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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

**DFT, INC. WAGE AND HOUR
CASES**

Coordinated Actions:

ERIC BETANCES vs. DFT, INC. D/B/A
CANNON MANAGEMENT

ROXANA VALDEZ vs. DFT, INC.
D/B/A CANNON MANAGEMENT

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO.: 4882

Honorable John S. Wiley, Jr.
Department SSC9

Superior Court of California, County of Los
Angeles: BC559751

Complaint Filed: October 6, 2014

Superior Court of California, County of San
Bernardino: CIVDS1605358

Complaint Filed: April 12, 2016

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Plaintiffs' Motion for Preliminary Approval of
Class Action Settlement; Declarations of Proposed
Class Counsel (Edwin Aiwazian and V. Andre
Sherman); Declaration of Proposed Class
Representatives (Eric Betances and Roxana
Valdez); and [Proposed] Order filed concurrently
herewith.]

Date: June 13, 2018
Time: 10:00 a.m.
Department: 9

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

3 **PLEASE TAKE NOTICE** that on June 13, 2018 at 10:00 a.m., or as soon thereafter as
4 the matter may be heard before the Honorable John S. Wiley, Jr. in Department 9 of the Superior
5 Court of California for the County of Los Angeles, located at 312 North Spring Street, Los
6 Angeles, California, 90012, Plaintiffs Eric Betances and Roxana Valdez ("Plaintiffs" or "Class
7 Representatives") will, and hereby do, move for an order:

- 8 • Granting preliminary approval of the proposed class action settlement described
9 herein and as set forth in the Stipulation of Class Action and PAGA Settlement and
10 Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as
11 "**EXHIBIT 1**" to the Declaration of Edwin Aiwarzian, including, but not limited to,
12 the means of allocation and distribution of funds, including and not limited to, the
13 allocations for penalties under the California Labor Code Private Attorneys General
14 Act of 2004 ("PAGA Settlement Amount"), Attorneys' Fees and Costs, Class
15 Representative Enhancement Payments, and Settlement Administration Costs;
- 16 • Certifying the Class for settlement purposes;
- 17 • Appointing Plaintiffs Eric Betances and Roxana Valdez as Class Representatives;
- 18 • Appointing Lawyers for Justice, PC and Girardi & Keese as Class Counsel;
- 19 • Approving the proposed Notice of Class Action and PAGA Settlement ("Class
20 Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary
21 Approval of Class Action Settlement;
- 22 • Directing the mailing of the Class Notice to the Class Members;
- 23 • Approving the proposed deadlines for the notice and settlement administration
24 process;
- 25 • Approving Phoenix Settlement Administrators as the Settlement Administrator; and

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

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian and V. Andre Sherman) and the Proposed Class Representatives (Eric Betances and Roxana Valdez) 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 1, 2018

LAWYERS for JUSTICE, PC

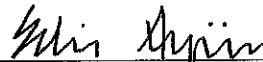
By: 
Edwin Aiwazian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Eric Betances and Roxana Valdez (“Plaintiffs” or “Class Representatives”) seeks preliminary approval of the Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant DFT, Inc. D/B/A Cannon Management, a California corporation (“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 Maximum Settlement Amount of five hundred fifty thousand dollars (\$550,000).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members; (2) employer’s and employee’s share of payroll taxes with respect to the wage portion of Settlement Shares; (3) Class Representative Enhancement Payments to Plaintiffs; (4) attorneys’ fees and reimbursement of any actual costs and expenses (collectively, “Attorneys’ Fees and Costs”) to Class Counsel; (5) penalties allocated under the California Labor Code Private Attorneys General Act of 2004 (“PAGA Settlement Amount”); and (5) Settlement Administration Costs to Settlement Administrator.²

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

All hourly-paid or non-exempt individuals employed by Defendant within the State of California during the period from October 6, 2010 through the date on which the Court grants preliminary approval of the Settlement (“Class” or “Class Members”).³

The Class is estimated to consist of approximately eight hundred eighty-five (885) individuals.⁴

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¹ Settlement Agreement, attached as “EXHIBIT 1” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 23

² *Ibid.*

³ *Id.*, § 32.

⁴ Aiwazian Decl., ¶ 9.

1 Class Members who do not submit a timely and valid Request for Exclusion (“Settlement
2 Class Members”) will receive a share of the Net Settlement Amount on a *pro rata* basis based
3 upon the number of weeks of employment that each Class Member worked as an hourly-paid or
4 non-exempt employee for Defendant within the State of California during the period from
5 October 6, 2010 to the date on which the Court grants preliminary approval of the Settlement
6 (“Workweeks”).⁵ The Net Settlement Amount refers to the Maximum Settlement Amount, less
7 the following amounts subject to approval by the Court: Attorneys’ Fees and Costs, Settlement
8 Administration Costs, Class Representative Enhancement Payments, and PAGA Settlement
9 Amount.⁶

10 Settlement Class Members who were employed by Defendant during (“PAGA Class
11 Members”) will receive a share of twenty-five percent (25%) of the PAGA Settlement Amount
12 (i.e., \$7,500) on a *pro rata* basis based upon the number of weeks of employment that each Class
13 Member worked as an hourly-paid or non-exempt employee for Defendant within the State of
14 California during the period from October 6, 2013 to the date on which the Court grants
15 Preliminary Approval of the Settlement (“PAGA Workweeks”). The remaining seventy-five
16 percent (75%) of the PAGA Settlement Amount (i.e., \$22,500) shall be paid to the California
17 Labor and Workforce Development Agency (“LWDA”).

18 The Settlement resolves Plaintiffs’ and the Settlement Class Members’ Released Claims
19 against the Released Parties.⁷

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

21 Defendant is a property management company with at least five locations in California.
22 Plaintiffs Eric Betances and Roxana Valdez are former employees of Defendant.

23 ///

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27 ⁵ Settlement Agreement, §§ 22 & 55(a)-55(c).

28 ⁶ *Id.*, § 24.

⁷ See *id.* at § 33, for the full scope of the “Released Claims,” and *id.* at § 34 for the definition of the “Released Parties.”

1 **A. *Betances v. DFT, Inc. D/B/A Cannon Management.***

2 Plaintiff Eric Betances filed a Class Action Complaint for Damages (“Original
3 Complaint”) against Defendant on October 6, 2014 in the Los Angeles Superior Court (“Court”),
4 Case No. BC559751 (the “*Betances Lawsuit*”). On November 10, 2014, Defendant filed a
5 Notice of Demurrer and Demurrer to the Complaint.

6 On March 17, 2015, Plaintiff Betances filed a First Amended Class Action Complaint
7 for Damages & Enforcement under the Private Attorneys General Act, California Labor Code §
8 2698, Et Seq. On May 20, 2015, Defendant filed a Demurrer to the First Amended Complaint
9 (“Demurrer”). On June 1, 2015, Plaintiff Betances filed an opposition to Defendant’s Demurrer.
10 On June 5, 2015, Defendant filed a reply in support of its Demurrer.

11 On June 26, 2015, Plaintiff Betances filed a Second Amended Class Action Complaint
12 for Damages & Enforcement under the Private Attorneys General Act, California Labor Code §
13 2698, Et Seq. (“Second Amended Complaint”). On July 27, 2015, Defendant filed an Answer
14 to Plaintiff Eric Betances’s Second Amended Complaint.

15 **B. *Valdez vs. DFT, Inc. D/B/A Cannon Management.***

16 Plaintiff Roxana Valdez filed a Complaint for Enforcement under the Private Attorneys
17 General Act, California Labor Code § 2698 Et Seq. (“Complaint”) against Defendant on April
18 12, 2016 in the San Bernardino Superior Court, Case No. CIVDS1605358 (the “*Valdez*
19 *Lawsuit*”).

20 On June 13, 2016, Defendant filed a Motion to Permit Filing of Petition for Coordination
21 (“Motion re Petition for Coordination”). On July 12, 2016, the San Bernardino Superior Court
22 entered an order granting Defendant’s Motion re Petition for Coordination.

23 **C. *DFT, Inc. Wage and Hour Cases.***

24 On August 4, 2016, Defendant filed a Petition for Coordination seeking the coordination
25 of the *Betances Lawsuit* and the *Valdez Lawsuit*. On August 4, 2016, the Judicial Council of
26 California filed an Order Assigning the Coordination Motion Judge. On September 27, 2016,
27 the Court filed an Order granting Defendant’s Petition for Coordination resulting the present
28 coordinated proceeding (also referred to as the “Action”). On October 20, 2016, the Court filed

1 an Order Assigning Coordination Trial Judge which assigned the Honorable John S. Wiley, Jr.
2 as the Coordination Trial Judge.

3 On November 16, 2017, Plaintiffs filed an opening brief regarding the appropriate scope
4 of pre-certification and PAGA discovery and supporting documents.

5 Plaintiffs' core allegation is that Defendant has violated the California Labor Code and
6 California Business and Professions Code by engaging in a uniform practice and procedure,
7 with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all wages due and
8 owing, failing to provide compliant meal period and rest periods and associated premium pay,
9 failing to timely pay wages during employment and upon termination, failing to provide
10 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse
11 necessary business expenses, and thereby engaged in unfair business practices and owes
12 penalties recoverable under PAGA. Plaintiffs contend that they, and the Class Members, are
13 entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant
14 to PAGA), and attorneys' fees.

15 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
16 associated with any of the allegations in the lawsuits, and further denies that the lawsuits are
17 appropriate for class treatment or representative adjudication for any purpose other than for
18 settlement purposes only.

19 The Parties have actively litigated this matter since the *Betances* Lawsuit was
20 commenced on October 6, 2014. On June 29, 2017, the Parties participated in a formal, full-
21 day mediation conducted by the Deborah C. Saxe, Esq., a well-regarded mediator experienced
22 in mediating complex labor and employment matters. With the aid of the mediator, the Parties
23 ultimately reached the Settlement described herein to resolve the lawsuits in their entirety.

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

25 Under the terms of the Settlement, Defendant will pay a Maximum Settlement Amount
26 in the amount of five hundred fifty thousand dollars (\$550,000) to resolve the Released Claims
27 of Plaintiffs and the Class Members who do not opt out of the Settlement (i.e., Settlement Class
28

Members) with respect to the Released Parties.⁸ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Attorneys' Fees and Costs in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (\$192,500 out of \$550,000) and reimbursement of actual litigation costs and expenses in an amount not to exceed thirty thousand dollars (\$30,000) to Class Counsel; (2) Class Representative Enhancement Payments of up to seven thousand five hundred dollars (\$7,500) to Plaintiff Betances and five thousand dollars (\$5,000) to Plaintiff Valdez; (3) PAGA Settlement Amount of thirty thousand dollars (\$30,000); and (4) Settlement Administration Costs, which are currently estimated not to exceed seventeen thousand dollars (\$17,000) to the Settlement Administrator.⁹ The Parties have agreed to retain Phoenix Settlement Administrator ("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 *pro rata* share of the available Net Settlement Amount ("Settlement Share"), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will calculate the total number of Workweeks worked by each individual Class Member and the total number of Workweeks worked by all Class Members ("Class Workweeks").¹⁰
- b. To determine each Class Member's estimated Settlement Share, the Settlement Administrator will use the following formula: estimated Settlement Share = (Net Settlement Amount / Class Workweeks) x Class Member's Workweeks.¹¹
- c. If any Class Members submit a timely and valid, or otherwise accepted, Request for Exclusion, the Settlement Administrator will proportionately increase the Settlement Share of each Settlement Class Member to ensure that the entire Net Settlement Amount is distributed to Settlement Class Members.¹²

The Settlement Administrator will determine each PAGA Class Member's *pro rata* share of the PAGA Settlement Amount ("Individual PAGA Payment"), in accordance with the Settlement Agreement and as follows:

⁸ Settlement Agreement, § 23.

⁹ *Id.*, §§ 16, 23, 28, & 38.

¹⁰ *Id.*, § 55(a).

¹¹ *Id.*, § 55(b).

¹² *Id.*, § 55(c).

- a. The Settlement Administrator will calculate the total number of PAGA Workweeks worked by each individual PAGA Class Member ("Individual PAGA Workweeks") and the total number of PAGA Workweeks worked by all PAGA Class Members ("Total PAGA Workweeks").¹³
- b. To determine each PAGA Class Member's estimated Individual PAGA Payment, the Settlement Administrator will use the following formula: estimated Individual PAGA Payment = (\$7,500 / Total PAGA Workweeks) x Individual PAGA Workweeks.¹⁴

Each Settlement Class Member's Settlement Share will be allocated as follows: one-third (1/3) as wages, which will be reported on an IRS Form W-2; and one-third (1/3) as alleged unpaid interest and one-third (1/3) as alleged unpaid penalties and alleged non-taxable damages, which will be reported on an IRS Form 1099.¹⁵ Settlement Class Members will be issued payment of their Settlement Share subject to reductions for the employer's and employee's share of taxes and withholdings with respect to the wage portion of each share (the net payment is the "Individual Settlement Payment").¹⁶ Each Individual PAGA Payment will be allocated as one hundred percent (100%) alleged unpaid penalties, will be reported on an IRS Form 1099, and will be paid without reduction for any taxes or withholdings.¹⁷

The Individual Settlement Payment checks issued to Settlement Class Members and Individual PAGA Payment checks issued to PAGA Class Members will remain valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁸ Funds associated with checks not cashed or deposited within the 180-day period or returned as undeliverable plus any accrued interest that has not otherwise been distributed ("Unused Funds"), will be transmitted, within ten (10) business days of the expiration of the 180-day period by the Settlement Administrator pursuant to California Code of Civil Procedure section 384.¹⁹ The Unused Funds will be transmitted as follows: 25% to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund and 75% to the State Treasury for

¹³ Settlement Agreement, § 53(a).

¹⁴ *Id.*, § 53(b).

¹⁵ *Id.*, § 71(a).

¹⁶ *Id.*, §§ 40& 71(a).

¹⁷ *Id.*, § 71(b).

¹⁸ *Id.*, § 69

¹⁹ *Ibid.*

1 deposit into the Equal Access Fund of the Judicial Branch.²⁰

2 A Class Member who wishes to be excluded from the Settlement must timely submit a
3 valid Request for Exclusion to the Settlement Administrator.²¹ To be timely, the Class Member
4 must submit, by mail or fax, a Request for Exclusion to the Settlement Administrator, on or
5 before the date that is forty-five (45) calendar days from the mailing of the Class Notice or
6 fifteen (15) calendar days after the Settlement Administrator re-mails the Class Notice to the
7 Class Member, whichever is later (“Response Deadline”).²² A Request for Exclusion must
8 contain: (1) the full name, signature, address, telephone number, and last four digits of the Social
9 Security Number of the Class Member requesting exclusion; (2) the case name and number of
10 the Action; and (3) a clear statement that the Class Member does not wish to be included in
11 the Settlement.²³ If a Class Member’s Request for Exclusion is timely submitted before the
12 Response Deadline but is otherwise defective as to the requirements, the Class Member will be
13 given the opportunity to cure the defect.²⁴ The Settlement Administrator will mail the Class
14 Member a cure letter within three (3) business days of receiving the defective submission to
15 advise the Class Member that his or her submission is defective and that the defect must be
16 cured to render the Request for Exclusion valid.²⁵ The Class Member will have until the later
17 of (1) the applicable Response Deadline or (2) fifteen (15) calendar days from the date of the
18 cure letter to submit a revised Request for Exclusion to the Settlement Administrator by mail or
19 fax.²⁶ Any Class Member who is properly excluded from the Settlement will not participate in
20 the Settlement, will not be a Settlement Class Member or a PAGA Class Member, will not be
21 entitled to receive an Individual Settlement Payment or an Individual PAGA Payment, will not
22 be bound by the terms of the Agreement and will not have any right to object, appeal, or
23 comment thereon.²⁷

24 ²⁰ Settlement Agreement, § 69.

25 ²¹ *Id.*, § 64

26 ²² *Ibid.*

27 ²³ *Id.*, § 35.

28 ²⁴ *Id.*, § 63.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Id.*, §§ 22 & 64-65.

1 Only Class Members who do not exclude themselves from the Settlement (i.e.,
2 Settlement Class Members) can object to the Settlement.²⁸ Settlement Class Members who wish
3 to object to the Settlement must file a Notice of Objection with the Court and copies of the
4 Notice of Objection must be mailed to the Settlement Administrator on or before the Response
5 Deadline.²⁹ The Notice of Objection must contain: (1) the objector's full name, signature,
6 address, telephone number, and the last four digits of his or her Social Security Number; (2) the
7 case name and number of the Action; (3) a written statement of all grounds for objection
8 accompanied by any legal support for such objection; (4) a statement of whether the objection
9 intends to appear for the Final Approval Hearing and whether he or she is represented by
10 counsel; and (5) copies of any papers, briefs, por other documents upon which the objection is
11 based.³⁰ The file-stamp date on the filing and the postmark date on the copy of the Notice of
12 Objection mailed to the Settlement Administrator will be deemed the exclusive means for
13 determining whether a Notice of Objection is timely.³¹ Counsel for the Parties will have the
14 option of filing a response to any Notice of Objection submitted by Class Members at or before
15 the Final Approval Hearing.³² Settlement Class Members who fail to object in accordance with
16 these requirements will be deemed to have waived all objections to the Settlement.³³

17 Class Members who wish to dispute the Workweeks credited to them in their Class
18 Notice may do so by submitting a written Workweek Dispute to the Settlement Administrator
19 on or before the Response Deadline.³⁴ A Workweek Dispute must contain: (1) the Class
20 Member's full name, signature, address, telephone number, and last four digits of his or her
21 Social Security Number; (2) the case name and number of the Action; and (3) the number of
22 Workweeks and/or PAGA Workweeks that the Class Member contends is correct and any
23 evidence supporting his or her contention.³⁵ Absent written and credible evidence rebutting

24 ²⁸ Settlement Agreement, § 66.

25 ²⁹ *Ibid.*

26 ³⁰ *Id.*, § 25.

27 ³¹ *Ibid.*

28 ³² *Id.*, § 66.

³³ *Ibid.*

³⁴ *Id.*, § 62

³⁵ *Id.*, § 42.

Defendant's records, Defendant's records will be presumed determinative.³⁶

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 decision to approve a class action settlement may be reversed only upon a strong showing of "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).

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³⁶ Settlement Agreement, § 62.

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

9 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.**

10 The trial court has broad powers to determine whether a proposed settlement is fair under
11 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
12 this fairness determination, courts must consider several relevant factors, including "the strength
13 of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the
14 risk of maintaining class action status through trial, the amount offered in settlement, the extent
15 of discovery completed and the stage of the proceedings, the experience and view of counsel,
16 the presence of a governmental participant, and the reaction of the class members to the
17 proposed settlement." *Dunk, supra*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive
18 and the court is free to engage in a balancing and weighing of the factors depending on the
19 circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
20 "proper deference to the private consensual decision of the parties." *Hanlon, supra*, 150 F.3d
21 at 1027 (citation omitted).

22 The proponent of the settlement has the burden to show that it is fair and reasonable.
23 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the
24 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
26 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
28 1151.

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

3 The Parties actively litigated this matter since the *Betances* Lawsuit was commenced on
4 October 6, 2014. Both sides used the pre-mediation time period to investigate the veracity,
5 strength, and scope of the claims, and Class Counsel were actively preparing the matter for a
6 motion for class certification.³⁷

7 Prior to engaging in the mediation, the Parties conducted significant investigation into
8 the facts of the case and the Parties engaged in extensive formal and informal discovery, the
9 formal and informal exchange, review, and analysis of thousands of pages of documents and
10 data produced by Defendant.³⁸ The volume of data and documents that Class Counsel reviewed
11 and analyzed included and was not limited to: Plaintiffs and other Class Members' employment
12 records, a detailed sampling of Class Members' time and pay data (including but not limited to,
13 timecards, payroll records, and wage statements), Defendant's Employee Handbook,
14 agreements, internal memoranda (for example Defendant's Use of Cell Phones and Personal
15 Digital Assistants (PDA) While Driving memo), job descriptions, and Defendant's operations
16 and employment practices, forms (such as Auto Mileage Log and Check Request forms),
17 procedures, and policies (including but not limited to Defendant's Company Related Driving
18 Policy), among other information and documents. Class Counsel interviewed Plaintiffs and
19 other Class Members to gather facts and to identify potential witnesses.³⁹ Plaintiffs propounded
20 onto Defendant, and reviewed and provided responses to, multiple sets of formal written
21 discovery requests in both the coordinated matter and in the *Betances* Lawsuit.⁴⁰ Class Counsel
22 also took the deposition of Defendant's Person Most Knowledgeable designee and prepared for
23 and defended the depositions of Plaintiffs.⁴¹ Counsel for the Parties also met and conferred on
24 numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the
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26 ³⁷ Aiwazian Decl., ¶¶ 11-13.

27 ³⁸ *Id.*, ¶ 12.

28 ³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

1 production of documents and data prior to the mediation.⁴² Class Counsel also drafted Plaintiffs'
2 mediation brief, and prepared for and attended court proceedings, settlement negotiations, and
3 the mediation, among other tasks.⁴³

4 The Parties engaged in extensive settlement negotiations and participated in a formal,
5 full-day mediation conducted by the Deborah C. Saxe, Esq., a well-respected mediator
6 experienced in mediating complex labor and employment matters.⁴⁴ Prior to and during the
7 mediation and settlement discussions, the Parties exchanged class information and engaged in
8 an intensive discussion regarding their evaluations of the lawsuits and various aspects of the
9 lawsuits, including but not limited to, the risks and delays of further litigation, the risks to the
10 Parties of proceeding with class certification and/or representative adjudication, the law relating
11 to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA
12 representative claims, as well as the evidence produced and analyzed, and the possibility of
13 appeals, among other things.⁴⁵ During all settlement discussions, the Parties conducted their
14 negotiations at arm's length in an adversarial position.⁴⁶ Arriving at a settlement that was
15 acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their
16 ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed
17 that they would be able to obtain class certification and prevail at trial.⁴⁷ After conducting
18 investigations, extensive formal and informal discovery, multiple depositions, and extensive
19 settlement negotiations, and with the aid of the mediator's evaluations, the Parties have agreed
20 that this case is well-suited for settlement given the legal issues relating to Plaintiffs' principal
21 claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁸

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25 ⁴² Aiwazian Decl., ¶ 12.

26 ⁴³ *Ibid.*

27 ⁴⁴ *Id.*, ¶ 11.

28 ⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 16-18.

⁴⁸ *Ibid.*

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/or trial.⁴⁹ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁵⁰ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant 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 Defendant's defenses thereto, as well as facts discovered.⁵¹ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁵²

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

The Maximum Settlement Amount of five hundred fifty thousand dollars (\$550,000) represents a fair, adequate, and reasonable resolution of this case.⁵³ The Settlement was calculated using the information and data uncovered during the litigation, case investigation, as well as the formal and informal exchange of information.⁵⁴ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this case.⁵⁵ Moreover, considering all of the facts and circumstances of this case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁶

Assuming that the Attorneys' Fees and Costs, Class Representative Enhancement Payments, PAGA Settlement Amount, and Settlement 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

⁴⁹ Aiwazian Decl., ¶¶ 16-18.

⁵⁰ *Ibid.*

⁵¹ *Id.*, ¶¶ 11-13 & 16-18.

⁵² *Id.*, ¶¶ 6-7.

⁵³ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵⁴ *Id.*, ¶¶ 11-13.

⁵⁵ *Id.*, ¶¶ 16-18.

⁵⁶ *Id.*, ¶¶ 11, 13, & 21.

dollars (\$268,000).⁵⁷ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members. The amount of each Settlement Class Member's Settlement Share will be calculated based on their Workweeks.⁵⁸ The amount of each PAGA Class Member's Individual Settlement Payment will be calculated based on their PAGA Workweeks.⁵⁹ 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.⁶⁰ 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 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 and exchanged thousands of pages of documents, data, and information prior to the mediation.⁶¹ 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.⁶² As outlined in the Declaration

⁵⁷ Aiwazian Decl., ¶ 14.

⁵⁸ Settlement Agreement, § 40.

⁵⁹ *Id.*, § 55.

⁶⁰ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁶¹ *Id.*, ¶¶ 11-13 & 18.

⁶² *Id.*, ¶ 18.

of Edwin Aiwarzian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁶³

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.⁶⁴ 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, Plaintiffs’ 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 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.*

⁶³ Aiwarzian Decl., ¶¶ 11-13 & 16-18.

⁶⁴ Settlement Agreement, § 43.

1 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
2 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

3 This action involves a class of approximately eight hundred eight-five (885)
4 individuals.⁶⁵ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
5 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
6 requirement as joinder is not practical at that point). Further, all Class Members can and will
7 be identified by Defendant to the Settlement Administrator through a review of Defendant's
8 employment records regarding hourly-paid or non-exempt employees who worked for
9 Defendant within the State of California during the period from October 6, 2010 through the
10 date on which the Court grants preliminary approval of the Settlement ("Class Period"). As
11 such, the Class is ascertainable and sufficiently numerous.

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

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

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

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⁶⁵ Aiwazian Decl., ¶ 9.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in this lawsuit. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiffs contend that all of the hourly-paid or non-exempt employees who worked for Defendant were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶⁶ Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs 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 and after employment, failing to provide complaint wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁷

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁸ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁹

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 ATTORNEYS' FEES AND COSTS

Class Counsel have litigated the coordinated matter, the *Betances* Lawsuit, and the *Valdez* Lawsuit for almost four years and were actively preparing them for class certification.⁷⁰ The ongoing work has been extensive, demanding, and ultimately successful in achieving a

⁶⁶ Aiwazian Decl., ¶ 16.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Id.*, ¶¶ 11-13.

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 Defendant and reviewing Defendant's responses thereto, working with Plaintiffs to review and respond to multiple formal written discovery requests propounded by Defendant, taking the depositions of Defendant's Person Most Knowledgeable designee, preparing and defending the deposition of Plaintiffs (including, with respect to Plaintiff Betances, two separate sessions of deposition), and reviewing thousands of pages of documents and data.⁷¹ 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, discovery, and the production of documents and data prior to mediation.⁷² Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷³

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷⁴

The Settlement establishes a Maximum Settlement Amount of five hundred fifty thousand dollars (\$550,000), and provides for Class Counsel 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., \$192,500) for attorneys' fees and an amount not to exceed thirty thousand dollars (\$30,000) for reimbursement of actual litigation costs and expenses.⁷⁵ The Attorneys' Fees and Costs award provided for by the Settlement is commensurate with (1) the risk that Class Counsel took in bringing and litigating this case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel have shown, (4) the results that Class Counsel have achieved throughout the litigation, (5) the value of the Settlement that Class Counsel have achieved for the Class Members, and (6) the other cases that Class

⁷¹ Aiwasian Decl., ¶ 12.

⁷² *Ibid.*

⁷³ *Id.*, ¶ 11.

⁷⁴ *Id.*, ¶¶ 6-7.

⁷⁵ Settlement Agreement, §§ 10 & 23.

1 Counsel had to turn down in order to devote their time and efforts to this matter. The proposed
2 Class Notice provides the Class Members with information about the amount allocated toward
3 Attorneys' Fees and Costs, and that Attorneys' Fees and Costs will be sought, as provided for
4 by the Settlement.⁷⁶

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

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

25 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
26 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
27 *AntitPhoenix Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of

28 ⁷⁶ Settlement Agreement, Exh. A.

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 Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁷

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 Attorneys' Fees and Costs 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 Notice⁷⁸ describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Settlement, Request for Exclusion from the Settlement, or Workweek Dispute, and the date and time set for the Final Approval Hearing.⁷⁹

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⁷⁷ Aiwazian Decl., ¶ 19.

⁷⁸ Settlement Agreement, Exh. A.

⁷⁹ *Ibid.*

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.⁸⁰ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁸¹ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Settlement Share and their Individual PAGA Payment are calculated and the number of Workweeks credited to them.⁸²

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. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix Settlement Administrators (hereinafter, “Phoenix” or “Settlement Administrator”) to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by first class U.S. mail.⁸³ Prior to mailing the Class Notice to the Class Members, the Settlement Administrator will use the National Change of Address Database or any other similar services available, such as provided by Experian, to update or correct the addresses of the Class Member.⁸⁴ With respect to any returned, undeliverable Class Notice that is returned with a

⁸⁰ Settlement Agreement, Exh. A.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Id.*, § 59.

⁸⁴ *Id.*, § 60.

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 and will indicate the date of such re-mailing.⁸⁵ With respect to any returned, undeliverable Class Notice returned without a forwarding address, the Settlement Administrator will perform a skip-trace procedure to obtain a more current address and, if an updated address is located, undertake a single remailing to such address.⁸⁶ The Settlement Administrator will receive Requests for Exclusion, Notices of Objection, and any Workweek Disputes.⁸⁷

The Settlement Administrator will calculate the amounts of the Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes thereon; mail the Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks to PAGA Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Class Representative Enhancement Payments, and PAGA Settlement Amount; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁸ The Settlement Administration Costs are currently estimated to be seventeen thousand dollars (\$17,000) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁸⁹

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At 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

⁸⁵ Settlement Agreement, § 60.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*; Aiwazian Decl., ¶ 15.

⁸⁹ Settlement Agreement, §§ 37-38.

1 reasonably ascertainable Class Members based on Defendant's records.⁹⁰

2 Within thirty (30) calendar days after the date on which the Court grants preliminary
3 approval of the Settlement, Defendant will provide the Settlement Administrator with the
4 following information for each Class Member: (1) full name; (2) last known mailing address
5 and telephone number; (3) Social Security Number; and (4) dates of employment (collectively,
6 "Class List").⁹¹

7 Within fifteen (15) calendar days of receipt of the Class List, the Settlement
8 Administrator will mail the Class Notice to the Class Members via first class U.S. Mail.⁹² If a
9 Class Notice is returned to the Settlement Administrator with a forwarding address, the
10 Settlement Administrator will re-send the Class Notice to the forwarding address.⁹³ If no
11 forwarding address is provided, then the Settlement Administrator will promptly conduct a skip
12 trace to locate a better address and will promptly re-send the Class Notice.⁹⁴ Class Members
13 will have forty-five (45) calendar days from the original mailing of the Class Notice or if the
14 Class Notice is re-mailed, the Class Member will have the later of fifteen (15) calendar days
15 after re-mailing or forty-five (45) calendar days from the original mailing, to fax or mail and
16 postmark a Request for Exclusion, Notice of Objection, or Workweek Dispute to the Settlement
17 Administrator.⁹⁵

18 Defendant will deliver the Maximum Settlement Amount within seven (7) calendar days
19 after the Effective Date into a qualified settlement account created by the Settlement
20 Administrator.⁹⁶ Within fourteen (14) calendar days after Defendant deposits the funds
21 comprising the Maximum Settlement Amount into a Qualified Settlement Fund, the Settlement
22 Administrator will distribute the: (1) Individual Settlement Payments to Settlement Class
23 Members and Individual PAGA Payments to PAGA Class Members; (2) the Court-approved
24

25 ⁹⁰ Settlement Agreement, § 59.

26 ⁹¹ *Id.*, § 12.

27 ⁹² *Id.*, § 59.

28 ⁹³ *Id.*, § 60.

⁹⁴ *Ibid.*

⁹⁵ *Id.*, § 36.

⁹⁶ *Id.*, § 49. See *id.*, § 20 for the definition of "Effective Date."

1 Class Representative Enhancement Payments to Plaintiffs; (3) the Court-approved Attorneys'
2 Fees and Costs award to Class Counsel; (4) the LWDA's portion of the PAGA Settlement
3 Amount to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁹⁷

4 The Individual Settlement Payment checks and Individual PAGA Payment checks will
5 remain valid and negotiable for one hundred and eighty (180) calendar days from the date of
6 their issuance.⁹⁸ Such checks will automatically be cancelled if not cashed or deposited by the
7 Settlement Class Member and/or PAGA Class Member within the 180-day period, and the funds
8 associated with such cancelled checks together with interest accrued, will be considered unpaid,
9 unclaimed, or abandoned cash residue pursuant to California Code of Civil Procedure section
10 384 ("Unused Funds").⁹⁹ The Unused Funds will be transmitted as follows: 25% to the State
11 Treasury for deposit in the Trial Court Improvement and Modernization Fund, 75% to the State
12 Treasury for deposit into the Equal Access Fund of the Judicial Branch.¹⁰⁰

13 **XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR**
14 **CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS**

15 Plaintiffs Eric Betances and Roxana Valdez respectfully request that the Court appoint
16 them as the Class Representatives and preliminarily approve the request for Class
17 Representative Enhancement Payments in an amount up to seven thousand five dollars (\$7,500)
18 to Plaintiff Betances and in an amount up to five thousand dollars (\$5,000) to Plaintiff Valdez
19 as provided for by the Settlement.¹⁰¹ It is within the Court's discretion to award payment to a
20 class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal.
21 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class
22 representative). The factors that courts may consider in determining whether to make an
23 enhancement payment include: (1) the risk to the class representative in commencing suit, both
24 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
25 representative; (3) the amount of time and effort spent by the class representative; (4) the

26 ⁹⁷ Settlement Agreement, § 49.

27 ⁹⁸ *Id.*, § 69.

28 ⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, § 16.

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

3 The Class Representative Enhancement Payments to Plaintiffs are fair and appropriate.
4 Plaintiffs spent a substantial amount of time and effort in producing relevant documents and
5 past employment records and providing the facts and evidence necessary to attempt to prove the
6 allegations.¹⁰² Plaintiffs were available whenever Class Counsel needed them and actively tried
7 to obtain and provide information that would benefit the Class.¹⁰³ For example, both Plaintiffs
8 reviewed and responded to multiple sets of formal discovery and prepared for and attended a
9 full day of deposition (with Plaintiff Betances attending two separate days of deposition) and
10 reviewed their transcripts thereafter.¹⁰⁴ Accordingly, it is appropriate and just for Plaintiffs to
11 receive reasonable Class Representative Enhancement Payments for their services on behalf of
12 the Class, in addition to their Individual Settlement Payment, and if applicable, Individual
13 PAGA Payment.

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27 ¹⁰² Aiwazian Decl., ¶ 20; Declaration of Eric Betances In Support Of Plaintiffs' Motion for Preliminary Approval
of Class Action Settlement ("Betances Decl."), ¶¶ 3-4; Declaration of Roxana Valdez In Support Of Plaintiffs'
Motion for Preliminary Approval of Class Action Settlement ("Valdez Decl."), ¶¶ 3-4

28 ¹⁰³ Aiwazian Decl., ¶ 20; Betances Decl, ¶¶ 3,4, & 7; Valdez Decl., ¶¶ 3,4, & 7.

¹⁰⁴ Betances Decl., ¶ 5; Valdez Decl., ¶ 5.

1 **XII. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
3 approval of the Settlement; certify the Class for settlement purposes; appoint and designate
4 Lawyers for Justice, PC and Girardi & Keese as Class Counsel; appoint and designate Plaintiffs
5 Eric Betances and Roxana Valdez as Class Representatives; appoint Phoenix Settlement
6 Administrators as Settlement Administrator; preliminarily approve the allocations for
7 Attorneys' Fees and Costs, Class Representative Enhancement Payments, PAGA Settlement
8 Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the
9 Settlement Administrator to undertake the notice and settlement administration process in
10 conformity with the deadlines and procedures provided by the Settlement Agreement; and
11 schedule a Final Approval Hearing to take place in approximately mid December 2018.

12 Dated: June 1, 2018

LAWYERS for JUSTICE, PC

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14 By: Edwin Aiwazian
15 Edwin Aiwazian
16 Attorneys for Plaintiffs
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