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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

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

Plaintiff,

vs.

GOLDEN STATE DERMATOLOGY, INC., an unknown business entity; GOLDEN STATE DERMATOLOGY MANAGEMENT, LLC, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: MSC21-00576

Honorable Charles S. Treat
Department 12

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Yasmin Hosseini); Declaration of Proposed Class Representative (Kaylynn Parker); and [Proposed] Order filed concurrently herewith]

Date:	03/07/24
Time:	9:00a
Department:	12
Complaint Filed:	March 3, 2021
FAC Filed:	August 4, 20221
SAC Filed:	November 18, 2021
TAC Filed:	September 28, 2022
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on a date and time to be determined by the Honorable Charles S. Treat in Department 12 of the Superior Court of California for the County of Contra Costa, located at 725 Court Street, Martinez, California 94553, Plaintiff Kaylynn Parker ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Yasmin Hosseini, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Kaylynn Parker as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment for Plaintiff, and Administration Costs to Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini) and Proposed Class Representative (Kaylynn Parker) 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: December 5, 2023 **LAWYERS *for* JUSTICE, PC**

By: ______________________________
Yasmin Hosseini
Attorney for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Kaylynn Parker ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Golden State Dermatology Inc., and Golden State Dermatology Management, LLC ("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 Six Hundred Twenty-Five Thousand Dollars ($625,000.00).[1] The Maximum Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Enhancement Payment of Seven Thousand Five Hundred Dollars ($7,500.00) to Plaintiff[3]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or $218,750.00 if the Maximum Settlement Amount remains $625,000.00, and reimbursement of litigation costs and expenses not to exceed Fifteen Thousand Dollars ($15,000.00)[4]; (4) the Administration Costs to the Settlement Administrator in the amount not to exceed Fifteen Thousand Dollars ($15,000.00);[5] and (5) the amount of One Hundred Thousand Dollars ($100,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA Penalties"), of which seventy-five percent (75%) or Seventy Five Thousand Dollars ($75,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA Payment") and 25% (i.e., $25,000.00) will be distributed to

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Yasmin Hosseini ("Hosseini Decl."), ¶ I.R. If the number of workdays during the period from March 3, 2017 through April 9, 2022 is actually more than 10% higher than 122,605 workdays ("Workdays Threshold"), the Maximum Settlement Amount will increase on a *pro rata* basis to the extent the Workdays Threshold is exceeded. For example, if the workdays for the referenced time period exceed the Workdays Threshold by 1%, then the Maximum Settlement Amount will be increased by 1%. See *id.*, ¶ VIII.B.
[2] *Id.*, ¶ I.Q.
[3] *Id.*, ¶ XV.
[4] *Id.*, ¶ XIV.
[5] *Id.*, ¶ IX.

PAGA Members on a *pro-rata* basis based on PAGA Members' PAGA Workweeks during the PAGA Period (i.e., Employee PAGA Amount).[6]

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

> All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period, excluding the one (1) individual who has entered into an individual settlement with Defendants ("Class" or "Class Members").[7]

Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Settlement Class Member") will receive a share of the Net Settlement Amount ("Individual Settlement Share") on a *pro rata* basis based upon the number of weeks that a Class Member worked for Defendants as an hourly-paid or non-exempt employee in California during the Class Period, which will be calculated by the Settlement Administrator based on information provided by Defendants by way of the Class List, by dividing the number of hours worked by the Class Member during the period March 3, 2017 through December 31, 2018 by eight (8) to get the number of workdays and dividing the number of days worked by the Class Member during the period March 3, 2017 through August 23, 2022 by five (5) ("Workweeks").[8] All current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time during the PAGA Period ("PAGA Members"), will receive a *pro rata* share of the 25% portion of the Employee PAGA Amount ("Individual PAGA Payment") based on the number of weeks that a PAGA Member worked during the PAGA Period, which will be calculated by the Settlement Administrator based on the information provided by Defendants by way of the Class List, by dividing the number of days worked by the PAGA Member during the PAGA Period by five (5).[9]

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[6] Settlement Agreement, ¶ XVII; "PAGA Period" is defined as the period from June 16, 2021 through August 23, 2022. See *id*., ¶ I.W.

[7] *Id*., ¶ I.E.; "Class Period" is defined as the period of time from March 3, 2017 through August 23, 2022. *See id*., ¶ I.G.

[8] *Id*., ¶¶ I.Q., I.GG, & I.HH.

[9] *Id*., ¶¶ I.O., I.U., & I.HH.

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The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiff and Settlement Class Members, and the Released PAGA Claims of Plaintiff, PAGA Members, and the State of California against the Released Parties.[10]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are a comprehensive medical, surgical, and cosmetic dermatology network with locations throughout the San Francisco Bay Area and Central Valley. Plaintiff Kaylynn Parker is a former employee of Defendants.

On March 3, 2021, Plaintiff filed a Class Action Complaint for Damages in the Contra Costa County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On August 4, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages, removing the claim for violation of California Labor Code section 1174(d).

On November 18, 2021, Plaintiff filed a Second Amended Class Action Complaint for Damages, fleshing out the facts regarding the alleged violations of the California Labor Code.

On June 16, 2022, Plaintiff provided written notice to the Labor Workforce Development Agency ("LWDA") and Defendants, giving notice of her intent to pursue civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("PAGA").

On September 28, 2022, Plaintiff filed a Third Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., adding a PAGA cause of action ("Operative Complaint").

Plaintiff's core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA 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

[10] See *id.* at ¶ I.AA., for the full scope of the "Released Class Claims," ¶ I.BB., for the full scope of the "Released PAGA Claims," and *id.* at ¶ I.CC for the definition of the "Released Parties."

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statements, 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. Plaintiff contends that she, and the Class Members and PAGA Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

On October 25, 2021, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One), on Defendants, and noticed the deposition of Defendants' person most knowledgeable regarding job duties and organizational structure of Defendants.

The Parties have actively litigated the Action since it was commenced on March 3, 2021. On May 18, 2022, the Parties participated in a formal, full-day mediation conducted by Hon. Howard R. Broadman (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Maximum Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Member) and Released PAGA Claims of Plaintiff, PAGA Members, and the State of California, with respect to the Released Parties.[11] 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 in an amount not to exceed thirty five percent (35%) of the Maximum Settlement Amount (i.e., $218,750.00 if the Maximum Settlement Amount remains

[11] Settlement Agreement, ¶ I.R.

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$625,000.00) and reimbursement of costs and expenses in an amount not to exceed Fifteen Thousand Dollars ($15,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) administration costs, which are currently estimated not to exceed Fifteen Thousand Dollars ($15,000.00) to the Settlement Administrator ("Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., $75,000.00 out of $100,000.00) ("LWDA Payment") and twenty-five percent (25%), or $25,000.00, will be distributed to PAGA Members on a *pro rata* basis ("Employee PAGA Amount"); and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars ($7,500.00) to Plaintiff Kaylynn Parker ("Enhancement Payment").[12] The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.

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

a. The Settlement Administrator will calculate the number of Workweeks of each Settlement Class Member during the Class Period and include this information in the Class List.[13]
b. The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks of all Settlement Class Members ("Estimated Workweek Value").[14]
c. Each Settlement Class Member's individual Workweeks will be multiplied by the Estimated Workweek Value to arrive at his or her Individual Settlement Share.[15]

The Parties have agreed that the Settlement Administrator will determine each PAGA Members' *pro rata* share of the Employee PAGA Amount (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement and as follows:

a. The Settlement Administrator will calculate the number of PAGA Workweeks of each PAGA Member by dividing the number of days worked by the PAGA Member during the PAGA Period by five (5).[16]

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[12] Settlement Agreement, ¶¶ I.X, XIV, XV, & XVII.
[13] *Id.*, ¶ XII.A.1.
[14] *Id.*, ¶ XII.A.2.
[15] *Id.*, ¶ XII.A.3.
[16] *Id.*, ¶ XII.B.1.

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b. The value of each PAGA Workweek shall be determined by the Settlement Administrator by dividing the Employee PAGA Amount by the total number of PAGA Workweeks of all PAGA Members ("PAGA Workweek Value").[17]

c. Each PAGA Member's individual PAGA Workweeks will be multiplied by the PAGA Workweek Value to arrive at his or her Individual PAGA Payment.[18]

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.[19] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).[20] The Individual PAGA Payments to PAGA Members shall be deemed one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.[21] The Settlement Administrator may, at its discretion, distribute the Individual Settlement Payment and Individual PAGA Payment by way of a single check that combines both payments (if applicable).[22] Defendants' employer payroll taxes and contributions in connection with the wages portion of the Settlement ("Employer Taxes") shall be paid separately and in addition to the Maximum Settlement Amount.[23]

Any checks issued by the Settlement Administrator to Settlement Class Members and PAGA Members will be valid and negotiable for one hundred and eighty (180) calendar days after issuance, and thereafter, the checks will be cancelled.[24] The funds remaining and associated with cancelled Individual Settlement Payment and/or Individual PAGA Payment checks will be paid to Legal Aid at Work, after the Court enters an order approving the parties' stipulation to

[17] Settlement Agreement, ¶ XII.B.2.
[18] *Id.*, ¶ XII.B.3.
[19] *Id.*, ¶ XVI.D.
[20] *Ibid*.
[21] *Id.*, ¶ XVI.C.
[22] *Id.*, ¶ XII.D.2.
[23] *Id.*, ¶ VIII.A.
[24] *Id.*, ¶ XII.D.3.

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amend the judgment, which Parties shall prepare and file in accordance with California Code of Civil Procedure section 384.5, *et seq*.[25]

Any Class Member wishing to be excluded from the Class Settlement must submit a timely, written letter indicating a request to be excluded from the Class Settlement to the Settlement Administrator ("Request for Exclusion").[26] To be timely, the Class Member must mail a 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").[27] The Request for Exclusion must : (a) contain the case name and number of the Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and last four digits of his or her Social Security Number of the Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be included in the Class Settlement; and (5) be submitted to the Settlement Administrator by mail, postmarked by no later than the Response Deadline.[28] Any Class Member who timely and validly submits a Request for Exclusion will not be entitled to an Individual Settlement Payment, will not be bound by the Class Settlement, and will not have any right to object, appeal, or comment thereon. [29] All PAGA Members shall be bound to the PAGA Settlement regardless of their decision to participate in the Class Settlement.[30]

Class Members who do not submit a Request for Exclusion (i.e., Settlement Class Members) may object to the Class Settlement.[31] To object to the Class Settlement, a Settlement Class Member may send a written objection ("Notice of Objection") to the Settlement Administrator or appear at the Final Approval Hearing with or without submitting a written objection to the Class Settlement.[32] The Notice of Objection must: (a) contain the case name and number of the Action; (b) include the objector's full name, signature, address, telephone

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[25] *Ibid.*
[26] Settlement Agreement, ¶X.C.1.
[27] *Id.*, ¶ I.DD.
[28] *Id.*, ¶ I.EE.
[29] *Id.*, ¶ X.C.2.
[30] *Id.*, ¶ X.C.3.
[31] *Id.*, ¶ X.B.
[32] *Ibid.*

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number, and last four digits of his or her Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain the full name, address, and telephone number of any attorney representing the Class Member with respect to his or her objection; (e) include copies of any papers, briefs, or other documents upon which the objection is based; and (f) be submitted to the Settlement Administrator by mail, postmarked no later than the Response Deadline.[33]

If a Class Member and/or PAGA Member disputes the number of Workweeks credited to him or her for the Class Period and/or PAGA Period, which will be set forth in the Class Notice, he or she must submit a written dispute ("Workweeks Dispute") to the Settlement Administrator that: (a) contains the case name and number of the Action; (b) contains the Class Member's full name, address, telephone number, signature, and last four digits of his or her Social Security number; (c) contains a statement setting forth the number of Workweeks during the Class Period and/or PAGA Period that he or she contends is correct and attaches any relevant documentation in support thereof; and (d) is submitted to the Settlement Administrator by mail, postmarked no later than the Response Deadline.[34]

IV. <u>LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS</u>

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

[33] *Ibid.*
[34] Settlement Agreement, ¶ XI.A.

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

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

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

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

V. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT</u>

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

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

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

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

The Parties actively litigated the Action since it was commenced on March 3, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.[35]

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendants.[36] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff and other Class Members' employment records, a thirty percent (30%) sampling of Class Members' time and pay data, multiple iterations of Defendants' Employee Handbook, company policy acknowledgements (Employee

[35] Hosseini Decl., ¶¶ 10-12.
[36] *Id.*, ¶ 11.

Acknowledgment), job descriptions, Defendants' operations and employment practices, procedures, and policies, among other information and documents.[37] Class Counsel had the opportunity to interview Plaintiff and other Class Members to gather facts and to identify potential witnesses.[38] Class Counsel propounded multiple sets of formal written discovery requests on Defendants and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties.[39] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.[40] Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[41]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Hon. Howard R. Broadman (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters.[42] Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[43] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[44] Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able

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[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*
[40] Hosseini Decl., ¶ 11.
[41] *Ibid.*
[42] *Id.*, ¶ 11.
[43] *Ibid.*
[44] *Ibid.*

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to obtain class certification and prevail at trial.[45] After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[46]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.[47] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[48] Counsel for the Parties have also reviewed documents and information relating to Plaintiffs', Class Members', and PAGA Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.[49] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[50]

B. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for a Maximum Settlement Amount of Six Hundred Twenty-Five Thousand Dollars ($625,000.00), represents a fair, adequate, and reasonable resolution of the matter.[51] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[52] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[53] Moreover, considering all of the facts and

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[45] Hosseini Decl., ¶¶ 10, 15-17.
[46] *Ibid.*
[47] *Ibid.*
[48] *Id.*, ¶¶ 10, 15-17.
[49] *Id.*, ¶¶ 10-12 & 15-17.
[50] *Id.*, ¶¶ 2-7.
[51] *Id.*, ¶¶ 10, 12, 13 & 21.
[52] *Id.*, ¶¶ 10-12.
[53] *Id.*, ¶¶ 15-17.

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circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[54]

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Penalties, and Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Two Hundred Sixty-Eight Thousand Seven Hundred and Fifty Dollars ($268,750.00).[55] Additionally, the 25% of the PAGA Penalties (i.e., Employee PAGA Amount), which is $25,000.00 out of $100,000.00, will be distributed to PAGA Members. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share and each PAGA Members' Individual PAGA Payment will be calculated based on his or her Workweeks.[56] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA Members, and the State of California.[57] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg,* §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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[54] Hosseini Decl., ¶¶ 10, 12, & 21.
[55] *Id.,* ¶ 13.
[56] Settlement Agreement, ¶¶ XII.A & X.B.
[57] Hosseini Decl., ¶¶ 10, 12, & 21.

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 formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[58] The discovery and information that Class Counsel obtained from Defendants 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 Defendants' defenses thereto.[59] As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[60]

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

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

[58] Hosseini Decl., ¶¶ 10-12 & 17.
[59] *Id.*, ¶ 17.
[60] *Id.*, ¶¶ 10-12 & 15-17.
[61] Settlement Agreement, ¶ IV.A.

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means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

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

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

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

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." *Capitol People*, *supra*, 155

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Cal.App.4th at 690 (emphasis added) (citing *Sav-On*, *supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the "reasonableness" of the defendant's labor policies as applied to the potential class. *Ghazaryan*, *supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiff contends that 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.[62] Plaintiff's claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, and failing to reimburse necessary business-related expenses.[63]

Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.[64] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.[65]

Plaintiff maintains that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across their hourly-paid and non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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[62] Hosseini Decl., ¶ 15.
[63] *Ibid.*
[64] *Ibid.*
[65] *Ibid.*

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

Class Counsel has litigated the matter for over two (2) years, and was actively preparing the matter for class certification and trial.[66] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendants. Class Counsel also noticed the depositions of Defendants' Person Most Knowledgeable designees. Class Counsel reviewed a large volume of documents and data[67] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[68] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[69]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[70]

The Settlement establishes a Maximum Settlement Amount of Six Hundred Twenty-Five Thousand Dollars ($625,000.00), and provides for Class to apply to the Court for an award in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., $218,750.00 if the Maximum Settlement Amount remains $625,000.00)) and an amount not to exceed Fifteen Thousand Dollars ($15,000.00) for costs and expenses (collectively, "Attorneys' Fees and Costs").[71] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that

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[66] Hosseini Decl., ¶¶ 10-12.
[67] *Id.*, ¶ 11.
[68] *Id.*, ¶ 11.
[69] *Id.*, ¶ 10.
[70] *Id.*, ¶¶ 2-7.
[71] Settlement Agreement, ¶ XIV.

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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, PAGA Members, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members and PAGA Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[72]

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. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee 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). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id*. (internal quotation marks omitted).

[72] Settlement Agreement, Exh. A.

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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.[73]

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice[74] describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, requests for exclusion from the Class Settlement,

[73] Hosseini Decl., ¶ 18.
[74] Settlement Agreement, Exh. A.

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and/or disputes regarding Workweeks, and the date and time set for the Final Approval Hearing.[75]

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[76] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[77] The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share, and if applicable, their Individual PAGA Payment are calculated and the number of Workweeks credited to them.[78]

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

IX. <u>APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR</u>

The Parties have selected Phoenix Settlement Administrators to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.[79] Any Class Notices returned with a forwarding address to the Settlement Administrator before the Response Deadline, shall be re-mailed to the forwarding address

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[75] *Ibid.*
[76] *Ibid.*
[77] *Ibid.*
[78] Settlement Agreement, Exh. A.
[79] *Id.*, ¶ X.A.2.

affixed thereto.[80] If a Class Notice is returned as undeliverable before the Response Deadline, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address within three (3) business days of receipt of the returned mail. If the Settlement Administrator is successful in locating an updated address, it will re-mail the Class Notice to the Class Member as soon as possible.[81] With respect to any Class Notice that is re-mailed, the Response Deadline for the Class Member whose Class Notice is re-mailed will be extended an additional fifteen (15) calendar days from the original Response Deadline.[82] The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objections, and any Workweek Disputes.[83]

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and the Individual PAGA Payment checks to PAGA Members; issue W-2 and 1099 forms; determining the timeliness, validity, and/or completion of any objections, Requests for Exclusion, and/or Workweeks Disputes; distributing and responding to inquiries about the Class Notice 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.[84] The Administration Costs are currently estimated to be Fifteen Thousand Dollars ($15,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.[85]

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

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[80] Settlement Agreement., ¶ X.A.4.
[81] *Ibid.*
[82] *Id.*, ¶ X.A.5.
[83] *Id.*, ¶ I.DD.
[84] *Id.*, ¶ IX; Hosseini Decl., ¶ 14.
[85] Settlement Agreement, ¶ IX.

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X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.[86]

Within twenty-one (21) calendar days after the Preliminary Approval Date, Defendants will provide the Settlement Administrator with a readable Microsoft Office Excel spreadsheet and will include each Class Member's full name, last known mailing address, Social Security Number, start and end dates worked for Defendants during the Class Period (and, if applicable, during the PAGA Period); number of hours worked during the period March 3, 2017 through December 31, 2018; number of days worked during the period January 1, 2019 through April 9, 2022; number of days worked during the period April 10, 2022 through August 23, 2022; and number of days worked during the PAGA Period (i.e., Class List).[87]

Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.[88] Any Class Notices returned with a forwarding address to the Settlement Administrator before the Response Deadline, shall be re-mailed to the forwarding address affixed thereto.[89] If a Class Notice is returned as undeliverable before the Response Deadline, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address within three (3) business days of receipt of the returned mail. If the Settlement Administrator is successful in locating an updated address, it will re-mail the Class Notice to the Class Member as soon as possible.[90] Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, Workweek Disputes, and/or Notices of Objection.[91]

Within twenty-one (21) calendar days following the Effective Date, Defendants will

[86] Settlement Agreement, ¶ X.A.2.
[87] *Id.*, ¶ I.D.
[88] *Id.*, ¶ X.A.2.
[89] *Id.*, ¶ X.A.4.
[90] *Ibid.*
[91] *Id.*, ¶ I.DD.

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deposit the Maximum Settlement Amount into a qualified settlement account established by the Settlement Administrator for administration of the Settlement.[92] The Settlement Administrator shall distribute the Court-approved Attorney's Fees and Costs to Class Counsel, Court-approved Enhancement Payment to Plaintiff, Court-approved Administration Costs to the Settlement Administrator, LWDA Payment to the LWDA, Individual Settlement Payments to Settlement Class Members, and the Individual PAGA Payments to PAGA Members within ten (10) calendar days following the full funding of the Maximum Settlement Amount.[93]

Any checks issued by the Settlement Administrator to Settlement Class Members and PAGA Members will be valid and negotiable for one hundred and eighty (180) calendar days after issuance, and thereafter, the checks will be cancelled.[94] The funds remaining and associated with cancelled Individual Settlement Payment and/or Individual PAGA Payment checks will be paid to Legal Aid at Work, after the Court enters an order approving the parties' stipulation to amend the judgment, which Parties shall prepare and file in accordance with California Code of Civil Procedure section 384.5, *et seq*.[95]

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Kaylynn Parker respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to Seven Thousand Five Hundred Dollars ($7,500.00) to Plaintiff Kaylynn Parker.[96] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by

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[92] Settlement Agreement., ¶ XII.C.
[93] *Id.*, ¶ XII.D.1.
[94] *Id.*, ¶ XII.D.3.
[95] *Id.*, ¶ XII.D.3.
[96] *Id.*, ¶ XV.

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the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[97] Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[98] Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for her services on behalf of the Class, PAGA Members, and the State of California, in addition to her individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Kaylynn Parker as Class Representative; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Penalties, and Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months.

Dated: December 5, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________________
Yasmin Hosseini
Attorney for Plaintiff

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[97] Hosseini Decl., ¶ 19; Declaration of Kaylynn Parker in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Parker Decl."), ¶ 4.

[98] Hosseini Decl., ¶ 19; Parker Decl., ¶¶ 3-6.