Exclusion, and/or dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷¹

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷² The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷³ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks credited to them.⁷⁴

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*,

⁷⁰ Settlement Agreement, Exh. A.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

§§ 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 SIMPLURIS, INC. AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Notice Packet to all Class Members by First-Class U.S. mail.⁷⁵ With respect to Notice Packets that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternative address by way of skip-trace and re-mail the Notice Packet within five (5) calendar days.⁷⁶ In the event that a Notice Packet is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fifteen (15) calendar days.⁷⁷ The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.⁷⁸

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks to PAGA Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys’ Fees and Costs, Service Award, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁷⁹ The Settlement Administration Costs are currently estimated not to exceed thirteen thousand dollars and no cents (\$13,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁰

⁷⁵ Settlement Agreement, § 18.

⁷⁶ *Ibid.*

⁷⁷ *Id.*, § 6.qq.

⁷⁸ *Id.*, § 19, 21 & 22.

⁷⁹ *Id.*, § 12.; Aiwarzian Decl., ¶ 15.

⁸⁰ Settlement Agreement, § 12.

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Notice Packet 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.⁸¹

Within twenty-one (21) calendar days after the date on which the Court enters the order granting preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with a complete list of all Class Members and PAGA Members, which will include each Class Member's and PAGA Member's last-known full name, mailing address, telephone number, Social Security Number, and number of Workweeks during the Class Period and, as applicable, during the PAGA Period (collectively, "Class and PAGA Data and List").⁸²

Within ten (10) business days after receiving the Class and PAGA Data and List from Defendant, the Settlement Administrator will mail the Notice Packet to all Class Members via First-Class U.S. Mail.⁸³ With respect to Notice Packets that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternative address by way of skip-trace and re-mail the Notice Packet within five (5) calendar days.⁸⁴ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, dispute regarding Workweeks, and/or Notice of Objection.⁸⁵

Within thirty (30) calendar days of the Effective Date, Defendant will make a one-time deposit of the Gross Settlement Amount plus an amount sufficient for Employer Taxes into a

⁸¹ Settlement Agreement, § 18.

⁸² *Id.*, §§ 6.c & 17.

⁸³ *Id.*, § 18.a.

⁸⁴ *Id.*, § 18.b.

⁸⁵ *Id.*, §§ 19, 21 & 22.

1 settlement account to be established by the Settlement Administrator.⁸⁶ Within seven (7)
2 calendar days of the funding of the Gross Settlement Amount and an amount sufficient for
3 Employer Taxes, the Settlement Administrator will issue payments due under the Settlement
4 and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class
5 Members; (b) Individual PAGA Payments to PAGA Members; (c) LWDA Payment to the
6 LWDA; (d) Service Award to Plaintiff; (e) Attorneys' Fees and Costs to Class Counsel; and (f)
7 Settlement Administration Costs to itself.⁸⁷

8 Each Individual Settlement Payment and Individual PAGA Payment check will valid
9 and negotiable for one hundred and eighty (180) calendar days from the date the checks are
10 issued, and thereafter, shall be cancelled.⁸⁸ The Settlement Administrator shall perform a skip-
11 trace search on any checks that are returned as undeliverable within ninety (90) days of the initial
12 mailing, and perform a single re-mailing to any address located.⁸⁹ All funds associated with
13 such cancelled checks will be transmitted by the Settlement Administrator to Legal Aid at
14 Work.⁹⁰

15 **XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR**
16 **SERVICE AWARD**

17 Plaintiff Sonny Le respectfully requests that the Court appoint him as the Class
18 Representative and preliminarily approve the Service Award in an amount up to seven thousand
19 five hundred dollars and no cents (\$7,500.00) to Plaintiff Sonny Le.⁹¹ It is within the Court's
20 discretion to award payment to a class representative for their efforts and work. *Vranken v.*
21 *Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation
22 award to a single class representative). The factors that courts may consider in determining
23 whether to make an enhancement payment include: (1) the risk to the class representative in
24 commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties

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26 ⁸⁶ Settlement Agreement, § 9.

27 ⁸⁷ *Ibid.*

28 ⁸⁸ *Id.*, § 20.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Id.*, § 11.

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 Service Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records, providing the facts and evidence necessary to attempt to prove the allegations, and providing responses and supplemental responses to Defendant's discovery requests.⁹² Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁹³ Accordingly, it is appropriate and just for Plaintiff to receive a Service Award for his services on behalf of the Class, in addition to his Individual Settlement Payment.

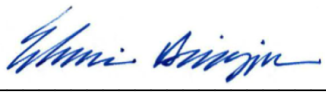
XII. CONCLUSION

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 Edwin Aiwarzian, Arby Aiwarzian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Sonny Le as Class Representative; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Service Award, PAGA Allocation, and Settlement Administration Costs; approve the proposed Notice Packet; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated:

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian
Attorneys for Plaintiff

⁹² Aiwarzian Decl., ¶ 20; Declaration of Sonny Le in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Le Decl."), ¶ 3-4.

⁹³ Aiwarzian Decl., ¶ 20; Le Decl., ¶¶ 3-4.