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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

BRYANT HARRIS; individually, and on behalf of others members of the general public similarly situated and on behalf of others aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

vs.

TVI, INC. D/B/A SAVERS, VALUE VILLAGE & VILLAGE DES VALEURS, an unknown business entity; SAVERS, INC., an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: BC612403

Honorable Carolyn B. Kuhl
Dept. SSC-12

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Edwin Aiwazian); Declaration of Proposed Class Representative (Bryant Harris); and [Proposed] Order filed concurrently herewith]

Date: TBD
Time: TBD
Dept: SSC-12

Complaint Filed: March 1, 2016
FAC Filed: May 31, 2016
SAC Filed: December 27, 2018
Trial Date: None Set

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

PLEASE TAKE NOTICE that on a date to be determined by the Court, the matter may be heard before the Honorable Carolyn B. Kuhl in Department SSC-12 of the Superior Court of California for the County of Los Angeles, Spring Street Courthouse located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Bryant Harris ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class and representative action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Edwin Aiwasian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs, Enhancement Payment, and Settlement Administration Costs;
- Certifying the Class for settlement purposes;
- Appointing Plaintiff Bryant Harris as Class Representative;
- Appointing Lawyers for Justice, PC and Righetti Glugoski, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("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 RG/2 Claims Administration LLC as the Settlement Administrator;

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for Attorneys' Fees and Costs, Enhancement Payment, and Settlement Administration Costs, and allocation for the PAGA Settlement Amount.

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 Declaration of Proposed Class Counsel (Edwin Aiwarzian) and Proposed Class Representative (Bryant Harris) 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: March 29, 2019

LAWYERS for JUSTICE, PC

By:


Edwin Aiwarzian
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND	2
IV.	SUMMARY OF THE SETTLEMENT TERMS.....	4
V.	LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS.....	7
VI.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT. ..	8
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.....	9
B.	The Settlement Is Fair, Reasonable, and Adequate.	12
C.	The Settlement Is of Significant Value.	13
VII.	CERTIFICATION OF THE CLASS IS APPROPRIATE.	13
A.	The Class Is Ascertainable and Sufficiently Numerous.	14
B.	The Class Members Share a Well-Defined Community of Interest.	14
VIII.	APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND COSTS	16
IX.	THE PROPOSED CLASS NOTICE IS ADEQUATE.....	19
X.	APPOINTMENT OF RG/2 CLAMS ADMINISTRATION LLC AS THE SETTLEMENT ADMINISTRATOR.....	20
XI.	PROPOSED DEADLINES FOR THE NOTICE PROCESS	21
XII.	APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT.....	22
XIII.	CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	9
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	14
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	18
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 14, 15	
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	19, 20
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	18
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	8
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7, 9
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No.: BC 262247 (May 2005)	18
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	8, 9
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	14
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	12
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp.494	18
<i>Ketchum v. Moses</i> (2001) 24 Cal. 4th 1122	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	13
<i>Laffitte v. Robert Half Int'l, Inc.</i> (2016) 1 Cal. 5th 480	17, 18
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	17, 18
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	14
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	19
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No.: BC 263646 (Sept. 2006).....	18
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615.....	8
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	14

1	<i>Sav-on Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	13, 14, 15
2	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	7
3	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	23
4	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	7, 9
5	Statutes	
6	Cal. Code Civ. Proc. § 1781	19
7	Cal. Code Civ. Proc. § 1781(f).....	7
8	Other Authorities	
9	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	8
10	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	21
11	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	13
12	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	18
13	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	20
14	Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	20
15	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	19
16	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	20
17	Rules	
18	Fed. R. Civ. P. 23(c)(2)	21
19	Fed. R. Civ. P. 23(e).....	21

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Bryant Harris ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants TVI, Inc. d/b/a Savers, Value Village & Village Des Valeurs and Savers, Inc. ("Defendants"), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the "Parties") have agreed to settle this lawsuit for a Maximum Settlement Amount of three hundred fifty thousand dollars (\$350,000).¹ The Maximum 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 Shares; (3) Enhancement Payment to Plaintiff; (4) attorneys' fees and reimbursement of actual litigation costs and expenses (collectively, "Attorneys' Fees and Costs") to Class Counsel; (5) the Labor Workforce Development Agency's ("LWDA") portion of penalties allocated under the California Labor Code Private Attorneys General Act of 2004 ("LWDA Payment"); and (6) Settlement Administration Costs to Settlement Administrator.²

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

All individuals employed by Defendants in California as "exempt" Retail Sales Managers at any time during the period from March 1, 2012 through December 31, 2016 ("Class").³

The Class is estimated to consist of approximately thirty-five (35) individuals.⁴

Class Members who do not submit a timely and valid Request for Exclusion ("Participating Class Members") will receive a share of the Net Settlement Amount on a *pro rata* basis, based upon the number of weeks each Class Member was employed by Defendants

¹ Settlement Agreement, attached as "EXHIBIT 1" to Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 25.

² *Ibid.*

³ *Id.*, ¶ 7.

⁴ Aiwazian Decl., ¶ 9.

1 as an “exempt” Retail Sales Manager in the State of California during the period from March 1,
2 2012 through December 31, 2016 (“Class Period”),⁵ excluding any weeks during which a Class
3 Member was on a leave of absence (“Workweeks”).⁶ The Net Settlement Amount refers to the
4 Maximum Settlement Amount, less the following amounts subject to approval by the Court:
5 Attorneys’ Fees and Costs, Settlement Administration Costs, Enhancement Payment, and
6 LWDA Payment.⁷

7 The Settlement resolves the Released Claims of Plaintiff and Participating Class
8 Members against the Released Parties.⁸

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

10 Defendants are a global thrift retailer offering clothing, accessories, and household
11 goods. Defendants operate over 20 locations in California. Plaintiff Bryant Harris is a former
12 employee of Defendants.

13 On March 1, 2016, Plaintiff Bryant Harris filed a Class Action Complaint for Damages
14 and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et
15 Seq. against Defendants in the Los Angeles County Superior Court (“Court”), Case No.
16 BC612403 (the “Action”). On April 13, 2016, Defendants removed the Action to the United
17 District Court for the Central District of California (“U.S. District Court”). On April 20, 2016,
18 Defendant filed their Motion to Dismiss Complaint and to Strike the Class Allegations. On May
19 16, 2016, pursuant to the stipulation by the Parties, the U.S. District Court entered an order
20 dismissing without prejudice allegations on behalf of a sub-class of non-exempt employees that
21 were the subject of another, prior-filed lawsuit pending in another court and remanding the
22 Action to this Court.

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26 ⁵ Settlement Agreement, ¶ 14.

27 ⁶ *Id.*, ¶ 40.

28 ⁷ *Id.*, ¶ 26.

⁸ *See id.* at ¶ 33, for the full scope of the “Released Claims,” and *id.* at ¶ 35 for the definition of the “Released Parties.” A Class Member who timely submits a Request for Exclusion is still bound by the PAGA Settlement and will still release their Released Claims which arise under PAGA (“PAGA Released Claims”).

1 On May 31, 2016, Plaintiff filed a First Amended Class Action Complaint for Damages
2 and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et
3 Seq. against Defendants. On August 3, 2016, Defendants filed Defendants TVI, Inc. and Savers
4 LLC's First Amended Answer to Plaintiff Bryant Harris' Unverified First Amended Class
5 Action Complaint.

6 On September 19, 2017, Plaintiff filed a Motion for Class Certification and supporting
7 documents. On October 23, 2017, pursuant to stipulation by the Parties, the Court entered an
8 order to vacate the hearing on Plaintiff's Motion for Class Certification.

9 On December 27, 2018, pursuant to the Court's order granting the Parties' stipulation,
10 Plaintiff filed a Second Amended Class Action Complaint for Damages and Enforcement Under
11 the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative
12 Complaint") against Defendants.

13 Plaintiff's core allegation is that Defendants have violated the California Labor Code by
14 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
15 of, *inter alia*, misclassifying them as exempt and failing to pay overtime and minimum wages,
16 failing to provide compliant meal period and rest periods and associated premium pay, failing
17 to pay wages and associated waiting time penalties, failing to provide compliant wage
18 statements, failing to maintain complete and accurate payroll records, and failing to reimburse
19 necessary business-related expenses, and thereby engaged in unfair business practices under the
20 California Business and Professions Code and owe penalties recoverable under PAGA. Plaintiff
21 contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
22 (including, and not limited to, penalties pursuant to PAGA), and attorneys' fees.

23 Defendants have denied, and continue to deny, any liability and wrongdoing of any kind
24 associated with any of the allegations in the Action, and further deny that the Action is
25 appropriate for class treatment or representative adjudication for any purpose other than for
26 settlement purposes only.

27 ///

28 ///

The Parties have actively litigated this matter since the Action was commenced on March 1, 2016. The Parties have conducted significant formal and informal discovery and investigation into the claims. Both sides have propounded and responded to multiple sets of formal written discovery requests in various forms. Class Counsel also prepared for and took the depositions of Defendants' Person Most Knowledgeable designees and prepared for and defended the deposition of Plaintiff. The Parties also engaged in a *Belaire-West* process. The Parties engaged in extensive discussions about the strengths and weaknesses of Plaintiff's claims and Defendants' defenses thereto, to try to resolve the Action. Ultimately, the Parties reached the Settlement described herein to resolve this Action in its entirety.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Maximum Settlement Amount in the amount of three hundred fifty thousand dollars (\$350,000) to resolve the matter. Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Attorneys' Fees and Costs, which consists of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$122,500 out of \$350,000) and reimbursement of actual litigation costs and expenses in an amount not to exceed thirty-five thousand dollars (\$35,000) to Class Counsel; (2) Enhancement Payment of up to seven thousand five hundred dollars (\$7,500) to Plaintiff; (3) LWDA Payment of fifteen thousand dollars (\$15,000) (i.e., 75% of the PAGA Settlement Amount of \$20,000); and (4) Settlement Administration Costs, which are currently estimated not to exceed seven thousand five hundred dollars (\$7,500) to the Settlement Administrator.⁹ The Parties have agreed to retain RG/2 Claims Administration LLC ("RG/2" or "Settlement Administrator") to handle the notice and settlement administration process. The Net Settlement Amount will be distributed to Participating Class Members without any reversion to Defendants.

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⁹ *Id.*, ¶¶ 10, 19, 24, 25, 39, 47-49, 51.

1 The Parties have agreed that the Settlement Administrator will determine each
2 Participating Class Member's *pro rata* share of the available Net Settlement Amount
3 ("Individual Settlement Share"), in accordance with the Settlement Agreement and as follows:

- 4 a. The Settlement Administrator will calculate the number of Individual
5 Workweeks for each individual Class Member ("Individual Workweeks") and
6 the total number of Workweeks worked by all Class Members ("Class
7 Workweeks").¹⁰
8 b. The Settlement Administrator will use the following formula: estimated
9 Individual Settlement Share = (Net Settlement Amount ÷ Class Workweeks) x
10 Individual Workweeks.¹¹

11 Each Participating Class Member's Individual Settlement Share will be allocated as
12 follows: thirty-three and one third percent (33 ⅓ %) as wages, which will be reported on an IRS
13 Form W-2; thirty-three and one third percent (33 ⅓ %) as penalties, which will be reported on
14 an IRS Form 1099; and the remaining thirty-three and one third percent (33 ⅓ %) as interest and
15 other non-wage damages, which will be reported on an IRS Form 1099.¹² Participating Class
16 Members will be issued payment of their Individual Settlement Share subject to reduction for
17 the employee's share of taxes and withholdings with respect to the wage portion of each
18 Individual Settlement Share ("Individual Settlement Payment").¹³ The employer's share of
19 payroll taxes and contributions with respect to the wage portion of the Individual Settlement
20 Shares will be paid by Defendants separately and in addition to the Maximum Settlement
21 Amount.¹⁴

22 The checks issued to Participating Class Members will remain valid and negotiable for
23 one hundred eighty (180) calendar days from the date of issuance,¹⁵ and will be cancelled
24 thereafter. Funds associated with such cancelled checks will be transmitted, pursuant to
25 California Code of Civil Procedure Section 384 (as amended effective June 2018), to The
26 Alliance for Children's Rights.¹⁶

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28 ¹⁰ Settlement Agreement, ¶ 53(a).

¹¹ *Id.*, ¶ 53(b).

¹² *Id.*, ¶ 68.

¹³ Settlement Agreement, ¶ 22.

¹⁴ *Id.*, ¶ 66.

¹⁵ *Id.*, ¶ 61.

¹⁶ *Id.*, ¶ 61.

1 A Class Member who wishes to be excluded from the Settlement must timely submit a
2 valid written request to be excluded ("Request for Exclusion") to the Settlement Administrator.¹⁷
3 To be timely, the Class Member must mail or fax a Request for Exclusion to the Settlement
4 Administrator postmarked or fax-stamped on or before the date that is forty-five (45) calendar
5 days from the initial mailing of the Class Notice or, in the case of re-mailed Class Notice, fifteen
6 (15) calendar days after the Settlement Administrator re-mails the Class Notice to the Class
7 Member ("Response Deadline").¹⁸ A valid Request for Exclusion must: (a) contain the case
8 name and number of the Action, (b) be signed by the Class Member, (c) contain the full name,
9 address, telephone number, and the last four digits of the Social Security Number of the Class
10 Member requesting exclusion, (d) clearly state that the Class Member does not wish to be
11 included in the Settlement, and (e) be returned by fax or mail to the Settlement Administrator
12 at the specified address and/or facsimile number, postmarked or faxed on or before the
13 Response Deadline.¹⁹ Any Class Member who is properly excluded from the Settlement will
14 not participate in the Settlement, will not be a Participating Class Member, will not be entitled
15 to receive an Individual Settlement Share, will not be bound by the Settlement, and will not have
16 any right to object, appeal, or comment thereon.²⁰ A Class Member who does not request
17 exclusion from the Settlement will be deemed a Participating Class Member and will be bound
18 by all terms of the Settlement.

19 Only Class Members who do not exclude themselves from the Settlement (i.e.,
20 Participating Class Members) can object to the Settlement.²¹ Participating Class Members who
21 wish to object to the Settlement must fax or mail their written objection ("Notice of Objection")
22 to the Settlement Administrator postmarked or fax stamped on or before the Response
23 Deadline.²² The Notice of Objection must be in writing and include: (a) the case name and
24 number of the Action; (b) the objector's full name, signature, address, and telephone number,

25 ¹⁷ *Id.*, ¶ 62.

26 ¹⁸ *Id.*, ¶ 37.

27 ¹⁹ Settlement Agreement, ¶ 36.

28 ²⁰ *Id.*, ¶¶ 36, 73.

²¹ *Id.*, ¶¶ 27, 64.

²² Settlement Agreement, ¶ 27.

(c) a written statement of all grounds for the objection accompanied by any legal support for such objection, and (d) copies of any papers, briefs, or other documents upon which the objection is based.²³ Participating Class Members who fail to object in accordance with these requirements will be deemed to have waived all objections to the Settlement.²⁴

Class Members who wish to dispute the number of Workweeks credited to each of them in their Class Notice may do so by mailing or faxing a written dispute to the Settlement Administrator that: (a) contains the case name and number of the Action; (b) is signed by the Class Member; (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member; (d) clearly states that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (e) includes and/or attaches evidence showing that the number of Workweeks credited to him or her are inaccurate; and (f) is returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or faxed on or before the Response Deadline.²⁵

V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, ¶ 60.

1 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
2 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

23 **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.**

24 The trial court has broad powers to determine whether a proposed settlement is fair under
25 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
26 this fairness determination, courts must consider several relevant factors, including “the strength
27 of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the
28 risk of maintaining class action status through trial, the amount offered in settlement, the extent

1 of discovery completed and the stage of the proceedings, the experience and view of counsel,
2 the presence of a governmental participant, and the reaction of the class members to the
3 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
4 and the court is free to engage in a balancing and weighing of the factors depending on the
5 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
6 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
7 at 1027 (citation omitted).

8 The proponent of the settlement has the burden to show that it is fair and reasonable.
9 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
10 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
11 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
12 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
13 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
14 1151.

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

17 The Parties actively litigated the Action since it was commenced on March 1, 2016.
18 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
19 the claims, and Class Counsel filed a motion for class certification.²⁶

20 Prior to reaching the Settlement, Class Counsel conducted significant investigation into
21 the facts of the case and engaged in extensive formal and informal discovery and review and
22 analysis of a volume of documents and data produced by Defendants.²⁷ The data and documents
23 that Class Counsel reviewed and analyzed included, and was not limited to: Plaintiff and other
24 Class Members’ employment records, a detailed sampling of Class Members’ time and pay data
25 (including, but not limited to, timesheets, payroll records, and earning statements), job titles and
26 descriptions, corporate policies (including, but not limited to, several iterations of Defendants’
27

28 ²⁶ Aiwazian Decl., ¶¶ 11-13.

²⁷ *Id.*, ¶ 12.

1 Human Resources Policies), and Defendants' operations and employment practices (such as
2 Defendants' Weekly Manager and Production Schedules, Production Targets, and Production
3 Quota Reports), procedures (such as Defendants' Time Keeping and Payroll Procedures), and
4 policies (such as Defendants' Hours of Work, Overtime and Payday policy, Employee Benefits
5 and Awards policy, and Sick Time and Holiday policy), and non-party witness declarations,
6 among other information and documents.²⁸

7 Class Counsel interviewed Plaintiff and other Class Members to gather facts and to
8 identify potential witnesses.²⁹ Class Counsel served multiple sets of formal written discovery
9 requests and reviewed Defendants' responses and supplemental responses thereto.³⁰ Class
10 Counsel also worked with Plaintiff to prepare responses to formal written discovery which were
11 propounded by Defendants.³¹ Class Counsel also took the depositions of Defendants' Person
12 Most Knowledgeable designees and prepared for and defended the deposition of Plaintiff.³²
13 Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues
14 relating to the pleadings, jurisdiction, discovery, *Belaire-West* process, motion practice, and the
15 production of documents and data.³³ Class Counsel also engaged in extensive motion practice
16 and prepared for and attended court proceedings and settlement negotiations, among other
17 tasks.³⁴

18 The Parties also engaged in extensive settlement negotiations over several months.³⁵ Prior
19 to and during the settlement discussions, the Parties exchanged class information and engaged
20 in an intensive discussion regarding their evaluations of the Action and various aspects of the
21 Action, including but not limited to, the risks and delays of further litigation, the risks to the
22 Parties of proceeding with class certification and representative adjudication, the law relating to
23 misclassification theory, meal and rest periods, wage-and-hour enforcement, and PAGA

24 ²⁸ Aiwazian Decl., ¶ 12.

25 ²⁹ *Ibid.*

26 ³⁰ *Ibid.*

27 ³¹ *Ibid.*

28 ³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Aiwazian Decl., ¶ 11.

1 representative claims, as well as the evidence produced and analyzed, and the possibility of
2 appeals, among other things.³⁶ During all settlement discussions, the Parties conducted their
3 negotiations at arm's length in an adversarial position.³⁷ Arriving at a settlement that was
4 acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their
5 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that
6 they would be able to obtain class certification and prevail at trial.³⁸ After conducting
7 investigations, the *Belair-West* notice process, extensive formal and informal discovery,
8 multiple depositions, extensive motion practice, and extensive settlement negotiations, the
9 Parties have agreed that this case is well-suited for settlement given the legal issues relating to
10 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further
11 litigation.³⁹

12 The Settlement takes into account the strengths and weaknesses of each side's position
13 and the uncertainty of how the case might have concluded at certification and/or trial.⁴⁰ The
14 Parties have had the opportunity to interview and obtain information from their respective
15 witnesses.⁴¹ Counsel for the Parties have also reviewed documents and information relating to
16 Plaintiff's and the Class Members' employment with Defendants and performed significant
17 research into the law concerning PAGA representative actions, class certification,
18 misclassification theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims,
19 and Defendants' defenses thereto, as well as facts discovered.⁴² The Parties have reached the
20 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class
21 Counsel have extensive experience in employment class actions, including significant
22 experience in California wage-and-hour litigation.⁴³

23 ///

24 _____
³⁶ *Ibid.*

25 ³⁷ *Ibid.*

26 ³⁸ *Id.*, ¶¶ 16-18.

27 ³⁹ *Ibid.*

28 ⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Id.*, ¶¶ 11-13, 16-18.

⁴³ *Id.*, ¶¶ 6-7.

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

2 The Maximum Settlement Amount of three hundred fifty thousand dollars (\$350,000)
3 represents a fair, adequate, and reasonable resolution of this case.⁴⁴ The Settlement was
4 calculated using the information and data uncovered during the litigation, case investigation, as
5 well as the formal and informal exchange of information.⁴⁵ The Settlement takes into account
6 the potential risks and rewards inherent in any case and, in particular, in this case.⁴⁶ Moreover,
7 considering all of the facts and circumstances of this case, the Settlement represents a fair,
8 reasonable, and adequate recovery for the Class.⁴⁷

9 Assuming that the Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment,
10 and Settlement Administration Costs are approved by the Court and paid in the full amounts
11 provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is
12 currently estimated to be one hundred sixty-two thousand five hundred dollars (\$162,500).⁴⁸ As
13 discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the
14 Participating Class Members. The amount of each Participating Class Member's Individual
15 Settlement Payment will be calculated based on their Workweeks.⁴⁹ There is no reason to doubt
16 the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary
17 approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable,
18 rational basis [to warrant approval], particularly if recommended by experienced and competent
19 class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y.
20 2001) 127 F.Supp.2d 418, 429-30.

21 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
22 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁰
23 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
24 the recommendations into account, particularly if Class Counsel appears to be competent, and

25 ⁴⁴ Aiwazian Decl., ¶¶ 11, 13-14, 21.

26 ⁴⁵ *Id.*, ¶¶ 11-13.

27 ⁴⁶ *Id.*, ¶¶ 16-18.

28 ⁴⁷ *Id.*, ¶¶ 11, 13, & 21.

⁴⁸ *Id.*, ¶ 14.

⁴⁹ Settlement Agreement, ¶ 53(a).

⁵⁰ Aiwazian Decl., ¶¶ 11, 13, & 21.

1 has experience with this type of litigation, and significant discovery and investigation have been
2 completed. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
3 Settlement.

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

5 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
6 conducted significant formal and informal discovery, held multiple depositions, and exchanged
7 a volume of documents, data, and information prior to engaging in settlement discussions.⁵¹ The
8 discovery and information that Class Counsel obtained from Defendants and through other
9 sources allowed Class Counsel to develop valuation models in order to evaluate the potential
10 value and merit of the claims, and perform a complete evaluation of Defendants' defenses
11 thereto.⁵² As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an
12 extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the
13 Settlement.⁵³

14 **VII. CERTIFICATION OF THE CLASS IS APPROPRIATE.**

15 For settlement purposes, the requisites for establishing class certification are met, and
16 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁴
17 California Code of Civil Procedure Section 382 "authorizes class actions when the question is
18 one of a common or general interest, of many persons, or when the Parties are numerous, and it
19 is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court*
20 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
21 "both [1] an ascertainable class and [2] a well-defined community of interest among class
22 members." *Id.*

23 The Class is ascertainable and numerous as to make it impracticable to join all Class
24 Members, and there are common questions of law and fact that predominate over any questions
25 affecting any individual Class Member. Further, Plaintiff's claims are typical of the claims of
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27 ⁵¹ *Id.*, ¶¶ 11-13, 18.

28 ⁵² *Id.*, ¶ 18.

⁵³ *Id.*, ¶¶ 11-13, 16-18.

⁵⁴ Settlement Agreement, ¶ 43.

1 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
2 Class. Finally, prosecution of separate actions by individual Class Members would create the
3 risk of inconsistent or varying adjudications, and a class action is superior to other available
4 means for the fair and efficient adjudication of the case. The Class is amenable to class
5 certification for settlement purposes as discussed below.

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

7 “Ascertainability is required in order to give notice to putative class members as to whom
8 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
9 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
10 by describing a set of common characteristics sufficient to allow a member of that group to
11 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
12 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
13 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

14 This action involves a class of approximately thirty-five (35) individuals.⁵⁵ This class is
15 sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35
16 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is
17 not practical at that point). Further, all Class Members can and will be identified by Defendants
18 to the Settlement Administrator through a review of Defendants’ employment records regarding
19 employees it employed as “exempt” Retail Sales Managers. As such, the Class is ascertainable
20 and sufficiently numerous.

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

22 The community of interest requirement “embodies three factors: (1) predominant
23 common questions of law or fact; (2) class representative with claims or defenses typical of the
24 class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34
25 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate*
26 *that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of*
27 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts

28 ⁵⁵ Aiwazian Decl., ¶ 9.

1 focus on the Defendants' internal policies and "pattern and practice . . . in order to assess whether
2 that common behavior toward similarly situated plaintiff renders class certification appropriate."
3 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

9 Here, common issues of fact and law predominate as to each of the claims alleged and
10 asserted in this lawsuit. Based on the documents and information obtained through formal and
11 informal discovery and exchange of information in this case, Plaintiff contends that all of the
12 Class Members were subject to the same or similar job duties and uniform operations and
13 employment practices, policies, and procedures during the time period at issue.⁵⁶ Plaintiff also
14 asserted that all of the Class Members were regularly limited in their use of independent
15 discretion and judgment as their decisions were often subject to Defendants' comprehensive
16 policies and guidelines, and that Class Members spent the majority of their time carrying out the
17 same duties as non-exempt employees. Plaintiff's claims arise from Defendants' alleged
18 uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter*
19 *alia*, misclassifying them as exempt and failing to properly pay overtime and minimum wages
20 for all hours worked, failing to provide compliant meal and rest periods and associated premium
21 pay, failing to timely pay wages during and after employment, failing to provide compliant wage
22 statements, failing to maintain requisite payroll records, and failing to reimburse necessary
23 business-related expenses.⁵⁷

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27 ⁵⁶ Aiwazian Decl., ¶ 16.

28 ⁵⁷ *Ibid.*

1 Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect
2 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁵⁸
3 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
4 compensation due to them from Defendants during the time period at issue.⁵⁹

5 Plaintiff maintains that the outcome of this litigation would be determined by
6 Defendants' alleged uniform operations and employment policies and procedures that applied
7 across its "exempt" Retail Sales Managers within the State of California during the Class Period.
8 Accordingly, the Court should certify the Class for settlement purposes only.

9 **VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
10 **ATTORNEYS' FEES AND COSTS**

11 Class Counsel have litigated the Action for approximately two-and-one-half years and
12 were actively preparing the matter for class certification or representative adjudication.⁶⁰ The
13 ongoing work has been extensive, demanding, and ultimately successful in achieving a
14 substantial settlement resolution. Class Counsel conducted extensive investigations into the
15 facts of the case and formal and informal discovery, including, and not limited to, propounding
16 multiple formal written discovery requests onto Defendants and reviewing Defendants'
17 responses thereto, working with Plaintiff to review and respond to special interrogatories and
18 requests for production of documents propounded by Defendants, taking the depositions of
19 Defendants' Person Most Knowledgeable designees, preparing and defending the deposition of
20 Plaintiff, and reviewing a volume of documents and data.⁶¹ Class Counsel also interviewed and
21 obtained information from Plaintiff and other Class Members, researched applicable law,
22 engaged in *Belaire-West* notice administration, engaged in extensive motion practice, undertook
23 damages/valuation calculations, and met and conferred with Defendants' counsel regarding the
24 pleadings, jurisdiction, motion practice, *Belaire-West* notice administration, discovery, and the
25

26 ⁵⁸ *Ibid.*

27 ⁵⁹ *Ibid.*

28 ⁶⁰ *Id.*, ¶¶ 11-13.

⁶¹ Aiwazian Decl., ¶ 12.

1 production of documents and data.⁶² Counsel for the Parties also undertook extensive settlement
2 discussions.⁶³

3 Class Counsel are well-experienced in wage-and-hour class action litigation and used that
4 experience to obtain a great result.⁶⁴

5 The Settlement establishes a Maximum Settlement Amount of three hundred fifty
6 thousand dollars (\$350,000), and provides for Class Counsel to apply to the Court for an award
7 in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e.,
8 \$122,500) for attorneys' fees and for reimbursement of actual litigation costs and expenses not
9 to exceed \$35,000.⁶⁵ The Attorneys' Fees and Costs provided for by the Settlement are
10 commensurate with: (1) the risk that Class Counsel took in bringing and litigating this case, (2)
11 the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and
12 determination that Class Counsel have shown, (4) the results that Class Counsel have achieved
13 throughout the litigation, (5) the value of the Settlement that Class Counsel have achieved for
14 the Class Members, and (6) the other cases that Class Counsel had to turn down in order to
15 devote their time and efforts to this matter. The proposed Class Notice provides the Class
16 Members with information about the amount allocated toward Attorneys' Fees and Costs, and
17 that Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁶⁶

18 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
19 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
20 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
21 "experienced trial judge is the best judge of the value of professional services rendered in his
22 court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney
23 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
24 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal. 5th 480, 503 (citing
25 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to

26 ⁶² *Ibid.*

27 ⁶³ *Id.*, ¶ 11.

28 ⁶⁴ *Id.*, ¶¶ 6-7.

⁶⁵ Settlement Agreement, ¶ 10.

⁶⁶ *Id.*, ¶ 59.

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

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

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

24 Class Counsel has borne all of the risks and costs of litigation and will not receive any
25 compensation until recovery is obtained.⁶⁷

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27 ///

28 ⁶⁷ Aiwazian Decl., ¶ 19.

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

6 **IX. THE PROPOSED CLASS NOTICE IS ADEQUATE.**

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

12 The proposed Class Notice⁶⁸ describes the Settlement, the deadlines and procedures to
13 submit a Notice of Objection, Request for Exclusion, and/or dispute regarding Workweeks, and
14 the date and time set for the Final Approval Hearing.⁶⁹

15 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
16 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class
17 members to make an informed decision about their participation." *Manual for Complex*
18 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
19 proceedings to date and the terms and conditions of the Settlement in an informative and
20 coherent manner.⁷⁰ The proposed Class Notice recognizes that the Court has not yet granted
21 final approval of the Settlement.⁷¹ The proposed Class Notice also apprises the Class Members
22 of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks
23 credited to them.⁷²

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26 ⁶⁸ Settlement Agreement, Exh. A.

27 ⁶⁹ *Ibid.*

28 ⁷⁰ Settlement Agreement, Exh. A.

⁷¹ *Ibid.*

⁷² *Ibid.*

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

X. APPOINTMENT OF RG/2 CLAMS ADMINISTRATION LLC AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected RG/2 Claims Administration LLC (hereinafter, “RG/2” or “Settlement Administrator”) to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First Class U.S. Mail.⁷³ Prior to mailing the Class Notice to the Class Members, the Settlement Administrator will use the National Change of Address Database to update or correct the addresses of the Class Member.⁷⁴ With respect to any returned, undeliverable Class Notice returned without a forwarding address, the Settlement Administrator will perform a skip-trace procedure to obtain a more current address and, if an updated address is located, undertake a single remailing to such address within five (5) calendar days of receipt of the returned Class Notice.⁷⁵ The Settlement Administrator will receive Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.⁷⁶

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares; deduct and transmit applicable state and/or federal taxes thereon; mail the payment checks to Participating Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys’ Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁷⁷ The Settlement

⁷³ *Id.*, ¶ 57.

⁷⁴ *Id.*, ¶ 58.

⁷⁵ *Ibid.*

⁷⁶ *Id.*, ¶¶ 62–64.

⁷⁷ *Ibid.*; Aiwazian Decl., ¶ 15.

1 Administration Costs are currently estimated to be seven thousand five hundred dollars (\$7,500)
2 and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁷⁸

3 Accordingly, Plaintiff respectfully requests that the Court appoint RG/2 as the
4 Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the
5 manner outlined and based on the proposed deadlines as described herein and set forth in the
6 Settlement Agreement.

7 **XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

8 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
9 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
10 entails mailing of the Class Notice, in the form approved by the Court, to all known and
11 reasonably ascertainable Class Members based on Defendants' records.⁷⁹

12 Within fourteen (14) calendar days after the date on which the Court grants preliminary
13 approval of the Settlement, Defendants will provide the Settlement Administrator with a
14 complete list of all Class Members which will be formatted in a readable Microsoft Office Excel
15 spreadsheet and will include (to the extent available) each Class Member's full name, last-
16 known mailing address, Social Security number, dates of hire and termination of employment
17 with Defendants (collectively, "Class Data and List").⁸⁰

18 Within ten (10) business days of receipt of the Class Data and List, the Settlement
19 Administrator will mail the Class Notice to the Class Members via First Class U.S. Mail.⁸¹ Prior
20 to mailing the Class Notice, the Settlement Administrator will perform a search based on the
21 National Change of Address Database for information to update and correct for any known or
22 identifiable address changes.⁸² If any Class Notice is returned to the Settlement Administrator
23 as non-deliverable on or before the Response Deadline, the Settlement Administrator will
24 promptly attempt to locate a more current address using a skip-trace, and will then perform a

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26 ⁷⁸ Settlement Agreement, ¶¶ 39, 48.

27 ⁷⁹ *Id.*, ¶ 57.

28 ⁸⁰ *Id.*, ¶¶ 12, 56.

⁸¹ *Id.*, ¶ 57.

⁸² *Id.*, ¶ 58.

1 single re-mailing within five (5) calendar days of receipt of the returned Class Notice.⁸³ Class
2 Members will have forty-five (45) calendar days from the original mailing of the Class Notice
3 or if the Class Notice is re-mailed, the Class Member will have an additional fifteen (15)
4 calendar days to the forty-five (45) calendar days deadline, to submit a Request for Exclusion,
5 Notice of Objection, and/or dispute regarding Workweeks to the Settlement Administrator.⁸⁴

6 Defendants will deliver the Maximum Settlement Amount within twenty-one (21)
7 calendar days after the Effective Date into a qualified settlement account created by the
8 Settlement Administrator.⁸⁵ Within seven (7) calendar days after receipt of the Maximum
9 Settlement Amount, the Settlement Administrator will distribute the: (1) Individual Settlement
10 Payments to Participating Class Members; (2) the Court-approved Enhancement Payment to
11 Plaintiff; (3) the Court-approved Attorneys' Fees and Costs award to Class Counsel; (4) the
12 LWDA Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to
13 itself.⁸⁶

14 The Individual Settlement Payment checks will remain valid and negotiable for one
15 hundred and eighty (180) calendar days from the date of their issuance.⁸⁷ Such checks will
16 automatically be cancelled if not cashed or deposited by the Class Member within the 180-day
17 period, and the funds associated with such cancelled checks will be transmitted, pursuant to
18 California Code of Civil Procedure Section 384 (as amended effective June 2018), to The
19 Alliance for Children's Rights.⁸⁸

20 **XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR**
21 **ENHANCEMENT PAYMENT**

22 Plaintiff Bryant Harris respectfully requests that the Court appoint him as the Class
23 Representative and preliminarily approve the request for Enhancement Payment in an amount
24 of up to seven thousand five hundred dollars (\$7,500) as provided for by the Settlement.⁸⁹ It is

25 ⁸³ *Ibid.*

26 ⁸⁴ *Id.*, ¶ 37.

27 ⁸⁵ *Id.*, ¶ 45. See *id.*, ¶ 18 for the definition of "Effective Date."

28 ⁸⁶ Settlement Agreement, ¶ 45.

⁸⁷ *Id.*, ¶ 61.

⁸⁸ *Ibid.*

⁸⁹ *Id.*, ¶¶ 19, 47.

1 within the Court's discretion to award payment to a class representative for their efforts and
2 work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving
3 \$50,000 participation award to a single class representative). The factors that courts may
4 consider in determining whether to make an enhancement payment include: (1) the risk to the
5 class representative in commencing suit, both financial and otherwise; (2) the notoriety and
6 personal difficulties encountered by the class representative; (3) the amount of time and effort
7 spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit
8 (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

9 The contemplated Enhancement Payment to Plaintiff is fair and appropriate. Plaintiff
10 spent a substantial amount of time and effort in producing relevant documents and past
11 employment records and providing the facts and evidence necessary to attempt to prove the
12 allegations.⁹⁰ Plaintiff was available whenever Class Counsel needed him and actively tried to
13 obtain and provide information that would benefit the Class.⁹¹ For example, Plaintiff reviewed
14 and responded to formal written discovery, prepared for and attended a full-day of deposition,
15 and reviewed his transcript thereafter.⁹² Accordingly, it is appropriate and just for Plaintiff to
16 receive a reasonable Enhancement Payment for his services on behalf of the Class, in addition
17 to his Individual Settlement Payment.

18 **XIII. CONCLUSION**

19 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
20 approval of the Settlement; conditionally certify the Class for settlement purposes; appoint and
21 designate Lawyers for Justice, PC and Righetti Glugoski, PC as Class Counsel; appoint and
22 designate Plaintiff Bryant Harris as Class Representative; appoint RG/2 Claims Administration
23 LLC as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and
24 Costs, Enhancement Payment, PAGA Settlement Amount, and Settlement Administration
25 Costs; approve the Class Notice and direct its mailing to the Class; approve the manner and

26 ⁹⁰ Aiwazian Decl., ¶ 20; Declaration of Bryant Harris In Support of Plaintiff's Motion for Preliminary Approval of
27 Class Action Settlement ("Harris Decl."), ¶¶ 3-4.

⁹¹ Aiwazian Decl., ¶ 20; Harris Decl., ¶¶ 3, 4, & 7.

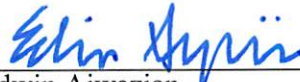
28 ⁹² Harris Decl., ¶ 5.

1 method for Class Members to request exclusion from the Settlement and object to the
2 Settlement as contained herein and within the Class Notice; and schedule a Final Approval
3 Hearing to take place in approximately September 2019.⁹³

4 Dated: March 29, 2019

LAWYERS for JUSTICE, PC

5
6 By:


Edwin Aiwanian
Attorneys for Plaintiff

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⁹³ September 2019 works if Preliminary Approval is granted in May 2019.