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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—STANLEY MOSK COURTHOUSE

TYRONE JOHNSON, TERRENCE
KENNEDY; individually, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

vs.

PARSEC, INC., D/B/A/ OHIO PARSEC,
INC., an Ohio corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 22STCV25427

Honorable Kristin Escalante
Department 24

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Elizabeth Parker-Fawley); Declarations of
Proposed Class Representatives (Tyrone Johnson,
Terrence Kennedy, and James Walker); and
[Proposed] Order filed concurrently herewith]

Date: July 15, 2024
Time: 8:30 a.m.
Dept: 24
Reservation ID: 869014079586

Complaint Filed: August 5, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on July 15, 2024 at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Kristin Escalante in Department 24 of the Superior Court of California for the County of Los Angeles, Stanley Mosk Courthouse located at 111 North Hill Street, Los Angeles, California 90012, Plaintiffs Tyrone Johnson and Terrence Kennedy and proposed Plaintiff James Walker (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting Plaintiffs leave to file the [Proposed] First Amended Class Action Complaint for Damages and Complaint for Enforcement under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“First Amended Complaint”);
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Elizabeth Parker-Fawley, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representatives Service Payments, and Settlement Administration Costs;
- Granting approval of the PAGA Settlement, including the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA Penalties”),
- Certifying the Class for settlement purposes;
- Appointing Plaintiffs Tyrone Johnson and Terrence Kennedy and proposed Plaintiff James Walker as Class Representatives;
- Appointing Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“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 Class Action Administration Solutions 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 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representatives Service Payments, Settlement Administration Costs, and allocation for the PAGA Penalties.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Elizabeth Parker-Fawley) and the Proposed Class Representatives (Tyrone Johnson, Terrence Kennedy, and James Walker) 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: June 20, 2024

LAWYERS for JUSTICE, PC

By: 
Elizabeth Parker-Fawley
Attorneys for Plaintiffs Tyrone Johnson,
Terrence Kennedy, and Proposed Plaintiff
James Walker

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Tyrone Johnson and Terrence Kennedy, and proposed Plaintiff James Walker, (collectively “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees and the State of California, on the one hand, and Defendant Parsec, Inc. dba Ohio Parsec, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of \$4,476,098.¹ The Gross Settlement Amount includes the following: (1) Individual Class Payments to Participating Class Members; (2) employee’s share of payroll taxes with respect to the wage portion of Individual Class Payments; (3) Class Representative Service Payments to Plaintiffs; (4) attorneys’ fees and reimbursement of any actual litigation costs and expenses (collectively, “Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment”) to Class Counsel; (5) penalties allocated under the California Labor Code Private Attorneys General Act of 2004 (“PAGA Penalties”); and (6) Settlement Administration Costs to Settlement Administrator.²

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

All current and former non-exempt or hourly-paid employees employed by Defendant in the State of California who worked for Defendant at any time during the Class Period.³

The Class is estimated to consist of approximately 2,522 individuals.⁴ Class Members who do not submit a timely and valid Request for Exclusion (“Participating Class Members”) will

¹ Settlement Agreement, attached as “EXHIBIT 1” to Declaration of Elizabeth Parker-Fawley (“Parker-Fawley Decl.”), 3.1. The Gross Settlement Amount is subject to an escalator clause. To the extent the actual number of Workweeks exceeds 274,612 by more than 10%, Defendant will have the option to either increase the Gross Settlement Amount by a percentage equal to the percentage that the total Workweeks exceeds 10% or cut off the Class Period as of the date the workweeks increased by more than 10%. *See id.*, at 8.

² *Ibid.*

³ *Id.*, at 1.5.

⁴ *Id.*, at 4.1.

1 receive a share of the Net Settlement Amount on a *pro rata* basis, based upon the number of
2 weeks each Class Member actually worked for Defendant during the period from August 8, 2018
3 through September 27, 2023 (“Class Period”) in the State of California as hourly-paid or non-
4 exempt employees (“Workweeks”).⁵ The Net Settlement Amount refers to the Gross Settlement
5 Amount, less the following amounts subject to approval by the Court: Class Counsel Fees
6 Payment and Class Counsel Litigation Expenses Payment, Settlement Administration Costs,
7 Class Representative Service Payments, and PAGA Penalties.⁶

8 Plaintiffs additionally represent a group of all hourly-paid or non-exempt employees
9 employed by the Defendant in the State of California who worked for Defendant at any time
10 during the PAGA Period (“Aggrieved Employees”). Aggrieved Employees who were employed
11 by Defendant during the period from June 1, 2021 through September 27, 2023 (“PAGA
12 Period”) will receive a *pro rata* share of twenty-five percent (25%) of the PAGA Penalties (i.e.,
13 \$125,000) based on the number of PAGA Pay Periods credited to each of them (“Individual
14 PAGA Payment”). The term PAGA Pay Periods refers to the number of pay periods during
15 which an Aggrieved Employee worked for Defendant for at least one day during the PAGA
16 Period. The remaining seventy-five percent (75%) of the PAGA Penalties (i.e., \$375,000) shall
17 be paid to the California Labor and Workforce Development Agency (“LWDA”). The
18 Aggrieved Employees are currently estimated to include 1,596 employees.⁷ The Settlement
19 resolves the Released Class Claims of Plaintiffs and Participating Class Members and the
20 Released PAGA Claims of Plaintiffs and the Aggrieved Employees against the Released Parties.⁸

21 In order to efficiently present the Court with adequate information to determine whether
22 to grant preliminary approval of the Settlement and provisional certification of the Class for
23 settlement purposes, Plaintiffs also move for an order permitting the filing of this memorandum,
24 although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

25
26 ⁵ Settlement Agreement, at 1.12, 1.33, 1.40, 1.43.

27 ⁶ *Id.*, at 1.27.

28 ⁷ *Id.*, at 4.1

⁸ See *id.*, at 5.2 for the full scope of the “Released Class Claims,” at 5.3 for the full scope of the “Released PAGA Claims,” and at 1.39 for the definition of the “Released Parties.”

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

2 Defendant is an intermodal transportation company. Plaintiffs are former employees of
3 Defendant.

4 On August 5, 2022, Plaintiffs Tyrone Johnson and Terrence Kennedy filed a Complaint
5 for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et
6 Seq. (“PAGA Complaint”) against Defendant in the Los Angeles County Superior Court
7 (“Court”), Case No. 22STCV25427 (the “Action”). On August 8, 2022, Plaintiff Tyrone
8 Johnson and Terrence Kennedy filed a Class Action Complaint for Damages against Defendant
9 in the Los Angeles Superior Court, Case No. 22STCV25562 (“the Class Action”). On September
10 26, 2022, Defendant removed the Class Action to the United States District Court for the Central
11 District of California. On May 24, 2024, the Parties filed a Stipulation and [Proposed] Order
12 Granting Plaintiffs Leave to File a First Amended Class Action Complaint for Damages &
13 Enforcement under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in
14 order to consolidate the Class Action into the Action and add James Walker as a named plaintiff,
15 PAGA representative, and putative class representative in accordance with the terms of the
16 Settlement.

17 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by
18 engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and
19 Aggrieved Employees, of, *inter alia*, failing to pay all overtime and minimum wages due and
20 owing, failing to provide compliant meal period and rest periods and associated premium pay,
21 failing to timely pay wages during employment and upon termination, failing to provide
22 compliant wage statements, failing to maintain requisite payroll records, failing to reimburse
23 necessary business expenses and, thereby, engaged in unfair business practices under the
24 California Business and Professions Code and owes penalties recoverable under PAGA.
25 Plaintiffs contend that they, and the Class Members and Aggrieved Employees, are entitled to,
26 *inter alia*, unpaid wages, penalties (including, and not limited to, penalties pursuant to PAGA),
27 and attorneys’ fees and costs.

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

5 The Parties have actively litigated this matter since the Action was commenced. The
6 Parties have conducted significant formal and informal discovery and investigation into the
7 claims. Both sides have propounded and responded to multiple sets of formal written discovery
8 requests in various forms. Class Counsel also prepared for and took the depositions of
9 Defendant's Persons Most Knowledgeable and prepared for and defended the deposition of
10 Plaintiff Johnson. The Parties engaged in extensive discussions about the strengths and
11 weaknesses of Plaintiffs' claims and Defendant's defenses thereto, to try to resolve the Action.
12 Ultimately, the Parties reached the proposed Settlement described herein to resolve this Action in
13 its entirety.

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

15 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount in the
16 amount of \$4,476,098 to resolve the Released Class Claims of Plaintiffs and the Class Members
17 who do not opt out of the Settlement (i.e., Participating Class Members) and Released PAGA
18 Claims of Plaintiffs and the Aggrieved Employees with respect to the Released Parties.⁹ Subject
19 to approval by the Court, the Net Settlement Amount will be calculated by deducting the
20 following amounts from the Gross Settlement Amount: (1) Individual PAGA Payments, (2) the
21 LWDA PAGA Payment, (3) Class Representative Service Payments, (4) Class Counsel Fees
22 Payment, (5) Class Counsel Litigation Expenses Payment, and (6) the Administration Expenses
23 Payment.¹⁰ The Parties have agreed to retain Phoenix Class Action Administration Solutions
24 ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration
25 process.¹¹

27 ⁹ Settlement Agreement, at 5.

28 ¹⁰ *Id.*, at 1.27, 3.2.

¹¹ *Id.*, at 7.1.

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

- a. The Settlement Administrator will calculate the number of Individual Workweeks for each individual Class Member and the total number of Workweeks worked by all Class Members ("Class Workweeks").¹²
- b. The Settlement Administrator will use the following formula: estimated Individual Class Payments = (Individual Workweeks ÷ Class Workweeks) x Net Settlement Amount.¹³
- c. If any Class Members submit timely and valid Requests for Exclusion, the Settlement Administrator will proportionately increase the Individual Class Payments of each Participating Class Member to ensure that the entire Net Settlement Amount is distributed to Participating Class Members.¹⁴

Each Aggrieved Employee will be entitled to a *pro rata* share of twenty-five percent (25%) of the PAGA Penalties (i.e., \$125,000) ("Individual PAGA Payment") based on the number of PAGA Pay Periods credited to each of them, in accordance with the Settlement Agreement.¹⁵

Each Participating Class Member's Individual Class Payments will be allocated as follows: 15% to wages, which will be reported on an IRS Form W-2; and 65% non-wages for interest and penalties, which will be reported on an IRS Form 1099.¹⁶ Each Aggrieved Employee's Individual PAGA Payment will be allocated as 100% non-wages for penalties, will be reported on an IRS Form 1099, and will be paid out without reduction for any taxes or withholdings.¹⁷ Participating Class Members will be issued payment of their Individual Class Payments subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Class Payments ("Individual Class Payment").¹⁸ The employer's share of payroll taxes with respect to the wage portion of the Individual Class Payments will be paid by Defendant separately and in addition to the Gross Settlement Amount.¹⁹

¹² Settlement Agreement, at 7.4.1.

¹³ *Id.*, at 3.2.4.

¹⁴ *Id.*, at 3.2.4.2 (erroneously numbered 3.2.5.2).

¹⁵ *Id.*, at 3.2.4.1 (erroneously numbered 3.2.5.1).

¹⁶ *Id.*, at 3.2.5.1.

¹⁷ *Id.*, at 3.2.5.2.

¹⁸ *Id.*, at 3.2.4.1 (erroneously numbered 3.2.5.1).

¹⁹ *Id.*, at 3.1.

1 The payment checks issued to Participating Class Members and Aggrieved Employees
2 will remain valid and negotiable for one hundred eighty (180) calendar days from the date of
3 issuance.²⁰ Those payment checks that are returned as undeliverable or that remain un-cashed
4 for more than one hundred eighty (180) calendar days after issuance will be cancelled and the
5 funds associated with such cancelled checks will be deposited with the California Controller's
6 Unclaimed Property Fund in the name of the Class Member or Aggrieved Employee whose
7 check is cancelled.²¹

8 A Class Member who wishes to be excluded from the Settlement of Released Class
9 Claims must timely submit a valid Request for Exclusion to the Settlement Administrator.²² To
10 be timely, the Class Member must mail or fax a Request for Exclusion to the Settlement
11 Administrator postmarked, emailed, or fax-stamped on or before the date that is 45 days from the
12 mailing of the Class Notice or, in the case of re-mailed Class Notice, 59 days from the mailing of
13 the Class Notice ("Response Deadline").²³ A Request for Exclusion must: (a) contain the name,
14 address, and telephone number, and last four digits of the Social Security number of the Class
15 Member requesting exclusion from the Class Settlement; (b) reasonably communicates that the
16 Class Member election to be excluded from the Class Settlement; (c) be returned by fax, email,
17 or mail to the Settlement Administrator at the specified address and/or facsimile number; and (f)
18 be faxed, emailed, or postmarked on or before the Response Deadline.²⁴ The Administrator may
19 not reject a Request for Exclusion as invalid because it fails to contain all the information
20 specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid
21 if the Administrator can reasonably ascertain the identity of the person as a Class Member and
22 the Class Member's desire to be excluded.²⁵ Any Class Member who is properly excluded from
23 the Class Settlement will not participate in the Class Settlement, will not be a Participating Class
24 Member, will not be entitled to receive an Individual Class Payments, will not be bound by the

25 _____
²⁰ Settlement Agreement, at 4.4.1.

26 ²¹ *Id.*, at 4.4.3.

27 ²² *Id.*, at 7.5.1.

28 ²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, at 7.5.2.

Class Settlement and will not have any right to object, appeal, or comment thereon.²⁶ Notwithstanding the foregoing, Class Members who are also Aggrieved Employees and submit timely and valid Requests for Exclusion will, nevertheless, be deemed to settle and resolve all Released PAGA Claims and will still be issued payment for their share of the Individual PAGA Payments.²⁷

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Participating Class Members) can object to the Class Settlement.²⁸ Participating Class Members who wish to object to the Class Settlement may fax, email, or mail their written objection to the Settlement Administrator on or before the Response Deadline.²⁹ Alternatively, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.³⁰

Class Members who wish to challenge the number of Workweeks and/or PAGA Pay Periods credited to each of them in their Class Notice may do so by mailing, emailing, or faxing a written challenge to the Settlement Administrator on or before the Response Deadline.³¹

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

²⁶ Settlement Agreement, at 7.5.4.

²⁷ *Ibid.*

²⁸ *Id.*, at 7.7.1.

²⁹ *Ibid.*

³⁰ *Id.*, at 7.7.2.

³¹ *Id.*, at 7.6.

1 decision to approve a class action settlement may be reversed only upon a strong showing of
2 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
3 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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

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

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

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

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

The Parties actively litigated this matter since it was commenced. Both sides used the pre-Settlement time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing for a motion for class certification and for a PAGA trial.³²

Prior to engaging in mediation, Class Counsel conducted significant investigation into the facts of the case and engaged in extensive formal and informal discovery and review and analysis of thousands of pages of documents and data produced by Defendant.³³ The volume of data and documents that Class Counsel reviewed and analyzed included, and was not limited to: Plaintiffs and other Class Members’ employment records; a detailed sampling of Class

³² Parker-Fawley Decl., ¶¶ 11.

³³ *Ibid.*

Members' time and pay data (including, but not limited to, timecards, payroll records, and wage statements); Defendant's Employee Handbooks, agreements (such as collective bargaining agreements and Release and Acknowledgment Agreements), internal memoranda, job titles and descriptions, operations and employment practices, forms (such as Defendant's Employee Training Documentation forms), procedures, and policies (such as Defendant's Attendance and Punctuality Policy), among other information and documents.³⁴ Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses. Class Counsel served multiple sets of formal written discovery requests and reviewed Defendant's responses thereto.³⁵ The Parties exchanged FRCP Rule 26(a) Initial Disclosures.³⁶ Class Counsel also took the depositions of two of Defendant's FRCP Rule 30(b)(6) designees and prepared for and defended the deposition of Plaintiff Johnson.³⁷ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, motion practice, and the production of documents and data.³⁸ Class Counsel also prepared for and attended court proceedings and settlement negotiations, among other tasks.³⁹

On June 29, 2023, the Parties participated in formal mediation conducted by Mark Rudy, Esq. ("the Mediator"), a well-respected mediator experienced in mediating complex labor and employment matters.⁴⁰ Prior to and during the mediation, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with representative adjudication and class certification, the law relating to off-the-clock theory, meal and rest periods, regular rate of pay, rounding, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴¹ During all settlement discussions,

³⁴ Parker-Fawley Decl., ¶ 11.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶ 10.

⁴¹ *Ibid.*

1 the Parties conducted their negotiations at arm's length in an adversarial position.⁴² Arriving at a
2 settlement that was acceptable to both Parties was not easy. Defendant and their counsel felt
3 strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class
4 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴³ After
5 conducting investigations, extensive formal and informal discovery, multiple depositions, and
6 extensive settlement negotiations, the Parties have agreed that this case is well-suited for
7 settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and
8 risks to both sides that would attend further litigation.⁴⁴

9 The Settlement takes into account the strengths and weaknesses of each side's position
10 and the uncertainty of how the case might have concluded at certification and/or trial. The
11 Parties have had the opportunity to interview and obtain information from their respective
12 witnesses.⁴⁵ Counsel for the Parties have also reviewed documents and information relating to
13 Plaintiffs' and the Class Members' employment with Defendant and performed significant
14 research into the law concerning PAGA representative actions, class certification, off-the-clock
15 theory, regular rate of pay, rounding, meal and rest periods, wage-and-hour enforcement,
16 Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁶ The Parties
17 have reached the Settlement based on this large volume of facts, evidence, and investigation. In
18 addition, Class Counsel have extensive experience in employment class actions, including
19 significant experience in California wage-and-hour litigation.⁴⁷

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

21 The Gross Settlement Amount of \$4,476,098 represents a fair, adequate, and reasonable
22 resolution of this case.⁴⁸ The Settlement was calculated using the information and data
23 uncovered during the litigation, case investigation, as well as the formal and informal exchange
24

25 ⁴² Parker-Fawley Decl., ¶ 10.

26 ⁴³ *Ibid.*

27 ⁴⁴ *Ibid.*

28 ⁴⁵ *Id.*, ¶ 17.

⁴⁶ *Id.*, ¶¶ 10-12 & 15-17.

⁴⁷ Parker-Fawley Decl., ¶¶ 2-6.

⁴⁸ *Id.*, ¶¶ 10, 12, 13 & 20.

1 of information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in
2 any case and, in particular, in this case.⁵⁰ Moreover, considering all of the facts and
3 circumstances of this case, the Settlement represents a fair, reasonable, and adequate recovery for
4 the Class.⁵¹

5 Assuming that the Class Counsel Fees Payment and Class Counsel Litigation Expenses
6 Payment, Class Representative Service Payments, PAGA Penalties, and Settlement
7 Administration Costs are approved by the Court and paid in the full amounts provided for by the
8 Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be
9 \$2,304,463.70, subject to increase based on Class Counsel's actual litigation costs and
10 expenses.⁵² As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid
11 out to the Participating Class Members, and the \$500,000 allocated from the Gross Settlement
12 Amount for PAGA Penalties will be fully paid out to Aggrieved Employees and the LWDA.
13 The amount of each Participating Class Member's Individual Class Payment will be calculated
14 based on their Workweeks and each Aggrieved Employee's Individual PAGA Payment will be
15 calculated based on their PAGA Pay Periods.⁵³ There is no reason to doubt the fairness of the
16 proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even
17 at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis
18 [to warrant approval], particularly if recommended by experienced and competent class
19 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
20 127 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.⁵⁴
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

26 ⁴⁹ *Id.*, ¶¶ 10-12.

27 ⁵⁰ *Id.*, ¶¶ 15-17.

28 ⁵¹ *Id.*, ¶¶ 10, 12, & 20.

⁵² *Id.*, ¶ 13.

⁵³ Settlement Agreement, ¶¶ 41(a) & 41(c) .

⁵⁴ Parker-Fawley Decl., ¶¶ 10, 12, & 20.

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

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery, conducted multiple depositions, and exchanged thousands of pages of documents, data, and information prior to engaging in settlement discussions.⁵⁵ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁶ As outlined in the Declaration of Elizabeth Parker-Fawley, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁷

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.⁵⁸ 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 so 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, Plaintiffs' claims are typical of the claims of

⁵⁵ *Id.*, ¶¶ 10-12 & 17.

⁵⁶ *Id.*, ¶ 17.

⁵⁷ *Id.*, ¶¶ 10-12 & 15-17.

⁵⁸ Settlement Agreement, 12.1.

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately 2,522 Class Members.⁵⁹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding hourly-paid and non-exempt employees 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*

⁵⁹ Settlement Agreement, 4.1.

1 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
2 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess
3 whether that common behavior toward similarly situated plaintiff renders class certification
4 appropriate.” *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

5 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
6 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155
7 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore, the
8 commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied
9 to the potential class. *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1534.

10 Here, common issues of fact and law predominate as to each of the claims alleged and
11 asserted in this lawsuit. Based on the documents and information obtained through formal and
12 informal discovery and exchange of information in this case, Plaintiffs contend that all of the
13 putative class members were subject to the same or similar uniform operations and employment
14 practices, policies, and procedures during the time period at issue.⁶⁰ Plaintiffs’ claims arise from
15 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiffs and the
16 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
17 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
18 to timely pay wages during and after employment, failing to provide compliant wage statements,
19 failing to maintain requisite payroll records, and failing to reimburse necessary business-related
20 expenses.⁶¹

21 Plaintiffs also contend that Defendant’s payroll and recordkeeping practices with respect
22 to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶²
23 As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all
24 compensation due to them from Defendant during the time period at issue.⁶³

25
26
27 ⁶⁰ Parker-Fawley Decl., ¶ 15.

28 ⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

Plaintiffs maintain that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked for Defendant within the State of California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT

Class Counsel have litigated the Action for nearly three years and were actively preparing the matter for representative adjudication and class certification.⁶⁴ 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 sets of formal written discovery requests onto Defendant and reviewing Defendant's responses thereto, taking the depositions of two of Defendant's FRCP Rule 30(b)(6) designees, preparing and defending the deposition of Plaintiff Johnson, and reviewing thousands of pages of documents and data.⁶⁵ Class Counsel also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, motion practice, discovery, and the production of documents and data prior to settlement discussions.⁶⁶ Counsel for the Parties also undertook extensive settlement discussions.⁶⁷

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result.⁶⁸

⁶⁴ Parker-Fawley Decl., ¶¶ 10-12.

⁶⁵ *Id.*, ¶ 11.

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶ 10.

⁶⁸ *Id.*, ¶¶ 2-6.

1 The Settlement establishes a Gross Settlement Amount of \$4,476,098, and provides for
2 Class Counsel to apply to the Court for an award in an amount not to exceed 35% of the Gross
3 Settlement Amount (i.e., \$1,566,634.30) for attorneys' fees and for reimbursement of actual
4 litigation costs and expenses of not more than \$50,000.⁶⁹ The Class Counsel Fees Payment and
5 Class Counsel Litigation Expenses Payment provided for by the Settlement are commensurate
6 with (1) the risk that Class Counsel took in bringing and litigating this case, (2) the extensive
7 time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination
8 that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the
9 litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members,
10 and (6) the other cases that Class Counsel had to turn down in order to devote their time and
11 efforts to this matter. The proposed Class Notice provides the Class Members with information
12 about the amount allocated toward attorneys' fees, and that Class Counsel Fees Payment and
13 Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.⁷⁰

14 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
15 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
16 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
17 "experienced trial judge is the best judge of the value of professional services rendered in his
18 court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
19 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
20 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
21 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a
22 recovery that can be "monetized" with a reasonable degree of certainty, the trial court should
23 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
24 in comparable litigation." *Id.* at 50. In cases where class members present claims against a
25 settlement fund and the settlement agreement provides that the defendant agrees to paying the
26 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

27 ⁶⁹ Settlement Agreement, ¶ 3.2.1.

28 ⁷⁰ Settlement Agreement, Exh. A.

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).

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 amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement amount 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 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.⁷¹ Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs’ motion for final approval of the Settlement and application for attorneys’ fees and costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

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⁷¹ Parker-Fawley Decl., ¶ 18.

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 Notice⁷² describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, Request for Exclusion from the Class Settlement, or dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷³

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.⁷⁴ The proposed Class Notice recognizes that the Court has not yet granted final approval of the Settlement.⁷⁵ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Class Payments and, if applicable, their share of the Individual PAGA Payments are calculated and the number of Workweeks and, if applicable, PAGA Pay Periods credited to them.⁷⁶

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); *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

⁷² Settlement Agreement, Exh. A.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF PHOENIX AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement. The Settlement Administrator will mail the Class Notice to each Class Member by First Class U.S. Mail in English.⁷⁷ Before mailing Class Notices, the Settlement Administrator shall update Class Member addresses using the National Change of Address database. With respect to any returned, undeliverable Class Notice that is returned with a forwarding address on or before the Response Deadline, the Settlement Administrator will promptly re-mail the Class Notice via First Class U.S. Mail to the forwarding address.⁷⁸ 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 re-mail the Class Notice to the most current address obtained.⁷⁹ The Settlement Administrator will receive Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.⁸⁰

The Settlement Administrator will calculate the amounts of the Individual Class Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes thereon; mail the payment checks to Participating Class Members and Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and LWDA PAGA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸¹ The Settlement Administration Costs are currently estimated to be \$20,000 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸²

Accordingly, Plaintiffs respectfully requests that the Court appoint Phoenix as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the

⁷⁷ Settlement Agreement, at 7.4.3.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Id.* at 7.8; Parker-Fawley Decl., ¶ 15.

⁸² Settlement Agreement, at 3.2.3.

manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant’s records.⁸³

Within 30 calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with a complete list of all Class Members which will be formatted in a Microsoft Office Excel spreadsheet and will include (to the extent available) each Class Member’s full name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods (collectively, “Class Data”).⁸⁴

Within 15 days of receipt of the Class Data, the Settlement Administrator will mail the Class Notice to the Class Members via First Class U.S. Mail.⁸⁵ Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto.⁸⁶ If no forwarding address is provided, the Settlement Administrator will promptly attempt to locate a more current address using a skip-trace, or other search, using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing.⁸⁷ Class Members will have 45 calendar days from the original mailing of the Class Notice or, if the Class Notice is re-mailed, the Class Member will have 59 calendar days from the original mailing, to submit a Request for Exclusion, Notice of Objection, or dispute regarding Workweeks to the Settlement Administrator.⁸⁸

⁸³ Settlement Agreement, at 7.4.2.

⁸⁴ *Id.*, at 4.2.

⁸⁵ *Id.*, at 7.4.1.

⁸⁶ *Id.*, at 7.4.3.

⁸⁷ *Id.*, at 4.4.2.

⁸⁸ *Id.*, at 7.4.4.

Defendant will deliver the Gross Settlement Amount within 30 days after the Effective Date into a qualified settlement account created by the Settlement Administrator.⁸⁹ Within 14 days after Defendant deposits the funds comprising the Gross Settlement Amount into a qualified settlement fund, the Settlement Administrator will distribute the: (1) Individual Class Payments to Participating Class Members and Individual PAGA Payments to Aggrieved Employees; (2) the Court-approved Class Representative Service Payments to Plaintiffs; (3) the Court-approved Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment award to Class Counsel; (4) the LWDA PAGA Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁹⁰

The payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹¹ Such checks will be cancelled if not cashed or deposited by the Participating Class Member or Aggrieved Employee within the 180-day period, and the funds associated with such cancelled checks will be deposited with the California Controller's Unclaimed Property Fund, in the name of the Participating Class Member or Aggrieved Employee whose check is cancelled, in his or her respective amount.⁹²

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

Plaintiffs Tyrone Johnson respectfully requests that the Court appoint her as the Class Representatives and preliminarily approve the request for Class Representative Service Payments in an amount up to \$15,000 for Plaintiff Johnson, \$12,500 for Plaintiff Kennedy, and \$7,500 for James Walker as provided for by the Settlement.⁹³ 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 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an

⁸⁹ *Id.*, at 4.2. See *id.*, at 1.18 for the definition of "Effective Date."

⁹⁰ *Id.*, at 4.4.

⁹¹ *Id.*, at 4.4.1.

⁹² *Id.*, at 4.4.3.

⁹³ *Id.*, at 3.2.1.

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 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 Class Representative Service Payments to Plaintiffs are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁴ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁵ For example, Plaintiff Johnson prepared for and attended a full-day of deposition and reviewed his transcript thereafter.⁹⁶ Accordingly, it is appropriate and just for Plaintiffs to receive reasonable Class Representative Service Payments for their services on behalf of the Class, in addition to their Individual Class Payments and Individual PAGA Payments.

XII. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

A. Standards for Approval of PAGA Settlement

The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State of California to recover civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Cal. Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. *See* Cal. Lab. Code § 2699(a). Plaintiffs have complied.

The settlement of a PAGA action requires court approval. *See* Cal. Lab. Code §

⁹⁴ Parker-Fawley Decl., ¶ 20; Declaration of Tyrone Johnson in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Approval of PAGA Settlement (“Johnson Decl.”), ¶¶ 3-7; Declaration of Terrence Kennedy in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Approval of PAGA Settlement (“Kennedy Decl.”), ¶¶ 3-6; Declaration of James Walker in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Approval of PAGA Settlement (“Walker Decl.”), ¶¶ 3-5.

⁹⁵ Parker-Fawley Decl., ¶ 20; Johnson Decl., ¶¶ 3-7; Kennedy Decl., ¶¶ 3-6; Walker Decl., ¶¶ 3-5.

⁹⁶ Johnson Decl., ¶ 5.

2699(l)(2) (“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action” and therefore does not have to meet the requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from, and simpler than, the process for approval of a class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.⁹⁷ See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576, 589.

In a PAGA case, the court’s focus is not the monetary amount which aggrieved employees or the State stand to receive, but instead, whether the total settlement amount achieves the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at

⁹⁷ Parker-Fawley Decl., ¶ 8.

*4 (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.” See Cal. Lab. Code § 2699(j). The recovery of penalties on behalf of the State, by way of a PAGA claim, is essentially a law enforcement action. See *Amalgamated, supra*, 46 Cal.4th at 1003 (stating that the PAGA is a mechanism for “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies”); see also *Iskanian, supra*, at 381.

A PAGA settlement is a settlement of claims for penalties and other remedies which the LWDA could assess and collect on behalf of employees without their involvement or approval. “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class action settlement, and the Court need not employ the two-step approval process that applies to a class action settlement, under both state and federal law.

A. The Settlement Is Fair, Adequate, and Reasonable

The Settlement provides significant benefits to the State of California and the Aggrieved Employees and falls well-within the range of acceptable settlements under the circumstances. Under the Agreement, Defendants have agreed to pay PAGA Penalties in the amount of \$500,000.00, which encompasses the LWDA PAGA Payment of 75% of the PAGA Penalties (\$375,000) and the Individual PAGA Payments from the remaining 25% of the PAGA Penalties (\$125,000).⁹⁸ The Individual PAGA Payments are to be distributed to Aggrieved Employees on a *pro rata* basis, based on their PAGA Pay Periods. There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i).

⁹⁸ Settlement Agreement, 1.32.

The Settlement is a compromise of highly disputed claims. Plaintiffs and their counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals.⁹⁹ Plaintiffs and their counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.¹⁰⁰ Plaintiffs and their counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing Defendants' liability for, and the right to recover, penalties on behalf of Plaintiffs, the State of California, and other Aggrieved Employees.¹⁰¹ Plaintiffs and their counsel have also taken into account Defendants' agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California.¹⁰²

Considering all of the facts in this case, Plaintiffs and their counsel determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved Employees and the State of California.¹⁰³ The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared to trial court penalties assessments in contested cases¹⁰⁴ and the settlement of PAGA claims in other

⁹⁹ Parker-Fawley Decl., ¶¶ 13, 17 & 20.

¹⁰⁰ Ibid.

¹⁰¹ *Id.*, ¶¶ 16 & 17.

¹⁰² *Id.*, ¶ 14.

¹⁰³ *Id.*, ¶ 27.

¹⁰⁴ *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp. 3d 1058, 1100-1101, 1103-1104, 1111 (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and reducing the PAGA penalty award significantly from the maximum penalties possible); *Morales v Bridgestone Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (of \$7 million PAGA penalties requested, the court awarded \$425,000); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation); *Arnold v San Diego Second Chance Program* (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (no PAGA penalties awarded); *Felczner v Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (no PAGA penalties awarded); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557 at *41 (the court declined to award PAGA penalties after trial); *Allen v American Multi-Cinema* (July 24, 2016) Alameda County Superior Court No. RG11585502 (no PAGA penalties awarded); *Atempa v Pama* (July 31, 2015) San Diego County Superior Court (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (the court declined to award PAGA penalties); *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at **8-9 (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000); *Aguirre v Genesis Logistics* (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820 at **6-7 (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v Aroma Bakery Café, Inc.*,

cases.¹⁰⁵ Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

B. No Right to Object to, or Opt Out of, the PAGA Settlement

“[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *5. A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984. “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for relief are not at stake.” *Williams, supra*, 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

“[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]” *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Industries, Inc.* (1981) 29

Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages to class on the basis that, *inter alia*, the lawsuit was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, corporate defendants corrected violations and were no longer in business, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory).

¹⁰⁵ See, e.g., *DCH Auto Wage and Hour Cases* (May 2017) Los Angeles Superior Court, Case No. JCCP4833 (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia, supra*, 2012 WL 5364575, at *3 (approving the amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller, supra*, 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu, supra*, 2011 WL 672645, at *1 (approving the amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco, supra*, 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom Commissions Case, supra*, at 589 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit).

Cal, 3d 462, 474.) A “judgment in such an action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding” because “the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies[,]” “collateral estoppel applies [...] against those for whom the party acted as an agent or proxy[,]” and “[w]hen a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party.” *Arias, supra*, at 985-86 (citations omitted); see also *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot opt out of a PAGA settlement).

As such, the Settlement is consistent with the law, and there is no requirement that the Aggrieved Employees be provided with a mechanism to opt out of or object to the PAGA Settlement.

XIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that the Court grant preliminary approval of the Class Settlement; grant approval of the PAGA Settlement; grant leave to file the First Amended Complaint; certify the Class for settlement purposes; appoint and designate Lawyers for Justice, PC as Class Counsel; appoint and designate Tyrone Johnson, Terrence Kenedy, and James Walker as Class Representatives; appoint Phoenix Class Action Administration Solutions as Settlement Administrator; preliminarily approve the allocations for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Service Payments, PAGA Penalties, and Settlement 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

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1 by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately
2 mid-November 2024; and permit the filing of a memorandum that exceeds the page limit.

3 Dated: June 20, 2024

LAWYERS for JUSTICE, PC

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5 By: 
6 Elizabeth Parker-Fawley
7 Attorneys for Plaintiffs Tyrone Johnson,
8 Terrence Kennedy, and Proposed Plaintiff
9 James Walker
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