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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDGAR MARISCAL, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiffs,

v.

ARIZONA TILE, LLC, an unknown
business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 8:20-CV-02071-JLS-KES

Honorable Josephine L. Staton

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Filed concurrently with Declaration of
Proposed Class Counsel (Edwin Aiwarzian);
Declaration of Proposed Class
Representative (Edgar Mariscal); and
[Proposed] Order]

Date: June 17, 2022

Time: 10:30 a.m.

Courtroom: 10A

Complaint Filed: September 15, 2020

FAC Filed: May 28, 2021

Trial Date: None Set

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 17, 2022, at 10:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Josephine L. Staton in Courtroom 10A of the United States District Court for the Central District of California, located at the Ronald Reagan Federal Building and United States Courthouse, 411 W. Fourth St., Santa Ana, CA, 92701, Plaintiff Edgar Mariscal (“Plaintiff”) will and hereby does move for an order:

- Granting Plaintiff leave to file the [Proposed] Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Second Amended Complaint”) attached as “**EXHIBIT 2**” to the Declaration of Edwin Aiwazian;
- Granting preliminary approval of the proposed class and representative action settlement described herein and as set forth in the parties’ Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“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 but not limited to, the allocation for penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA Allocation”), Attorneys’ Fees and Costs, Class Representative Service Award, and Settlement Administrator Costs;
- Conditionally certifying the Class for settlement purposes;
- Appointing Plaintiff Edgar Mariscal as Class Representative;
- Appointing Edwin Aiwazian, Esq., Arby Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers for Justice, PC as Class Counsel;

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- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**,” to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement (“Proposed Order”);
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administration Solutions (“Phoenix”) 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 Attorneys’ Fees and Costs, Class Representative Service Award, Settlement Administrator Costs, and PAGA Allocation.

This motion is based upon the following memorandum of points and authorities; the Settlement Agreement; the Declaration of Proposed Class Counsel (Edwin Aiwazian) the Declaration of Proposed Class Representative (Edgar Mariscal) in support thereof; as well as 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: January 21, 2022

LAWYERS for JUSTICE, PC

By: /s/ Edwin Aiwazian

Edwin Aiwazian

Attorneys for Plaintiff Edgar Mariscal

TABLE OF CONTENTS

I.	SUMMARY OF MOTION	1
II.	FACTUAL BACKGROUND AND PROCEDURAL HISTORY	3
III.	SUMMARY OF THE SETTLEMENT TERMS	6
A.	The Class for Settlement Purposes	6
B.	Essential Terms of the Settlement	6
C.	Calculation and Range of Individual Settlement Payments to Participating Class Members	7
D.	Settlement Opt-Out and Objection Procedures	8
E.	Scope of the Class Release	9
IV.	THE LEGAL STANDARD FOR PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT	10
V.	THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED	10
A.	The Settlement Resulted from Arm's Length Negotiations and Extensive Investigation and Discovery	11
B.	The Settlement Is Fair, Reasonable, and Adequate	12
VI.	APPOINTMENT OF CLASS REPRESENTATIVE AND CONTEMPLATED SERVICE AWARD	15
VIII.	CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE UNDER RULE 23	18
A.	Numerosity	18
B.	Commonality	18
C.	Typicality	19
D.	Adequacy of Representation	19
E.	Predominance and Superiority	20
IX.	ADEQUACY OF THE METHOD OF NOTICE	21
X.	APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR AND CONTEMPLATED SETTLEMENT ADMINISTRATOR	

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1	COSTS	23
2	XI. DEADLINES FOR NOTICE AND ADMINISTRATION	23
3	XII. CONCLUSION	24
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES**United States Supreme Court Cases**

<i>Dukes v. Wal-Mart, Inc.</i> , 564 U.S. 338 (2011).....	18
<i>Elsen v. Carlisle & Jacqueline</i> , 417 U.S. 156 (1974)	22
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983).....	17
<i>Hoffmann-La Roche Inc. v. Sperling</i> , 493 U.S. 165 (1989)	22

Federal Cases

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	20
<i>Armstrong v. Davis</i> , 275 F.3d 849 (9th Cir. 2001).....	19
<i>Blackie v. Barrack</i> , 524 F.2d 891 (9th Cir. 1975).....	19
<i>Churchill Vill. LLC v. Gen. Elec.</i> , 361 F.3d 566 (9th Cir. 2004)	21
<i>Harris v. Vector Mktg. Corp.</i> , No. 08-cv-5198-EMC, 2011 WL 1627973 (N.D. Cal. Apr. 29, 2011)	11
<i>In re Badger Mountain Irr. Dist. Sec. Litig.</i> , 143 F.R.D. 693 (W.D. Wash. 1992)	18
<i>In re Mego Fin. Corp. Sec. Litig.</i> , 213 F.3d 454 (9th Cir. 2000)	15, 19
<i>In re Toyota Motor Corp.</i> , 2013 WL 3224585 (C.D. Cal. June 17, 2013).....	16
<i>In re Toys “R” Us-Del., Inc. FACTA Litig.</i> , 295 F.R.D. 438 (C.D. Cal. 2014)	15
<i>Mazza v. Am. Honda Motor Co.</i> , 254 F.R.D. 610 (C.D. Cal. 2008)	18
<i>Romero v. Producers Dairy Foods, Inc.</i> , 2007 WL 3492841 (E.D. Cal. Nov. 14, 2007)	17
<i>Schaefer v. Overland Express Family of Funds</i> , 169 F.R.D. 124 (S.D. Cal. 1996)	21
<i>Singer v. Becton Dickinson and Co.</i> , 2010 WL 2196104 (S.D. Cal. June 1, 2010)	17
<i>Staton v. Boeing</i> , 327 F.3d 938 (9th Cir. 2003).....	15
<i>Vasquez v. Coast Valley Roofing, Inc.</i> , 266 F.R.D. 482 (E.D. Cal. 2010)	17
<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002).....	16, 17
<i>Welmer v. Syntex</i> , 117 F.R.D. 641 (N.D. Cal. 1987).....	19

Rules

Federal Rule of Civil Procedure 23(a).....	18
Federal Rule of Civil Procedure 23(a)(1)	18

LAWYERS for JUSTICE, PC
 410 West Arden Avenue, Suite 203
 Glendale, California 91203

1	Federal Rule of Civil Procedure 23(a)(4)	19
2	Federal Rule of Civil Procedure 23(b).....	18
3	Federal Rule of Civil Procedure 23(b)(3).....	20
4	Federal Rule of Civil Procedure 23(c)(2)(B).....	21, 22
5	Federal Rule of Civil Procedure 23(e).....	10, 21
6	Federal Rule of Civil Procedure 23(h)	16
7	Other Authorities	
8	<i>Manual for Complex Litig., Fourth</i> § 21.132	20

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Edgar Mariscal (“Plaintiff” or “Class Representative”) respectfully request that this Court grant preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“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 Arizona Tile, LLC (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle the action entitled *Edgar Mariscal v. Arizona Tile, LLC*, Central District of California Case No. 8:20-CV-02071-JLS-KES (the “Action”) for a Gross Settlement Amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) on a non-reversionary basis.¹

The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members; (2) employee’s share of payroll taxes with respect to the wage portion of Individual Settlement Payments; (3) Class Representative Service Award in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff; (4) Attorneys’ Fees and Costs to Class Counsel consisting of attorneys’ fees in an amount not to exceed thirty five percent (35%) of the Gross Settlement Amount (i.e. \$875,000 if the Gross Settlement Amount is \$2,500,000²) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty Five Thousand Dollars (\$25,000); (5) Settlement Administrator Costs to the Settlement Administrator in an amount not to exceed Fifteen Thousand Dollars (\$15,000); and (6) penalties allocated under the California Labor Code Private

¹ A copy of the fully-executed Settlement Agreement is attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwasian filed concurrently herewith (“Aiwasian Decl.”).

² The Settlement Agreement provides that to the extent the number of Compensable Workweeks increases beyond 50,649 by more than 10%, the Gross Settlement Amount shall increase 1% for each 1% increase over 10%. (Agreement, ¶ III. 30.)

1 Attorneys General Act of 2004 (“PAGA”) in the amount of One Hundred Fifty
2 Thousand Dollars (\$150,000) (the “PAGA Allocation”), of which seventy five
3 percent (75%) (i.e. \$112,500) will be distributed to the California Labor and
4 Workforce Development Agency (“LWDA”) and twenty five percent (25%) (i.e.
5 \$37,500) will be distributed to Participating Class Members as part of the Net
6 Settlement Amount.

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

9 all persons who are employed or have been employed by Arizona Tile,
10 LLC as non-exempt, hourly employees in the State of California during
11 the period from September 15, 2016 to October 21, 2021 (“Class” or
“Class Members”).

12 The Class is estimated to consist of approximately four hundred and fifteen
13 (415) individuals.

14 Class Members who do not submit a valid and timely Request for Exclusion
15 (“Participating Class Members”) will receive a share of the Net Settlement Amount
16 on a *pro rata* basis based upon the number of weeks in which Class Member(s)
17 performed work for Defendant in the State of California during the period from
18 September 15, 2016 through October 21, 2021 (“Compensable Workweeks” or
19 “Workweeks”). A Participating Class Member’s Individual Settlement Payment will
20 be based on his/her individual number of Compensable Workweeks in proportion to
21 the aggregate number of Compensable Workweeks of all Participating Class
22 Members.

23 The Settlement resolves the Released Claims of Plaintiff and Participating
24 Class Members against the Released Parties.

25 The Parties reached the Settlement after engaging in significant discovery,
26 investigations, and arm’s-length negotiations. The Settlement resulted from a formal
27 mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator who is
28 experienced in wage-and-hour class actions. The Settlement satisfies the criteria for

1 approval and falls within the range of possible approval under California and federal
2 law. Additionally, the proposed Class Notice provides the best notice practicable
3 under the circumstances and will allow each Class Member a full and fair opportunity
4 to evaluate the Settlement and decide whether to participate in it. Accordingly,
5 Plaintiff moves the Court to grant preliminary approval of the Settlement and the
6 allocations for Attorneys' Fees and Costs, Class Representative Service Award, and
7 Settlement Administrator Costs; certify the proposed Class for settlement purposes;
8 direct distribution of the Class Notice; and set a Final Approval Hearing.

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

10 Defendant is a wholesaler of stone, granite, and tile pieces for residential and
11 commercial spaces with over one dozen locations throughout the State of California.
12 Plaintiff Edgar Mariscal was employed by Defendant as an hourly-paid, non-exempt
13 employee from approximately February 2013 to July 2018. Declaration of Edgar
14 Mariscal filed concurrently herewith ("Mariscal Decl.") ¶ 2.

15 On September 15, 2020, Plaintiff filed a Class Action Complaint for Damages,
16 thereby commencing a putative class action in the Orange County Superior Court,
17 entitled *Mariscal v. Arizona Tile, LLC*, case no. 30-2020-01160477-CU-OE-CXC
18 ("Action"), against Defendant for violations of the California Labor Code and the
19 California Business and Professions Code.

20 On October 23, 2020, Defendant filed its Answer to Plaintiff's Class Action
21 Complaint for Damages.

22 On October 26, 2020, Defendant filed its Notice of Removal removing the
23 Action to the United States District Court, Central District of California (Doc. No. 1).

24 On November 23, 2020, Plaintiff filed a Motion to Remand, Defendant filed its
25 opposition on March 26, 2021, Plaintiff filed his reply on April 2, 2021, and the U.S.
26 District Court denied Plaintiff's Motion to Remand on April 14, 2021 (Doc. No. 27).

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1 On May 28, 2021, Plaintiff filed a First Amended Class Action Complaint for
2 Damages (“FAC” or “First Amended Complaint”) (Doc. No. 30). The First Amended
3 Complaint alleged claims for failure to properly pay overtime wages, failure to pay
4 meal period premiums, failure to pay rest period premiums, failure to pay minimum
5 wages, failure to timely pay wages upon termination of employment, failure to timely
6 pay wages during employment, non-compliant wage statements, failure to keep
7 requisite payroll records, failure to reimburse business expenses, and violation of
8 California Business and Professions Code § 17200, *et seq.*

9 On June 11, 2021, Defendant filed an Answer to Plaintiff’s First Amended
10 Complaint (Doc. No. 31).

11 Plaintiff contends that Defendant has violated the California Labor Code by,
12 *inter alia*, failing to properly pay minimum and overtime wages, failing to provide
13 compliant meal and rest periods or pay associated premium payments, failing to
14 timely pay wages upon termination, failing to timely pay wages during employment,
15 failing to provide compliant wage statements, failing to maintain adequate payroll
16 records, and failing to reimburse necessary business-related expenses. Plaintiff
17 further contends that, due to the referenced conduct, Defendant engaged in unfair
18 business practices (in violation of California Business and Professions Code sections
19 17200, *et seq.*) and owes civil penalties recoverable under the Private Attorney
20 General Act (California Labor Code section 2698, *et seq.*) As a result, Plaintiff
21 contends that he and the Class Members are entitled to, *inter alia*, unpaid wages,
22 penalties, and attorneys’ fees. By way of separate stipulation, Parties have agreed
23 that Plaintiff should be granted leave to file an amended complaint formally alleging
24 the PAGA cause of action, to implement the settlement.

25 Defendant denies any liability or wrongdoing of any kind associated with
26 Plaintiff’s allegations in the Action, disputes the damages and penalties claimed by
27 Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff’s
28 claims are not appropriate for class or representative action treatment.

1 The Parties engaged in formal and informal discovery, which facilitated an
2 understanding of the nature, strengths, and weaknesses of the allegations and the
3 scope of potential liability. On March 18, 2021, Plaintiff served on Defendant
4 requests for production, two sets of special interrogatories, and a notice of rule
5 30(b)(6) deposition of Defendant's person most knowledgeable. On April 6, 2021,
6 Defendant served a notice of deposition of Plaintiff and requests for production. On
7 April 18, 2021, Defendant responded to Plaintiff's discovery requests. Defendant
8 also informally provided Plaintiff's counsel with, among other things, pertinent data
9 and records for the Class.

10 On July 23, 2021, the Parties attended a full-day mediation with experienced
11 mediator Jeffrey Krivis ("Mediator"). After a full-day mediation, the Parties reached
12 a settlement, as provided in the Settlement Agreement and herein, to settle Plaintiff's
13 claims on a class-wide and representative basis.

14 Plaintiff served a letter dated September 8, 2021, on the California Labor &
15 Workforce Development Agency and the Defendant, that provided notice of his
16 intent to seek civil penalties for alleged violations of the California Labor Code,
17 under PAGA (the "PAGA Letter").

18 As part of the Settlement, to effectuate the settlement of the claims
19 investigated, pursued, litigated, mediated, and ultimately resolved, the Parties agreed
20 to the filing of an amended complaint in the instant action ("Second Amended
21 Complaint"). The Second Amended Complaint will add a cause of action under
22 PAGA.

23 On January 21, 2022, the Parties filed a Joint Stipulation Granting Plaintiff
24 Leave to File Second Amended Class Action Complaint for Damages & Enforcement
25 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
26 ("Joint Stipulation"), requesting the entry of an order from this Court granting
27 Plaintiff leave to file the [Proposed] Second Amended Class Action Complaint for
28 Damages & Enforcement Under the Private Attorneys General Act, California Labor

Code § 2698, Et Seq. attached as “**Exhibit A**” thereto. The same proposed Second Amended Complaint is also attached as “**EXHIBIT 2**” to the Declaration of Edwin Aiwarzian filled concurrently herewith,

With respect to the amendment of the complaint, the Settlement Agreement provides as follows: “Prior to the filing of the motion for preliminary approval of the Settlement Agreement, the Parties will stipulate to the filing of an amended complaint to add to the current complaint the PAGA cause of action, so that the claims and causes of action in the Action fall within the definition of Released Claims for purposes of settlement only (“Operative Complaint”). The Court’s approval of the Parties’ stipulation to file an amended complaint is a material term of the Settlement Agreement.” Agreement, ¶ II. 1.

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Class for Settlement Purposes

For settlement purposes only, the Parties agree to class action certification of the following Class consisting of approximately four hundred and fifteen (415) individuals:

all persons who are employed or have been employed by Arizona Tile, LLC as non-exempt, hourly employees in the State of California during the period from September 15, 2016 to October 21, 2021 (“Class Period”). Agreement, ¶¶ I. 5-6

As discussed in § VIII, *infra*, class certification is appropriate with respect to the Settlement and resolution of the Released Class Claims.³

B. Essential Terms of the Settlement

The Settlement provides for a Gross Settlement Amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) on a non-reversionary basis. Agreement, ¶ I. 17. The Settlement provides that to the extent the number of Compensable Workweeks increases beyond 50,649 by more than 10% (i.e., increases more than

³ See Agreement, ¶ I. 29 for the definition of Released Class Claims.

55,714), the Gross Settlement Amount shall increase 1% for each 1% increase over 10%. Agreement, ¶ III. 30.

Under the terms of the Settlement, the Net Settlement Amount is the Gross Settlement Amount less the following amounts subject to approval by the Court: 1) Attorneys' Fees and Costs consisting of attorneys' fees of up to 35% of the Gross Settlement Amount (i.e. \$875,000 if the Gross Settlement Amount is \$2,500,000) and reimbursement of litigation costs and expenses to Class Counsel of up to \$25,000; 2) Class Representative Service Award of up to \$7,500 to Plaintiff; 3) Settlement Administrator Costs of up to \$15,000 to Settlement Administrator; and 4) the LWDA Payment of \$112,500 to the LWDA for its seventy-five percent (75%) share of the \$150,000 civil penalties allocation. *Id.*, ¶ III. 15.

Assuming that the amounts allocated under the Settlement toward these payments are awarded in full, the Net Settlement Amount is currently estimated to be One Million Four Hundred Sixty-Five Thousand Dollars (\$1,465,000). *Id.* The Net Settlement Amount will be used to pay Individual Settlement Payments to Participating Class Members. *Id.*, ¶¶ I. 18 & I. 24. Participating Class Members will be paid from the Net Settlement Amount on, a *pro rata* basis, based upon their Compensable Workweeks. Agreement, ¶¶ I. 9 & I. 18; see §§ I and III.C, *infra*. The entire Net Settlement Amount will be distributed to Participating Class Members with no reversion to Defendant.

C. Calculation and Range of Individual Settlement Payments to Participating Class Members

The Settlement Administrator will calculate each Participating Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment") by dividing the Net Settlement Amount by the total number of Compensable Workweeks by all Class Members, and then multiplying the resulting figure by the number of Compensable Workweeks of each Participating Class Member. *Id.*, ¶ I. 26. Individual Settlement Payments will be allocated as twenty percent (20%) wages to

be reported on IRS Form W-2, and eighty percent (80%) interest, penalties, and non-wage damages to be reported on IRS Form 1099. *Id.*, ¶ III. 16. The Individual Settlement Payment will be reduced for the employee's share of tax withholdings and payroll deductions on the wages portion. *Id.* Defendant agrees to pay the employer's share of payroll taxes on the Individual Settlement Payments separately and in addition to the Gross Settlement Amount. *Id.*, ¶ III. 15.

Assuming a Net Settlement Amount of \$1,465,000, the range of estimated Individual Settlement Payments that individual Participating Class Members could be credited with are estimated as follows:

- 6 months: $[(\$1,465,000 \div 50,649 \text{ Workweeks}) \times 26 \text{ Workweeks}] = \751.92
- 1 year: $[(\$1,465,000 \div 50,649 \text{ Workweeks}) \times 52 \text{ Workweeks}] = \$1,503.84$
- 2 years: $[(\$1,465,000 \div 50,649 \text{ Workweeks}) \times 104 \text{ Workweeks}] = \$3,007.68$
- 3 years: $[(\$1,465,000 \div 50,649 \text{ Workweeks}) \times 156 \text{ Workweeks}] = \$4,511.52$
- 4 years: $[(\$1,465,000 \div 50,649 \text{ Workweeks}) \times 208 \text{ Workweeks}] = \$6,015.36$

D. Settlement Opt-Out and Objection Procedures

Class Members may opt out of the Settlement by mailing to the Settlement Administrator a written request ("Request for Exclusion"). Agreement, ¶ III. 11. A Request for Exclusion must: (1) contain the full name, address, and telephone number of the Class Member requesting exclusion; (2) contain a statement expressing that the Class Member elects to be excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked or fax stamped by no later than the date that is forty-five (45) calendar days from the initial mailing of the Class Notice, or in the case of a re-mailed Notice, an additional twenty (20) calendar days ("Response Deadline"). *Id.*, ¶ III. 11. Any Class Member who submits a timely and valid Request for Exclusion will not be bound by the terms of the Settlement. *Id.*, ¶ III. 11.

Class Members that have not submitted a timely and valid Request for Exclusion (i.e., Participating Class Members), may object to the Settlement by submitting a written objection ("Notice of Objection") to the Settlement

Administrator on or before the Response Deadline. *Id.*, ¶ III. 12. To be complete, a Notice of Objection must be signed by the Class Member and state: (1) the full name, present address, and telephone number of the Class Member; (2) the basis for the objection; and (3) if the Class Member intends to appear at the Final Approval Hearing. *Id.*, ¶ III. 12.

E. Scope of the Class Release

The Released Claims that are the subject of the Settlement are:

all causes of action and factual or legal theories that were alleged in the Operative Complaint or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, including all of the following claims for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to properly calculate the regular rate of pay for payment of overtime wages; (c) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (e) failure to pay all wages timely during employment; (f) failure to pay all wages timely at the time of termination; (g) failure to provide complete, accurate or properly formatted wage statements; (h) failure to keep required payroll records; (i) failure to reimburse business expenses; (j) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint; (k) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint; (l) any other claims or penalties under the wage and hour laws pleaded in the Action; and (m) all damages, penalties, interest and other amounts recoverable based on the claims, causes of action or legal theories of relief plead in the Operative Complaint. Agreement, ¶ I. 29.

Upon the Effective Date⁴, Plaintiff and Participating Class Members will release all Released Class Claims with respect to the Released Parties. *Id.*, § 5.1.

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⁴ See Agreement, ¶ I.13., for the definition of the “Effective Date.”

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

3 Class action settlements require approval by the court. Fed. R. Civ. Proc. 23(e).
 4 Although judicial policy favors settlement of class actions, *Class Plaintiffs v. City of*
 5 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992), the decision to approve or reject a
 6 settlement is within the trial court’s discretion, and that decision may be reversed
 7 only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.*,
 8 150 F.3d 1011, 1026 (9th Cir. 1998); *Class Plaintiffs*, 955 F.2d at 1276.

9 A settlement should be approved if it is “fundamentally fair, adequate, and
 10 reasonable.” *Hanlon*, 150 F.3d at 1026; Fed. R. Civ. P. 23(e). In approving a class
 11 action settlement, courts engage in a two-step process: (1) preliminary approval of the
 12 settlement; and (2) a later detailed review after notice is given to class members, to
 13 determine whether final approval is appropriate. *Nat’l Rural Telecomms. Coop. v.*
 14 *DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). At the preliminary approval
 15 stage, courts must approve a class action settlement “if it appears to be the product of
 16 serious, informed, non-collusive negotiations, has no obvious deficiencies, and does
 17 not improperly grant preferential treatment to class representatives or segments of the
 18 class, and falls within the range of possible approval.” *In re Tableware Antitrust*
 19 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

20 In evaluating the fairness of the class action settlement, courts should give
 21 “proper deference to the private consensual decision of the parties.” *Hanlon*, 150 F.3d
 22 at 1027. Courts need only ensure that the settlement is not a product of “fraud or
 23 overreaching by, or collusion between, the negotiating parties, and that the
 24 settlement, taken as a whole, is fair, reasonable, and adequate to all concerned.” *Id.*

25 **V. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

26 Preliminary approval is appropriate if the settlement is “potentially fair,”
 27 *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007), and has no
 28 “glaring deficiencies” that would make it clear that a final approval hearing is not

1 warranted. *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 478 (E.D. Cal. Mar. 4,
2 2010). As discussed below, the Settlement resulted from hard-fought litigation and
3 extensive negotiations, and is fair and reasonable. Therefore, the Settlement should
4 be preliminarily approved.

5 **A. The Settlement Resulted from Arm’s Length Negotiations and**
6 **Extensive Investigation and Discovery**

7 An initial presumption of fairness exists “if the settlement is recommended by
8 Class Counsel after arm’s-length bargaining.” *Harris v. Vector Mktg. Corp.*, No. 08-
9 cv-5198-EMC, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011) (citation omitted).
10 Courts give great weight to such recommendation, as class counsel are most familiar
11 with the issues underlying the case. *Nat’l Rural*, 221 F.R.D. at 528.

12 Here, the Parties actively litigated this case since the Action was commenced
13 on September 15, 2020. Class Counsel conducted a thorough investigation into the
14 facts of the case, including, *inter alia*, interviews with Plaintiff and many Class
15 Members, and diligently investigated the allegations in this lawsuit. Aiwazian Decl.,
16 ¶¶ 10-13. Class Counsel reviewed a large volume of data and documents, including,
17 but not limited to: Plaintiff’s and other Class Members’ employment records;
18 sampling of time and pay data; class-wide data containing, *inter alia*, hourly rates and
19 dates of employment for Class Members; multiple iterations of Defendant’s
20 Employee Handbook (which included, *inter alia*, policies and procedures regarding
21 attendance and punctuality, meal periods, rest breaks, medical leave, reimbursements
22 and employee classification); job descriptions; various agreements and
23 acknowledgements; and numerous other documents regarding Defendant’s
24 employment policies, practices, and procedures, among other information and
25 documents. *Id.*, ¶ 14. Class Counsel propounded multiple sets of discovery requests
26 onto Defendant, noticed the deposition of Defendant’s person most knowledgeable
27 designees, and prepared for the deposition of Plaintiff. *Id.*, ¶¶ 12-14. The parties also
28 engaged in significant motion practice and met and conferred on numerous occasions

1 over issues relating to the motion practice, pleadings, jurisdiction, discovery,
2 mediation, and the settlement negotiations. *Id.*

3 The data and documents produced in this matter enabled Class Counsel to
4 prepare damages/valuation models in preparation for the mediation, to determine the
5 potential value and strength of the claims, and to estimate the potential recovery for
6 the class and PAGA claims. *See id.*, ¶ 21.

7 The Parties reached the Settlement after reviewing all available evidence,
8 arm's-length bargaining, and participating in mediation conducted by Jeffrey Krivis,
9 Esq., a well-respected mediator experienced in handling complex wage-and-hour
10 matters. *Id.*, ¶ 12. During mediation, the Parties exchanged information and discussed
11 various aspects of the case, including and not limited to, the claims of Plaintiff, the
12 risks and delays of further litigation and of proceeding with class certification or
13 representative adjudication, the law relating to off-the-clock theory, meal and rest
14 periods, PAGA claims, wage-and-hour enforcement, the evidence produced and
15 analyzed, the possibility of appeals, and the risks to recovery.⁵ *Id.* ¶ 12.

16 While the Parties disagree over the merits and certifiability of Plaintiff's
17 claims, Plaintiff and Class Counsel agree that the Settlement is fair, reasonable,
18 adequate, and in the best interest of the Class and State of California, in light of all
19 known facts and circumstances. *Id.*, ¶¶ 12, 15 & 26.

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

21 The Settlement, which provides for a Gross Settlement Amount of \$2,500,000,
22 represents a fair, reasonable, and adequate resolution of the Action. Under the
23 Settlement, the entire Net Settlement Amount will be distributed to Participating
24

25 ⁵ *See Hanlon*, 150 F.3d at 1027 (affirming approval of settlement after finding “no
26 evidence to suggest that the settlement was negotiated in haste or in the absence of
27 information illuminating the value of plaintiffs’ claims”); *see also Villegas v. J.P.*
28 *Morgan Chase & Co.*, No. CV 09-00261 SBA (EMC), 2012 WL 5878390, at *6 (N.D.
Cal. Nov. 21, 2012) (stating that participation in private mediation “tends to support the
conclusion that the settlement process was not collusive”).

1 Class Members and the entire LWDA Payment will be distributed to the LWDA. The
2 amount of the Settlement is reasonable considering the risks relating to certification,
3 trial, potential appeals, and recovering monetary relief. Aiwazian Decl., ¶¶ 12, 23 &
4 26. Additionally, the Settlement guarantees a certain monetary recovery to
5 Participating Class Members and the State of California in a reasonably short period
6 of time, as opposed to waiting additional years for the same or possibly no recovery if
7 this matter were to proceed to trial.

8 The Settlement was calculated using data and information uncovered through
9 significant case investigation, formal discovery, and informal exchange of
10 information in the context of mediation and settlement negotiations. *Id.*, ¶¶ 11-15.
11 Prior to reaching the Settlement, Class Counsel conducted extensive investigation
12 into the claims. *Id.*, ¶¶ 12, 20 & 23. The data and information obtained enabled Class
13 Counsel to calculate the value of the claims and the monetary recovery that could
14 potentially be obtained, and permitted a comprehensive understanding of Defendant's
15 employment policies, practices, and procedures. *Id.*, ¶ 13. This information proved
16 invaluable in negotiating a settlement amount that fairly compensates the Class
17 Members and State of California. *Id.*.

18 The Parties have also considered the potential risks and rewards inherent in any
19 case and, in particular, with this case. *Id.*, ¶¶ 12-13. Prior to the mediation, Class
20 Counsel performed a damages and penalties analysis and valuation based on time and
21 pay data and information provided by Defendant. *Id.*, ¶ 23. During the mediation,
22 Defendant argued that individual issues would predominate because its non-exempt
23 employees worked at different locations, in different positions, or during different
24 periods of time, and were therefore, subject to variant employment policies, practices,
25 and procedures, and the reasons why a Class Member failed to receive a meal or rest
26 break or worked off-the-clock would also raise individual issues that cannot be
27 certified. Agreement, ¶ 22.

28 ///

1 Plaintiff faces numerous risks in continued litigation, including and not limited
2 to, bifurcation of discovery and/or trial, a denial of class certification, class de-
3 certification after certification, adverse findings regarding liability, adverse findings
4 regarding damages and penalties (including and not limited to, court discretion to
5 reduce civil penalties), potential appeals, and uncertainty in collecting on judgment.
6 *See Id.*, ¶¶ 12, 13 & 23. Plaintiff faces the real possibility that, if there is a recovery
7 against Defendant after years of litigation and a lengthy and costly trial, the amount
8 may be much less than the amount negotiated in this Settlement. *See Id.*, ¶¶.

9 **1. The Settlement Fairly Allocates and Distributes Payment**

10 There is no reason to doubt the fairness of the proposed plan of allocation of
11 the settlement funds for purposes of preliminary approval. Even at the *final* approval
12 stage: “an allocation formula need only have a reasonable, rational basis, particularly
13 if recommended by experienced and competent class counsel.” *Nguyen v. Radiant*
14 *Pharm. Corp.*, No. 11-cv-00406, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014);
15 *see Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002).

16 Here, the Settlement is fair because it poses no risk of unequal treatment of any
17 Class Member. Individual Settlement Payments will be calculated on a *pro rata* basis,
18 based upon the number of Compensable Workweeks during the Class Period.
19 Agreement, ¶ III .17. Furthermore, the State of California will be issued payment of
20 its 75% share of the amount allocated toward PAGA penalties, in conformity with
21 PAGA. Cal. Lab. Code § 2699(i). Considering the facts in the case, the amount of
22 the Settlement represents a fair, reasonable, and adequate recovery for the Class
23 Members and State of California. Aiwazian Decl., ¶ 26.

24 **2. The Settlement Is Within the Range of Possible Approval**

25 The Settlement, which provides for a Gross Settlement Amount of \$2,500,000,
26 provides substantial monetary recovery to Class Members and State of California,
27 and is fair, reasonable, and adequate in light of the value of the claims and the
28 significant risks of continued litigation. Similarly, all of the other Settlement terms

1 for which Plaintiff requests approval and/or preliminary approval fall within the
2 range of reasonableness.

3 **VI. APPOINTMENT OF CLASS REPRESENTATIVE AND**
4 **CONTEMPLATED SERVICE AWARD**

5 Plaintiff has spent considerable time and effort to produce relevant documents
6 and past employment records and provided the facts and evidence necessary to
7 attempt to support the allegations. Aiwazian Decl., ¶ 25; Mariscal Decl., ¶¶ 2-6.
8 Plaintiff was available whenever counsel needed him and tried to obtain documents
9 and information that would facilitate the prosecution of the matter. *Id.* Accordingly, it
10 is appropriate for Plaintiff to be appointed as the representative of the Class.

11 Furthermore, it is appropriate and just for Plaintiff to receive a reasonable
12 Class Representative Service Award for his services in the Action. Subject to
13 approval by the Court, Plaintiff will receive a Class Representative Service Award of
14 up to \$7,500. The Class Representative Service Award will be paid in addition to
15 Plaintiff's Individual Settlement Payment.

16 The trial court has discretion to award incentives to the class representative.⁶
17 *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000). Courts
18 routinely approve service/enhancement awards to class representatives for their time
19 and efforts, and the risks they undertake on behalf of the class. *See, e.g., Staton v.*
20 *Boeing*, 327 F.3d 938, 976-78 (9th Cir. 2003) (discussing cases approving service
21 awards in the range of \$2,000 to \$25,000). "Enhancement awards are particularly
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23 ⁶ In assessing the reasonableness of an incentive award, several district courts in the
24 Ninth Circuit have considered the factors set forth in *Van Vranken v. Atl. Richfield Co.*,
25 901 F. Supp. 294, 299 (N.D. Cal. 1995): (1) the risk to the class representative in
26 commencing a class action; (2) the notoriety and personal difficulties encountered by the
27 class representative; (3) the amount of time and effort spent by the class representative;
28 (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. *See, e.g., In re Toys "R" Us-Del., Inc.*
FACTA Litig., 295 F.R.D. 438, 470 (C.D. Cal. 2014); *Covillo v. Specialty's Café*, No. C-
11-00594 DMR, 2014 WL 954516, at *7 (N.D. Cal. Mar. 6, 2014); *Carr v. Tadin, Inc.*,
51 F. Supp. 3d 970, 986 (S.D. Cal. 2014).

appropriate in wage-and-hour actions” because named plaintiffs bear “a significant reputational risk for bringing suit against their former employers.” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. Mar. 19, 2015) (quotation marks omitted).

VII. APPOINTMENT OF CLASS COUNSEL AND CONTEMPLATED ATTORNEYS’ FEES AND COSTS

Class Counsel meet the requirements under Federal Rule of Civil Procedure 23(g). Class Counsel conducted extensive research, investigation, discovery, litigation, and analysis of the potential value of the claims. Aiwazian Decl., ¶ 23; see §§ II and V.A *infra*. Additionally, Class Counsel are highly experienced in wage-and-hour litigation and class action cases. Aiwazian Decl., ¶ 7. Class Counsel have committed and continue to commit significant financial and staffing resources to representation in this matter. Aiwazian Decl. ¶ 10-15. As such, it is appropriate to appoint Lawyers *for* Justice to represent the Class.

The Settlement establishes a Gross Settlement Amount of \$2,500,000.00 and provides for Class Counsel to apply for attorneys’ fees and reimbursement of litigation costs and expenses related to the Action in an amount of up to 35% of the Gross Settlement Amount. Agreement, ¶ III. 22. Class Counsel will file an appropriate motion or application in advance of the Final Approval Hearing pursuant to Rule 23(h), requesting an award of attorneys’ fees and reimbursement of litigation costs and expenses, and submit evidence and documents to demonstrate the work performed and expenses incurred in this matter.

In reviewing a fee award request, courts consider the following factors: (1) the results achieved; (2) whether there are benefits to the class beyond the immediate generation of a cash fund; (3) the risks of litigation; (4) the skill required of counsel and quality of the work performed; (5) the contingent nature of the fee and the foregoing by counsel of other work; and (6) the reactions of the class. *Vizcaino*, 290 F.3d at 1048-50; *In re Toyota Motor Corp.*, 2013 WL 3224585 (C.D. Cal. June 17,

2013). Of these factors, the most significant factor is the “degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

The goal is to award “reasonable compensation for creating a common fund.” *Paul, Johnson, Alston & Hunt v. Grafty*, 886 F.2d 268, 272 (9th Cir. 1989). District courts usually award attorneys’ fees in the 30-40% range in wage-and-hour class actions that result in recovery of a common fund under \$10 million. *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing recent wage-and-hour class actions where district courts approved attorneys’ fee awards ranging from 30-33%); *Singer v. Becton Dickinson and Co.*, 2010 WL 2196104, *8 (S.D. Cal. June 1, 2010) (approving attorneys’ fees of one-third of the common fund and holding that the award was similar to awards in other wage-and-hour class actions where fees ranged from 30.3-40%); *Romero v. Producers Dairy Foods, Inc.*, 2007 WL 3492841 (E.D. Cal. Nov. 14, 2007) (recognizing that “fee awards in class actions average around one-third” of the settlement).

Here, the attorneys’ fees award provided for by the Settlement is reasonable, particularly in light of the time and effort expended by Class Counsel. Class Counsel litigated this case for over a year, with the possibility of an unsuccessful outcome and no fee recovery of any kind. Aiwazian Decl., ¶¶ 10-15. The ongoing work has been demanding and ultimately successful in achieving a substantial settlement. Given the strengths and weaknesses of the claims and the risk and expense of further litigation, Class Counsel have achieved an excellent result on behalf of the Class and State of California. Considering the amount of attorneys’ fees to be requested, the work performed, and the risks incurred, the allocations for attorneys’ fees and costs provided by the Settlement are reasonable and should be approved. *See Vizcaino*, 290 F.3d at 1051.

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VIII. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE
UNDER RULE 23

Class certification under Rule 23(a) is appropriate where the plaintiff demonstrates the four requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy of representation), and one of the three requirements of Rule 23(b). *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). The proposed Class meets all of these requirements.

A. Numerosity

A class is sufficiently numerous if it is “so large that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). A reasonable estimate of the number of purported class members is sufficient to meet the numerosity requirement.” *In re Badger Mountain Irr. Dist. Sec. Litig.*, 143 F.R.D. 693, 696 (W.D. Wash. 1992).

The proposed Class consists of approximately four hundred and fifteen (415) individuals. Aiwazian Decl., ¶ 9; Agreement, ¶ III. 30. The proposed Class is sufficiently numerous, and joinder of all Class Members would be impractical. *See Mazza v. Am. Honda Motor Co.*, 254 F.R.D. 610, 617 (C.D. Cal. 2008), *rev’d on other grounds*, 666 F.581, 593 (9th Cir. 2012) (“As a general rule, classes of forty or more are considered sufficiently numerous.”).

B. Commonality

A class has sufficient commonality “if there are questions of fact and law which are common to the class.” Fed. R. Civ. P. 23(a)(2). An affirmative showing of at least one question of law or fact satisfies this requirement.⁷ Commonality has been found to exist when there is a common legal issue stemming from divergent factual predicates or a common nucleus of facts leading to different legal remedies. *Hanlon*, 150 F.3d at 1019.

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⁷ *Dukes v. Wal-Mart, Inc.*, 564 U.S. 338, 350 & 359 (2011); *see also Hanlon*, 150 F.3d at 1019 (“All questions of fact and law need not be common to satisfy the rule.”).

Courts generally find commonality where “the lawsuit challenges a system-wide practice or policy that affects all of the putative class members[]” and divergent ways in which these practices affect individual Class Members, if any, do not undermine the finding of commonality.⁸ Here, the Class Members seek remedies under wage-and-hour laws for violations arising from common, uniform, and systematic practices which applied to all Class Members during the Class Period. See e.g., *Aiwazian Decl.*, ¶¶ 11-13, 15, & 20. Accordingly, the commonality requirement is satisfied for settlement purposes.

C. Typicality

The typicality requirement is satisfied where “the cause of the injury is the same,” as here, and the injury claimed by the named plaintiffs are “similar” to that of unnamed class members. *Armstrong*, 275 F.3d at 868-69. They need not be “identical.” *Id.* at 869. Here, Plaintiff’s claims are typical of those of the Class Members, though some factual differences may exist among them, as the claims arise from the same events or course of conduct and are based upon the same legal theories. Plaintiff worked as a non-exempt employee for Defendant. *Mariscal Decl.*, ¶ 2. The typicality requirement is satisfied for settlement purposes as Plaintiff’s claims arise from the same factual basis and are based on the same legal theories as those applicable to all other Class Members. *Welmer v. Syntex*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).

D. Adequacy of Representation

Rule 23(a)(4) requires that (1) a class representative fairly and adequately protect the interests of the class, and (2) class counsel be qualified and competent to conduct the litigation. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir.

⁸ *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504–05 (2005); *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975), *cert denied*, 429 U.S. 816 (1976).

2000). The requirement “tends to merge with the commonality and typicality criteria of Rule 23(a).”⁹ The inquiry turns on whether “the named plaintiffs and their counsel have any conflicts of interest with other class members” and “whether the named plaintiffs and their counsel [will] prosecute the action vigorously on behalf of the class.” *Hanlon*, 150 F.3d at 1020.

Plaintiff’s interests align with those of other Class Members, as all of them were employed by Defendant within the State of California. Mariscal Decl., ¶ 2. Plaintiff’s claims are typical of those of Class Members, which are confined to a limited group of similarly situated employees during the Class Period. Class Counsel is highly experienced in employment class action and complex wage-and-hour litigation, having handled many cases before and having been appointed Class Counsel in many other cases. Aiwazian Decl., ¶ 7. Plaintiff contends that Class Counsel’s experience in litigating similar matters was integral to obtaining the Settlement. See also § VII, *infra*.

E. Predominance and Superiority

The proposed Class meets the requirements of Rule 23(b)(3) for settlement purposes because (1) common questions predominate over questions that affect individual members; and (2) class resolution is superior to other available means of adjudication. When assessing predominance and superiority, a court may consider that the proposed class will be certified for settlement purposes only. See *Amchem Prods.*, 521 U.S. at 618-20. Where the matter is being settled, a showing of manageability at trial is unnecessary. *Id.* at 620. At this stage, the relevant inquiry is “whether the proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Id.* at 618-20, 623; see *Hanlon*, 150 F.3d at 1022.

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⁹ *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997); see also *Manual for Complex Litig.*, Fourth § 21.132 (“a settlement class must be cohesive”).

Here, the Class is sufficiently cohesive to warrant certification. For settlement purposes, common questions of fact and law affecting Class Members predominate over any questions that may affect only individual members. For example, Defendant’s alleged failure to properly pay Class Members for all hours worked and provide compliant meal and rest periods are alleged to arise from Defendant’s uniform policies, practices, and procedures. As such, the questions of fact and law relating to these issues predominate. *See* Aiwazian Decl., ¶ 20.

Moreover, a class resolution is superior to other available means for the fair and efficient adjudication of the controversy. *See Hanlon*, 150 F.3d at 1023. The superiority requirement involves a “comparative evaluation of alternative mechanism of dispute resolution.” *Id.* Here, the alternative method of resolution is individual claims, subject to proof, for relatively small amounts of damages, which would be uneconomical for potential plaintiffs. *Id.* Therefore, a class resolution is superior to any other available methods.

IX. ADEQUACY OF THE METHOD OF NOTICE

“Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025. A class notice must be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). A class notice is adequate if it “generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). The notice must also be “neutral and objective in tone, and should neither promote nor discourage the assertion of claims.” *Schaefer v. Overland Express Family of Funds*, 169 F.R.D. 124, 131 (S.D. Cal. 1996).

Here, the proposed Class Notice provides the best notice practicable and is adequate. It provides information on, *inter alia*, the nature of the lawsuit, the definition of the Class, the terms of the Settlement, the scope of the Released Claims,

1 the binding effect of the Settlement, the number of Compensable Workweeks
2 credited to each Class Member during the Class Period and his or her estimated
3 Individual Settlement Payment, and the allocations for PAGA penalties, Attorneys'
4 Fees and Costs, Class Representative Service Award, and Settlement Administrator
5 Costs. The Class Notice summarizes the proceedings and provides the date, time, and
6 place of the Final Approval Hearing, and all of this information is "clearly and
7 concisely state[d] in plain, easily understood language." Fed. R. Civ. P. 23(c)(2)(B).

8 The Class Notice also fulfills the requirement of neutrality in class and
9 collective notices. The Class Notice provides a brief, neutral explanation of the case
10 from the perspective of both Parties and recognizes that the Court has not yet granted
11 final approval of the Settlement.¹⁰ The Class Notice sets forth the procedures and
12 deadlines governing the submission of Requests for Exclusion, Notices of Objection,
13 and disputes regarding the number of Compensable Workweeks credited to Class
14 Members. The proposed Class Notice satisfies all due process requirements and
15 complies with the standards of fairness, completeness, and neutrality. Accordingly,
16 the Court should approve the proposed Class Notice.

17 All Class Members can and will be identified by Defendant through a review
18 of their business records. After receiving the data from Defendant regarding each
19 Class Member, the Settlement Administrator will mail a Class Notice to each of them
20 in English. Agreement, ¶ III. 7.¹¹ Accordingly, the proposed Class Notice is adequate
21 and is the best notice practicable under Rule 23(c)(2)(B).

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26 ¹⁰ See *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 174 (1989) ("[C]ourts must be
27 scrupulous to respect judicial neutrality" in overseeing the class action notice process
28 and "avoid even the appearance of judicial endorsement of the merits of the action[.]").
¹¹ See *Elsen v. Carlisle & Jacqueline*, 417 U.S. 156, 175-77 (1974) (Individual notice by
mail "is clearly the 'best notice practicable' within the meaning of Rule 23(c)(2)"
where "all class members [] can be identified with reasonable effort").

**X. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR AND
CONTEMPLATED SETTLEMENT ADMINISTRATOR COSTS**

The Parties have selected Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”) as the Settlement Administrator to handle the notice and administration of the Settlement. Phoenix will format, print, and mail the Class Notice in English to each Class Member, receive, review, and process Requests for Exclusion, Notices of Objection, and written disputes regarding Compensable Workweeks; calculate Individual Settlement Payments; withhold applicable taxes and withholdings; prepare and transmit necessary tax documentation and filings; and transmit all required payments. Agreement, ¶ III. 24. Phoenix will also handle inquiries from Class Members regarding the Settlement, and perform any other usual and customary duties for administering a class action settlement. *Id.*

Settlement Administrator Costs are currently estimated not to exceed \$15,000, and will be paid out of the Gross Settlement Amount. Plaintiff respectfully requests that the Court appoint Phoenix as the Settlement Administrator and direct distribution of the Class Notice in the manner, and based on the proposed deadlines, set forth in the Settlement Agreement and Section IX, below.

XI. DEADLINES FOR NOTICE AND ADMINISTRATION

The Court is respectfully requested to approve the proposed deadlines for the notice and settlement administration process. Defendant will provide the Class Data to the Settlement Administrator within fourteen (14) calendar days following the Court granting preliminary approval of the proposed Settlement. *Id.*, ¶ III. 6. Within fourteen (14) calendar days of receipt of the Class Data, Phoenix will send a Class Notice to each Class Member. *Id.*, ¶ III. 7. If a Class Notice is returned as undeliverable, Phoenix will re-mail it to a forwarding address or address located through skip-tracing within ten (10) calendar days. *Id.*, ¶ III. 8.

Requests for Exclusion, Workweeks disputes, and Notices of Objection must be mailed to Phoenix, post-marked by the Response Deadline. *Id.*, ¶ III. 9-12.

All Individual Settlement Payment checks will remain valid and negotiable for 160 days from the date of the mailing. After one hundred and sixty (160) days of the mailing of the Individual Settlement Payment checks, the checks will be cancelled and funds associated with cancelled Individual Settlement Payment checks will be transmitted to the State of California Office of the Controller Unclaimed Property Fund in the name of the Participating Class Members who did not cash the Individual Settlement Payment check, in the respective amounts of their checks. If the Court does not approve of this disposition of the funds associated with cancelled checks, the Parties have alternatively agreed to distribute said funds as described therein, to the non-profit Bet Tzedek Legal Services as the *cy pres* designee. *Id.*, ¶ III. 20

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; certify the proposed Class for settlement purposes; appoint Plaintiff as the Class Representative; appoint Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminarily approve the allocations for PAGA penalties, Attorneys' Fees and Costs, Class Representative Service Awards, and Settlement Administrator Costs; appoint Phoenix as Settlement Administrator; approve and direct the mailing of the Class Notice to the Class Members; and schedule a Final Approval Hearing in approximately six months after the Court grants preliminary approval.

Dated: January 21, 2022

LAWYERS for JUSTICE, PC

By: /s/ Edwin Aiwazian

Edwin Aiwazian

Attorneys for Plaintiff Edgar Mariscal