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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

Tina Lundin, individually, and on behalf of other members of the general public similarly situated; Derek Brumbaugh, 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

Plaintiffs,

v.

Anaheim Transportation Network DBA Anaheim Resort Transportation, a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2021-01204870-CU-OE-CXC

Honorable Randall J. Sherman
Department CX-105

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Declaration of Proposed Class Counsel (Danielle L. GruppChang); Declarations of Proposed Class Representatives (Tina Lundin and Derek Brumbaugh); and [Proposed] Order filed concurrently herewith]

Reservation No. 74290989
Date: August 2, 2024
Time: 10:00 am
Department: CX-105

Complaint Filed: June 4, 2021
FAC Filed: March 28, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that on August 2, 2024 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Randall J. Sherman in Department CX-105 of the Superior Court of California for the County of Orange, located at the Civil Complex Center, 751 West Santa Ana Blvd., Plaintiffs Tina Lundin and Derek Brumbaugh (collectively referred to as “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT A**” to the Declaration of Danielle L. GruppChang, 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, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payments to Plaintiffs, and Administration Expenses Payment to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Tina Lundin and Derek Brumbaugh as Class Representatives;
- Preliminarily appointing Brock & Gonzales, LLP as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administrators 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 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payments for Plaintiffs, and Administration Expenses Payment to Settlement Administrator.

This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Danielle L. GruppChang) and Proposed Class Representatives (Tina Lundin and Derek Brumbaugh) 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: May 6, 2024

BROCK & GONZALES, LLP

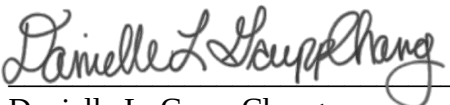
By: 
Danielle L. GruppChang
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION AND PROCEDURAL HISTORY

Plaintiffs Tina Lundin and Derek Brumbaugh (collectively referred to as “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Anaheim Transportation Network dba Anaheim Resort Transportation (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Two Hundred Fifty Thousand Dollars (\$250,000).¹

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

any and all persons currently or formerly employed by ATN as hourly-paid, non-exempt during the Class Period, in the State of California (“Class” or “Class Members”).²

The Class is estimated to consist of approximately one hundred forty two (142) individuals.³

The Settlement resolves the Released Class Claims of Plaintiffs and Participating Class Members and Released PAGA Claims of Plaintiff Brumbaugh and Aggrieved Employees, against the Released Parties.⁴

Defendant provides transportation services primarily in Orange County for major tourist attractions. Plaintiffs are both former employees of Defendant.

On June 4, 2021, Plaintiff Lundin filed a Class Action Complaint for Damages thereby commencing the above-captioned lawsuit (“Action”).

On October 24, 2023, the Parties participated in a formal, full-day mediation conducted

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Danielle GruppChang (“GruppChang Decl.”), § 1.22.

² *Id.*, §§ 1.5 & 1.12. The “Class Period” is the time period from June 4, 2017 to the date of the Preliminary Approval Order.

³ GruppChang Decl., ¶ 10.

⁴ See Settlement Agreement at §§ 5.2 & 5.3 respectively for the definitions of the “Released Class Claims” and “Released PAGA Claims,” and at § 1.41 for the definition of the “Released Parties.”

by Ann Kotlarski, esq., a well-regarded mediator experienced in mediating complex labor and employment matters. Ultimately, with the aid of the mediator and the mediator's evaluations, the Parties reached the Settlement described herein to resolve the Action in its entirety.

On March 28, 2024, pursuant to the Court's order granting the Parties' joint stipulation, Plaintiffs filed the First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act which named Plaintiff Brumbaugh and alleged a cause of action under Private Attorneys General Act ("PAGA").

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

III. SUMMARY OF THE SETTLEMENT TERMS

Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty Three Cents (\$83,33.33) (i.e., 1/3 of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Thirty Five Thousand Dollars (\$35,000) to Class Counsel (collectively referred to as the "Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment"); (2) settlement administration costs, which are not to exceed Seven Thousand Dollars (\$7,000) to the Settlement Administrator ("Administration Expenses Payment"); (3) Twenty Five Thousand Dollars (\$25,000) allocated towards the settlement of

PAGA (“PAGA Penalties”); and (4) payment in the amount of Eight Thousand Dollars (\$8,500) to Plaintiff Lundin and Seven Thousand (\$7,000) to Plaintiff Brumbaugh (“Class Representative Service Payments”).⁵

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member’s share of the available Net Settlement Amount (“Individual Class Payment”), in accordance with the following formula: $(\text{Class Member's Workweeks} \div \text{Class Workweeks}) \times \text{Net Settlement Amount}$.⁶ Aggrieved Employee’s Individual PAGA Payment, will be calculated by the Settlement Administrator in accordance with the following formula: $(\text{Aggrieved Employee's Workweeks} \div \text{PAGA Workweeks}) \times \text{the PAGA Penalties}$.⁷

Each Participating Class Member’s Individual Class Payment will be allocated as follows: 10% as wages to be reported on an IRS Form W2 and 90% as penalties and interest to be reported on an IRS Form 1099.⁸ Participating Class Members will be issued payment of their Individual Class Payment subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Class Payment.⁹ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Class Payments separately and in addition to the Gross Settlement Amount.¹⁰ Each Aggrieved Employee’s Individual PAGA Payment will be allocated entirely as penalties and will be reported on an IRS Form 1099.¹¹

The checks issued to Participating Class Members and Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days from the date of mailing.¹² Checks that are not negotiated within the 180-day period will be cancelled and the funds from associated with such cancelled checks will be transmitted by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the corresponding Class Member.¹³

⁵ Settlement Agreement, §§ 3.1 - 3.2.4.2.

⁶ Settlement Agreement, § 3.2.4.

⁷ *Id.*, § 3.2.5.

⁸ *Id.*, § 3.2.4.1.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Id.*, § 3.2.5.1

¹² *Id.*, § 4.4.1.

¹³ *Id.*, § 4.4.3.

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing indicating that they want to exclude themselves (“Request for Exclusion”).¹⁴ To be timely, the Class Member must mail, fax, or email the Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is Forty Five (45) calendar days from the initial mailing of the Class Notice (“Response Deadline”).¹⁵ A valid Request for Exclusion must include: (1) the Class Member’s name; (2) Class Member’s address; (3) Class Member’s email address or telephone number; and (4) the following statement: “Please exclude me as a Class Member in the *Lundin, et al. v. Anaheim Transportation Network dba Anaheim Resort Transportation* matter, I understand that by excluding myself I will not receive any payment under the Settlement.” or a statement of reasonably similar meaning.¹⁶ Class Members who submit a valid and timely Request for Exclusion will not be bound by release of Released Class Claims.¹⁷ Aggrieved Employees may not request exclusion from the release of Released PAGA Claims.¹⁸

Only Class Members who do not exclude themselves from the Settlement (i.e., Participating Class Members) have standing to object to the Settlement.¹⁹ A valid Objection must be mailed, faxed, or emailed on or before the Response Deadline.²⁰ Alternatively, a Participating Class Member may appear in Court to present an oral objection at the Final Approval Hearing.²¹

Class Members who wish to dispute the number of Workweeks credited to may do so by mailing, faxing, or emailing a written letter to the Settlement Administrator on or before the Response Deadline (“Workweek Dispute”).²²

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¹⁴ *Id.*, § 7.5.1.

¹⁵ Settlement Agreement, § 1.43

¹⁶ *Id.*, § 7.5.1.

¹⁷ *Id.*, § 7.5.4.

¹⁸ *Id.*, § 7.5.3.

¹⁹ *Id.*, § 7.7.1.

²⁰ *Id.*, § 7.7.2.

²¹ *Ibid.*

²² *Id.*, § 7.6.

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). Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002).

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801.

“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.” *Wershba, supra*, 91 Cal.App.4th at 245; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

3 The Parties actively litigated the Action since it was commenced on June 4, 2021. Both
4 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
5 claims, and Class Counsel was actively preparing the case for class certification and trial.²³

6 Prior to engaging in mediation, Class Counsel conducted significant investigation and
7 informal discovery regarding the facts of the case, including and not limited to, the exchange,
8 review, and analysis of thousands of pages of documents and data produced by Defendant.²⁴
9 Class Counsel interviewed Plaintiff and investigated other Class Members to gather facts and to
10 identify potential witnesses.²⁵

11 The Parties engaged in extensive settlement negotiations and participated in a formal,
12 full-day mediation conducted by Ann Kotlarski, *esq.*, a well-respected mediator experienced in
13 mediating complex labor and employment matters.²⁶ Prior to and during the mediation and
14 settlement discussions, the Parties exchanged class-wide information and engaged in an
15 extensive discussion regarding their evaluations of the case and various aspects of the case,
16 including but not limited to, the risks and delays of further litigation, the risks to the Parties of
17 proceeding with class certification and/or representative adjudication, the law relating to off-
18 the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative
19 claims, as well as the evidence produced and analyzed, the possibility of appeals, and what
20 Defendant alleged was enforceable and valid arbitration agreements, among other things.²⁷
21 During all settlement discussions, the Parties conducted their negotiations at arm’s length in an
22 adversarial position.²⁸

23 The Settlement takes into account the strengths and weaknesses of each side’s position
24 and the uncertainty of how the case might have concluded at certification and trial.²⁹ In addition,

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²³ GruppChang Decl., ¶¶ 12-14.

26 ²⁴ GruppChang Decl., ¶ 13.

27 ²⁵ *Ibid.*

28 ²⁶ *Id.*, ¶ 12.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.³⁰

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

The Settlement, which provides for a Gross Settlement Amount of Two Hundred Fifty Thousand Dollars (\$250,000), represents a fair, adequate, and reasonable resolution of the matter.³¹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue (for example, evidence of arbitration agreements with class action waivers).³² Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.³³

Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, PAGA Payment, and Administration Expenses Payment are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Eight Four Thousand One Hundred Sixty Six Dollars (\$84,166.67).³⁴ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Class Payment will be calculated based on his or her Workweeks during the Class Period.³⁵ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

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³⁰ *Id.*, ¶¶ 3-8.

³¹ *Id.*, ¶¶ 12, 14, 19 & 22.

³² GruppChang Decl., ¶¶ 18-20.

³³ *Id.*, ¶¶ 12, 14, & 22.

³⁴ Settlement Agreement, §§ 1.28 & 3.1 – 3.2.3.

³⁵ *Id.*, § 3.2.4.

In light of the foregoing considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.³⁶ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.³⁷ The documents and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.³⁸ As outlined in the Declaration of Danielle L. GruppChang, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.³⁹

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁴⁰ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

³⁶ GruppChang Decl., ¶¶ 12, 14, & 22.

³⁷ GruppChang Decl., ¶¶ 12-14 & 19.

³⁸ *Id.*, ¶ 19.

³⁹ *Id.*, ¶¶ 12-14 & 17-19.

⁴⁰ Settlement Agreement, § 12.1.

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

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

9 This action involves a class of approximately 111 individuals.⁴¹ This class is sufficiently
10 numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a
11 class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at
12 that point). Further, all Class Members can and will be identified by Defendant to the Settlement
13 Administrator through a review of Defendant's employment records regarding hourly-paid
14 and/or non-exempt employees in California during the Class Period. As such, the Class is
15 ascertainable and sufficiently numerous.

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

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

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 ⁴¹ GruppChang Decl., ¶ 10.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Complaint. Based on the documents and information obtained through informal discovery and exchange of information in this case, Plaintiff contend that all Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁴² Plaintiff's claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to: properly pay overtime and minimum wages for all hours worked, provide compliant meal and rest periods and associated premium pay, timely pay wages during employment and upon termination, provide complaint wage statements, keep requisite payroll records, and reimburse necessary business-related expenses.⁴³ 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.⁴⁴ As a result, Plaintiff claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁴⁵

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 the putative class members. 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 been investigating and litigating this action for almost one and one half years, and was actively preparing the matter for class certification and trial.⁴⁶ 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 informal discovery. Class Counsel reviewed thousands of pages of documents and

⁴² *Id.*, ¶ 12.

⁴³ GruppChang Decl., ¶ 19.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶¶ 12-14.

data⁴⁷ 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.⁴⁸ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁴⁹

Class Counsel is well-experienced in employment law and wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁵⁰

The Settlement provides for Class Counsel to apply to the Court for Class Counsel Fees Payment consisting of attorneys' fees in an amount not to exceed one third (1/3) of the Gross Settlement Amount (i.e., \$83,33.33) and Class Counsel Litigation Expenses Payment in an amount not to exceed Thirty Five Thousand Dollars (\$35,000) for costs and expenses.⁵¹ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort, and expense that Class Counsel has dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and that an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.⁵²

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. California law provides that attorney fee

⁴⁷ *Id.*, ¶ 13.

⁴⁸ *Ibid.*

⁴⁹ *Id.*, ¶ 12.

⁵⁰ GruppChang Decl., ¶¶ 3-8.

⁵¹ Settlement Agreement, § 3.2.2.

⁵² *Id.*, Exh. A.

awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49).

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506.

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁵³

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs' motion for final approval of the Settlement and application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment 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.

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⁵³ GruppChang Decl., ¶ 20.

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).

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The proposed Class Notice⁵⁴ describes the Settlement, the deadlines and procedures to submit an Objection, Request for Exclusion, and/or Workweek Dispute, and the date and time of the Final Approval Hearing.⁵⁵ The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement.⁵⁶ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement and also apprises the Class Members of, *inter alia*, how their gross Individual Class Payment and Individual PAGA Payment are calculated and the number of Workweeks credited to them.⁵⁷

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF PHOENIX AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix Class Action Administrators (“Phoenix”) to administer the Settlement. Phoenix is a recognized national administrator of class action and claims administration.

The Settlement Administrator will mail the Class Notice to each Class Member by first class USPS mail.⁵⁸ For any undeliverable Class Notice that is returned to the Settlement Administrator returned on or before the Response Deadline, the Settlement Administrator will obtain an updated address, and re-mail the Class Notice to the Class Member.⁵⁹ The Settlement

⁵⁴ Settlement Agreement, Exh. A.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Id.*, § 7.4.2.

⁵⁹ *Ibid.*

Administrator will receive and process Requests for Exclusion, Objections, and any Workweek Disputes.⁶⁰

The Settlement Administrator will calculate the amounts of the gross Individual Class Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of gross Individual Class Payments; mail the Individual Class Payment checks to Participating Class Members and Individual PAGA Payments to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and LWDA's portion of the PAGA Penalties; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁶¹ The Administration Expenses Payment will not exceed Seven Thousand Dollars (\$7,000) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁶²

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At the preliminary approval stage, Plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26.

Within seven (7) calendar days after the preliminary approval date, Defendant will provide the Settlement Administrator with the Class Data.⁶³ Within fourteen (14) calendar days of receipt of the Class Data, the Settlement Administrator will mail the Class Notice to the Class Members via U.S. Mail.⁶⁴ Class Members and/or Aggrieved Employees will have until the applicable Response Deadline (i.e., 45 days after mailing) to submit a Request for Exclusion,

⁶⁰ *Id.*, § 7.8.3.

⁶¹ Settlement Agreement, § 7.

⁶² *Id.*, § 3.2.3.

⁶³ *Id.*, § 4.2.

⁶⁴ *Id.*, § 7.4.2.

Objection, and/or Workweek Dispute.⁶⁵

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR CLASS REPRESENTATIVE PAYMENTS

Plaintiffs respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Class Representative Service Payments in the amounts of up to Eight Thousand Five Hundred Dollars (\$8,500) and Seven Thousand Dollars (\$7,000) to Plaintiff Lundin and Plaintiff Brumbaugh respectively.⁶⁶ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299.

Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations and was available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁶⁷ Plaintiff Lundin reviewed and aided in providing responses to multiple sets of formal written discovery propounded by Defendant. Accordingly, it is appropriate and just for Plaintiffs to each receive a Class Representative Service Payment for their services on behalf of the Class and in furtherance of the Action.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Brock & Gonzales, LLP as Class Counsel; preliminarily appoint and designate Plaintiffs Tina Lundin and Derek Brumbaugh as Class Representatives; appoint Phoenix Class Action Administrators as Settlement Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, PAGA Penalties, and Administration Expenses Payment; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice

⁶⁵ *Id.*, § 1.43.

⁶⁶ *Id.*, § 3.2.1.

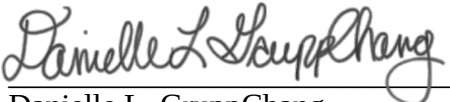
⁶⁷ GruppChang Decl., ¶ 21; Lundin Decl., ¶¶ 4-6; Brumbaugh Decl., ¶¶ 4-6.

1 and settlement administration process in conformity with the deadlines and procedures provided
2 by the Settlement Agreement; and schedule a Final Approval Hearing to take place in
3 approximately three and one half months after the Preliminary Approval Order is entered.

4 Dated: May 6, 2024

BROCK & GONZALES, LLP

By:


Danielle L. GruppChang
Attorneys for Plaintiffs