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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

EVERLIN BLANCO, RUDY RAMIREZ, individually, and on behalf of other members of the general public similarly situated Plaintiffs, vs. CALIFORNIA BOILER, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No.: 30-2022-01292011-CU-OE-CXC Assigned to Hon. Lon F. Hurwitz Department CX-103 **<u>CLASS ACTION</u>** **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [Concurrently filed with: Declaration of Elizabeth Parker-Fawley, Declaration of Aaron Gundzik, Declaration of Plaintiff Everlin Blanco and Declaration of Plaintiff Rudy Ramirez, Declaration of Jodey Lawrence of Phoenix Settlement Administrators, [Proposed] Order] **Date: May 16, 2025** **Time: 1:30 p.m.** **Dept.: CX-103** Action Filed: November 16, 2022

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 11, 2025, at 1:30 p.m., in Department CX-103 of the above-entitled Court, located at 751 West Santa Ana Blvd., Santa Ana, CA 92701, Plaintiffs Everlin Blanco and Rudy Ramirez will, and by this Notice of Motion and Motion, hereby do, move for an Order as follows:

1. Granting preliminary approval of a class action settlement pursuant to Rules of Court 3.766 and 3.769;

2. Provisionally certifying the proposed class for settlement purposes only as an opt-out class action under Section 382 of the Code of Civil Procedure, with the Class defined as all individuals who were employed by Defendant in California as non-exempt employees at any time during the Class Period (November 16, 2018, through September 19, 2024).

3. Appointing Plaintiffs Everlin Blanco and Rudy Ramirez as the Class Representatives;

4. Appointing Aaron C. Gundzik, Rebecca G. Gundzik, Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh and Elizabeth Parker-Fawley as Class Counsel;

5. Approving Phoenix Settlement Administrators (“Phoenix”) as the Settlement Administrator;

6. Approving the form of the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval to be sent to the class and authorizing its dissemination;

7. Scheduling a subsequent hearing for final approval of the settlement including approval of service awards to the class representative not exceeding $7,500 each (for a total amount of $15,000), for costs of settlement administration not exceeding $6,850, for costs and expenses to Class Counsel not exceeding $25,000, for an award of attorneys’ fees to Class Counsel in an amount not exceeding 35% of the Gross Settlement Amount, for an allocation of $75,000 to Plaintiffs’ PAGA claim, seventy-five percent (75%) of which is to be distributed to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of which is to be distributed to those Class Members who

worked for Defendant at any time during the PAGA Period (October 5, 2021 through September 19, 2024); and

8. Granting such other and further relief as the Court may deem just and proper.

Plaintiffs' motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the [Proposed] Preliminary Approval Order, the Declarations of the proposed Class Counsel, Aaron C. Gundzik and Elizabeth Parker-Fawley, the Declarations of Plaintiffs Everlin Blanco and Rudy Ramirez, the Declaration of Jodey Lawrence of Phoenix Settlement Administrators, the pleadings and other papers filed in this action, and such further argument or evidence as may be considered at the hearing on the motion.

DATED: February 11, 2025 GUNDZIK GUNDZIK HEEGER LLP

By:____________________________

Aaron Gundzik
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This putative wage and hour class action was brought by Plaintiffs Everlin Blanco and Rudy Ramirez against Defendant California Boiler, Inc. ("Defendant") on behalf of approximately 229 individuals who were employed by Defendant in California as non-exempt employees at any time during the Class Period (November 16, 2018, through September 19, 2024). If approved by the Court, the settlement will provide for payments of $1,597 on average to each class member.

The First Amended Complaint, filed on September 17, 2024, asserts the following causes of action against Defendant: (1) Violation of California Labor Code sections 510 and 1198 (unpaid overtime); (2) Violation of California Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) Violation of California Labor Code section 226.7 (unpaid rest period premiums); (4) Violation of California Labor Code sections 1194, 1197 and 1197.1 (unpaid minimum wages); (5) Violation of California Labor Code sections 201 and 202 (final wages not timely paid); (6) Violation of California Labor Code section 204 (wages not timely paid during employment); (7) Violation of California Labor Code section 226(a) (non-compliant wage statements); (8) Violation of California Labor Code section 1174(d) (failure to keep requisite employment records); (9) Violation of California Labor Code sections 2800 and 2802 (unreimbursed business expenses); (10) Violation of California Business & Professions Code sections 17200, *et seq*.; and (11) Recovery of Civil Penalties pursuant to Cal. Labor Code §§ 2698, *et. seq.*

Plaintiffs and Defendant have reached a proposed class action settlement whereby Defendant will pay a gross settlement amount of seven hundred fifty thousand dollars ($750,000). As explained below, although Defendant denies that it has any liability whatsoever, this gross settlement value is within the range of Defendant's potential liability, as estimated by Plaintiffs' Counsel. The settlement is advantageous to the Class in that it provides them prompt compensation and eliminates the uncertainty and risk of continued litigation against Defendant. The proposed settlement is memorialized in the parties'

"Stipulation of Class Action Settlement" (hereafter referred to as the "Settlement Agreement"), a true and correct copy of which is attached as Ex. 1 to the Declaration of Elizabeth Parker-Fawley ("Parker-Fawley Decl."), ¶ 7.

Given the comparative strengths and weaknesses of Plaintiffs' claims and Defendant's defenses and potential inability to pay a larger amount, as well as the inherent uncertainties of litigation, this settlement is within the scope of what is fair, reasonable and adequate for the Class and should be approved by the Court. Accordingly, Plaintiffs, on behalf of themselves and the Class, now seek an order:

- Granting preliminary approval of the settlement as being fair, reasonable and adequate;
- Provisionally certifying the Class on an opt-out basis and for settlement purposes only, and appointing Plaintiffs Everlin Blanco and Rudy Ramirez as the Class Representatives and Aaron C. Gundzik, Rebecca G. Gundzik, Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh and Elizabeth Parker-Fawley as Class Counsel;
- Entering the proposed Preliminary Approval Order, which is filed concurrently herewith, and directing that the Notice of Settlement be mailed to the Class Members;
- Appointing Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator;
- Finding that the proposed form and method of the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval ("Notice of Settlement") constitutes the best notice practicable under the circumstances and complies with the requirements of Code of Civil Procedure Section 382 and due process; and
- Scheduling a final approval hearing approximately 120 days after the preliminary approval hearing to decide, among other things, (i) whether the settlement should be granted final approval; (ii) whether the proposed Order and Final Judgment should be entered; (iii) the amount of Class Counsel's Attorney's fees and Class Counsel's Costs; (iv) the amount of the Class Representatives' Service Awards;

(v) whether to approve a payment of $56,250 to the California Labor and Workforce Development Agency ("LWDA"); and (vi) approving the proposed fee of the Settlement Administrator.

II. RELEVANT AND KEY FACTS

A. Relevant Facts Showing Settlement is Fair, Adequate and Reasonable

1. Investigation and Discovery

Plaintiffs' counsel has litigated the case on behalf of Plaintiffs and the Class and was actively preparing it for class certification and trial. Parker-Fawley Decl., ¶ 9. They have extensively investigated Plaintiffs' claims, reviewed and analyzed numerous pay documents, including records and information produced by Defendant, and worked to develop information on potential damages. Parker-Fawley Decl., ¶¶ 9-10. They have engaged in formal and informal discovery and reviewed and analyzed numerous pay documents, including records and information produced by Defendant, deposed Defendant's person most qualified, and worked to develop information on potential damages. Parker-Fawley Decl., ¶¶ 9-10, 18. In connection with the mediation, Defendant produced time records and pay records for almost all class members, in addition to Defendant's operations and employment practices, procedures, and policies documents. Parker-Fawley Decl., ¶ 10. Plaintiffs' counsel interviewed Plaintiffs and other putative class members to gather facts and circumstances surrounding Plaintiffs' and putative class members' employment. *Id*. And, Plaintiffs' counsel obtained and analyzed financial records provided by Defendant, including financial statements and tax returns. Parker-Fawley Decl., ¶ 11.

Based on this information, as well as information provided by the Plaintiffs, Plaintiffs' counsel calculated the potential damages and penalties available to the Class. Parker-Fawley Decl., ¶¶ 14-18. As set forth in the declarations of counsel, Class Counsel all have significant litigation experience, having worked for many decades and have handled many wage and hour and representative actions. Parker-Fawley Decl., ¶¶ 2-6; Declaration of Aaron Gundzik ("Gundzik Decl."), ¶¶ 3-5.

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2. Summary of Settlement Negotiations

On September 23, 2023, Plaintiffs' counsel and Defendant and their counsel attended a mediation session with well-respected mediator, David Rotman, Esq. The case settled after a full day of negotiation. Parker-Fawley Decl., ¶ 9.

3. Summary of Legal and Factual Bases for Plaintiffs' Claims

During the Class Period, Defendant provided combustion equipment and controls to customers throughout California. Parker-Fawley Decl., ¶ 14. Plaintiff Blanco worked for Defendant from 2018 to 2021 as an administrative assistant and parts coordinator. *Id*. Plaintiff Ramirez worked for Defendant from 2018 to 2020 as a service coordinator and inside salesperson. *Id.*

Plaintiffs allege that Defendant violated the California Labor Code and Industrial Welfare Commission Wage Orders by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiffs and the putative class members, including inter alia, failing to properly compensate minimum, regular and overtime wages, failing to provide compliant meal and rest periods and associated premium pay (including and not limited to, at the correct regular rates), failing to timely pay wages during employment, failing to timely pay wages upon termination and associated waiting-time penalties, failing to provide compliant wage statements, failing to maintain requisite payroll records and failing to reimburse necessary business expenses. Parker-Fawley Decl., ¶ 14.

4. Estimate of the Value of Plaintiffs' Class Claims

As explained in the Parker-Fawley Declaration, filed concurrently herewith, at the time of mediation, Class Counsel estimated the potential value of Plaintiffs' class claims. Parker-Fawley Decl., ¶ 18 (a)-(j). Such estimates considered the scope of the class, the incidence of alleged Labor Code violations and Defendant's defenses to those claims.

5. Risks, Expenses, Complexity and Duration if Settlement Not Approved

Plaintiffs were in possession of significant information prior to calculating any damages in this case. Parker-Fawley Decl., ¶¶ 9-10. As a result, Plaintiffs were able to make a reasonable estimate of Defendant's potential liability as to each claim alleged. Parker-Fawley Decl., ¶ 18 (a)-(j). For these reasons, the settlement now before the Court was reached at a stage where "the parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. See *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 617 (N.D. Cal. 1979).

After taking into account the sharply disputed factual and legal issues involved in the lawsuit, the risks attending further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the action, Plaintiffs' counsel concluded that the settlement is in the best interests of the Settlement Class and is fair and reasonable. Parker-Fawley Decl., ¶¶ 9-13; Gundzik Decl., ¶ 12. They also considered the possibility that the Class would not be certified and factored in the additional delay in recovery for Class Members if the settlement were rejected and the case went to trial. Parker-Fawley Decl., ¶ 25. They also considered Defendant's contention that it did not have sufficient assets to satisfy a larger judgment. *Id.*

If the settlement is not approved, Plaintiffs would need to move forward with discovery and then move for class certification. Defendant would oppose certification on the grounds that numerous individualized fact issues exist. Parker-Fawley Decl., ¶ 18. Defendant would argue and could succeed in claiming that these individualized issues overwhelm common issues, and/or that the action is not manageable on a class wide basis. Parker-Fawley Decl., ¶¶ 17-20. The result could be that the case would not be certified as a class action.

6. Risks of Maintaining Class Action Status

Even if Plaintiffs proceeded and the Class was certified, significant risks would remain. At trial Defendant could interpose a successful defense which could either cause the jury to reject Plaintiffs' claims or award the Class only a small amount of the unpaid wages and other damages sought. Parker-Fawley Decl., ¶ 25. And, even if the Class ultimately prevailed, Class Members might have to wait years before they received any payment from the lawsuit. *Id.*

Plaintiffs' counsel concluded that the settlement of $750,000 represents a fair and reasonable discount from the realistic recovery. Parker-Fawley Decl., ¶ 29. The settlement provides a significant benefit for the Class which might not otherwise have been available unless a settlement was reached. Class Counsel, who have significant experience litigating these types of claims, are of the opinion that a gross settlement of $750,000 is within the "ballpark" of a fair, reasonable and adequate settlement. Parker-Fawley Decl., ¶ 29; Gundzik Decl., ¶ 12.

B. Facts Relevant to Class Certification (Numerosity, Ascertainability and Community of Interest)

There are approximately 229 Class Members. Parker-Fawley Decl., ¶ 15. The exact number and identity of Class Members will be provided by Defendant in connection with their duty to provide Class Data to the Settlement Administrator within ten (10) days after the Court preliminarily approves the settlement. Parker-Fawley Decl., ¶¶ 7, Ex. 1, ¶ IV.C; 21. And, a community of interest exists, as in the pleading, Plaintiffs are claiming the same injuries based upon the same alleged wage and hour policies as are the Class Members. Parker-Fawley Decl., ¶ 14. Class Counsel are not aware of any actual or potential conflicts of interest with any of the Class Members. Parker-Fawley Decl., ¶ 21; Gundzik Decl., ¶ 9.

C. Facts Relevant to Other Concerns

Plaintiffs' counsel have conferred with Defendant's counsel, and Defendant has indicated that some of the Class Members are not proficient in English but are fluent in Spanish. Gundzik Decl., ¶ 13. For that reason, the Notice of Settlement will be printed in English and Spanish. *Id*.

Gundzik Gundzik Heeger LLP ("GGH") and Lawyers *for* Justice have entered into a Joint Prosecution Agreement with the representative Plaintiffs. Gundzik Decl., ¶ 14, and Ex. 1. GGH and LFJ have agreed to divide any attorney's fees awarded in this case. Plaintiffs have consented to the division of fees. *Id.*

Class Counsel and Defendant are not aware of any other pending action asserting claims that will be extinguished or adversely affected by the proposed settlement that is the subject of this Motion. Parker-Fawley Decl., ¶ 30; Gundzik Decl., ¶ 11.

III. THE SETTLEMENT AGREEMENT

A. Class Definition and Class and Release Period

The Class includes all individuals who were employed by Defendant in California as non-exempt employees during the Class Period. Parker-Fawley Decl., ¶¶ 7, Ex. 1, ¶ II.C; 7. The Class Period is from November 16, 2018, through September 19, 2024. Parker-Fawley Decl., ¶¶, Ex. 1, ¶ II.I; 21.

B. Release of Claims

Members of the Class and PAGA Employees will provide releases to Defendant and their related entities. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶¶ II.FF, II.GG, VI. The scope of the releases will be disclosed to the Class in the proposed Notice of Settlement. See Parker-Fawley Decl., ¶ 7, Ex. A to Ex. 1. Any member of the Class who does not like the scope of the class release (or the Settlement in general) can preserve his or her individual claims by timely submitting a written request to be excluded from the Settlement and Class. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.E. The releases apply to all of the Released Parties, which are "Defendant and all of its respective present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, members, principals, officers, directors, executive level employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims but only as to the Released Claims." Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ II.GG. The class Released Claims are defined as:

> [a]ll claims under state, federal or local law, whether statutory, common law or administrative law, arising out of or related to allegations in the operative complaint or PAGA letter which allege: (1) Failure to Pay Overtime; (2) Failure to Pay Meal Period Premiums; (3) Failure to Pay Rest Period Premiums; (4) Failure to Pay Minimum Wages; (5) Failure to Pay Earned Wages Upon Termination; (6) Failure to Pay Wages Timely During employment; (7) Failure to Furnish Accurate Wage Statements; (8) Failure to Maintain Requisite Payroll Records; (9) Failure to Reimburse for Business Expenses; and (10) Unfair Competition in Violation of Business and Professions Code Section 17200 and their request for damages, including, but not limited to, claims for injunctive relief;

> liquidated damages, penalties of any nature; interest; fees; costs; and all other claims and allegations made or which could have been made based on the allegations in the Complaint or the PAGA letter during the Class Period.

Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ II.FF.

The PAGA Employees will release the following claims:

> [a]ll PAGA claims arising out of or related to the allegations in the operative Complaint or the PAGA letter(s) including but not limited to: claims under the Private Attorneys General Act, Cal. Labor Code § 2698 et seq. arising out of or related to the allegations in the operative complaint which alleges: PAGA violations arising from Defendant's alleged failure to: (1) pay overtime; (2) provide meal periods; (3) provide rest periods; (4) pay minimum wages; (5) timely pay wages upon termination; (6) timely pay wages during employment; (7) furnish complete and accurate wage statements; (8) keep complete and accurate payroll records; and (9) reimburse business related expenses and costs and all other claims and allegations made or which could have been made based on the allegations in the Complaint or the PAGA letter during the PAGA Period.

Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ II.AA.

Class Members and PAGA Employees shall not waive section 1542 of the California Civil Code. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ II.AA, II.FF. The Releases will be effective upon entry of the Final Approval Order and Judgment and Defendant's payment of the Gross Settlement Amount and Employer's Withholding Share. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ VI.

Within ten (10) days following the Court's order granting preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the Class Data and at the same time will provide anonymized Class Data to Class Counsel so that they can confirm that the correct amounts are being paid to the correct individuals. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶IV.C. This information will remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, pursuant to Defendant's express written authorization, by order of the Court, or as otherwise provided for in this Agreement. *Id.*

C. Monetary Terms

Defendant will pay a Gross Settlement Amount of at least $750,000, plus the employer's share of withholding taxes, to the Settlement Administrator. After proposed deductions, as approved by the Court, the Net Settlement Amount of at least $365,650 will be available to distribute to settlement Class Members. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ I.F.

If the Court grants final approval of the Settlement, Defendant shall pay the Gross Settlement Amount in four separate payments. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.N. The first payment of $300,000 will be delivered to the Settlement Administrator within 63 days of the Final Approval Order. *Id.* The second payment, in the amount of $150,000, plus the Employer's Withholding Share, will be made two months after the first payment is due. *Id.* The third payment, in the amount of $150,000, will be made two months after the second payment is due. *Id.* A final payment of $150,000 will be made two months after the third payment is due. *Id.* As such, the entire Gross Settlement Amount, including the Employer's Withholding Share, will be delivered to the Settlement Administrator within six months and 63 days of the Effective Date. *Id.* Within ten (10) calendar days after Defendant's deposit of the second installment and the Employer's Withholding Share, the Settlement Administrator will make the settlement payments to Settlement Class Members, PAGA Employees and the LWDA. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.L(8).

Within ten (10) calendar days of Defendant's deposit of all funds due, the Settlement Administrator will pay the Court-approved Service Awards to the Representative Plaintiffs, the court-approved award for Class Counsel's Attorneys' Fees and Class Counsel's Costs to Class Counsel and will pay the court-approved fees of the Settlement Administrator. Parker-Fawley Decl., ¶ 6, Ex. 1, ¶ IV.O.

If the Court grants preliminary approval, at the final approval hearing, in addition to granting final approval to the settlement, the Court will be asked to approve the following deductions from the Gross Settlement Amount of $750,000: (a) Class Counsel's attorneys' fees of $262,500 (or 35% of the Gross Settlement Amount); (b) Class Counsel's actual litigation costs and expenses, not to exceed $25,000; (c) Service Awards to the Representative Plaintiffs in an amount not to exceed $7,500 each (for a total of $15,000); (d) a payment of $56,250 to the LWDA; and (e) an amount not to exceed $6,850 to the Settlement Administrator for administering the settlement. Parker-Fawley Decl., ¶ 6, Ex. 1, ¶

I; Declaration of Jodey Lawrence of Phoenix Settlement Administrators ("Lawrence Decl."), ¶ 16.

As compensation for their efforts, the Settlement Agreement provides that service awards to the Class Representatives in an amount not to exceed $7,500 each will be requested. Parker-Fawley Decl., ¶ 28, Ex. 1, ¶ IV.R. This award is in recognition of the significant time she has expended pursing this action and assisting Class Counsel's efforts. *Id*.

Defendant's share of Employer's Withholding Taxes will be paid by Defendant in addition to the Gross Settlement Amount. Parker-Fawley Decl., ¶ 22, Ex. 1, ¶ IV.L.8. No amount of the Gross Settlement Amount will revert to Defendant. Parker-Fawley Decl., ¶ 22, Ex. 1, ¶ I.

The Net Settlement Amount of approximately $365,650.00 will be distributed to Class Members based on the number of Qualifying Workweeks they worked for Defendant. Parker-Fawley Decl., ¶¶ 7, Ex. 1, ¶ IV.L.1; 22. The formula to be used is specified in detail in both the Settlement Agreement and the Notice of Settlement which will be mailed to all of the Class Members. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.L.1, Ex. A. Based on a Class size of approximately 229, the Settlement Class Members will get on average, about $1,597 ($365,650 Net Settlement Amount / 229 class members = $1596.72). The estimated value per workweek is about $14.82 ($365,650 NSA / 24,666 maximum workweeks = $14.82.) The maximum number of workweeks for a Class Member is 284.71 and the minimum is 1 workweek. Gundzik Decl., ¶ 16. Thus, the maximum estimated settlement payout to a Class Member will be $4,220.56 (284.71 workweeks x $14.82) and the minimum is $14.82.

Settlement payments will be paid to the Class Members within 10 days of Defendant's deposit of the final payment of the Gross Settlement Amount and Employer's Withholding Share with the Settlement Administrator. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.L.8. Twenty percent (20%) of each Settlement Class Member payment will be considered wages, to be reported on a W-2 form. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.L.6. The remaining 80% will be deemed penalties and interest and reported on an IRS Form 1099. *Id.*

D. Notice Administration

The settlement will be administered by Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"). Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ II.NN; Lawrence Decl. ¶ 9. Class counsel has no actual or potential conflicts of interest with the Settlement Administrator. Parker-Fawley Decl., ¶ 23; Gundzik Decl., ¶ 10.

If the Court grants preliminary approval, within ten (10) calendar days Defendant will provide the Settlement Administrator with the Class Data. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.C. Within ten days thereafter, the Settlement Administrator will update the Class list, check all addresses against the National Change of Address database, and send each Class Member via First-Class United States mail English and Spanish versions of the Notice of Settlement. *Id.* No submission of a claim form is necessary, and all Class Members are eligible to receive a settlement payment except those who follow the procedure for requesting an exclusion. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.E, IV.L.4.

The proposed form of the notice of settlement to the Class ("Notice of Settlement") discloses the pendency of this litigation, summarizes the allegations against Defendant, defines the Class, describes the consideration that Defendant will provide in settlement along with an estimate of each Settlement Class Member's estimated recovery. Parker-Fawley Decl., ¶ 7, Ex. A to Ex. 1. The notice also describes the claims that will be released and explains the procedures to be used by members of the Class to be excluded from or object to the settlement. *Id.* Because this is an opt-out settlement and Class Members who do nothing will still receive a settlement payment. The notice provisions agreed to by the parties will adequately serve the interests of the individual Class Members in receiving the relief provided by the settlement and adequately comply with California Rules of Court, Rule 3.766(e). Gundzik Decl., ¶ 13.

Class Member settlement checks will be valid for 180 days from issuance. The funds represented by all uncashed settlement checks will be transmitted by the Settlement Administrator to the California State Controller's Office Unclaimed Property Fund. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.P.

For any Notice of Settlement that is returned as undeliverable, the Settlement Administrator will perform a utility database search or other skip trace. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.D. The returned Notices of Settlement will be re-mailed to the new addresses obtained for such Class Members. *Id.* Such searching and re-mailing will be completed within ten (10) calendar days of the date that Notices of Settlement were originally returned as undeliverable. *Id.*

The Settlement Administrator will establish a website for this settlement and will post the settlement agreement and other relevant documents. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.M; Lawrence Decl., ¶ 7. In their individual Notices of Settlement, Class Members will be provided with the phone number and email address for the Settlement Administrator, as well as the website specific to the Settlement. Parker-Fawley Decl., ¶ 7, Ex. A to Ex. 1. If there is a change in the date or location of the Final Approval hearing, the Settlement Administrator will post this information on the website. *Id*. Notice of the Final Judgment and Final Approval Order will also be posted on the Settlement Administrator's website. *Id.*

E. Responses to Notice

The notices mailed to Class Members will provide instructions on how a Class Member can opt out of the settlement, object to the settlement or dispute the data used to calculate their individual settlement payments. Class Members who wish to be excluded from the settlement must submit a written request to be excluded to the Settlement Administrator no later than sixty (60) days after the Notice of Settlement is mailed by the Settlement Administrator. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶¶ II.JJ, IV.E; Ex. A to Ex. 1, ¶ 9 (c). Any Class Member wishing to object to the approval of the Settlement must send a written statement of objection to the Settlement Administrator within the same sixty day period. Parker-Fawley Decl., ¶ 7, Ex. 1 at ¶ IV.H.1; Ex. A to Ex. 1, ¶ 9(d). And Class Members who wish to dispute the number of workweeks or pay periods used to calculate their settlement payments may do so by submitting information to the Settlement Administrator within sixty days. Parker-Fawley Decl., ¶ 7, Ex. 1 at ¶ IV.L.5; Ex. A to Ex. 1, ¶ 9(b). For Notices of Settlement returned as being undeliverable that are re-mailed to a different address, the Response Deadline will be 45 calendar days after re-mailing. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.JJ.

F. Proposed Schedule of Events

Pursuant to the Settlement Agreement, the proposed schedule of events is:

Event	**Date**
Deadline for Defendant to provide Class data to settlement administrator	within ten (10) calendar days of preliminary approval
Deadline to mail Notice of Settlement to Class Members	within ten (10) calendar days of receipt of class data from Defendant
Deadline to dispute workdays, opt out of or object to settlement	Within sixty (60) calendar days of mailing or forty-five (45) calendar days of re-mailing of Notice of Settlement
Deadline for settlement administrator to provide counsel with Declaration of Compliance and report regarding notice and exclusion process	5 days prior to deadline for filing motion for final approval
Deadline to file motion for final approval of the settlement and award of attorneys' fees and costs	16 court days before final approval hearing
Hearing on motion for final approval of the settlement, granting of final approval, and entry of judgment	TBD
Deadline for Defendant to deliver funds to settlement administrator	Within sixty-three (63) days of the Final Approval Order, Defendant will deliver the first payment of $300,000. Within two months from the date that the first payment is due, Defendant will deliver the second payment, in the amount of $150,000, plus the Employer's Withholding Share. Within two months of the date that the second payment is due, Defendant will deliver the third payment, in the amount of $150,000. Within two months of the date that the third payment is due, Defendant will deliver the fourth and final payment, in the amount of $150,000.
Deadline for settlement administrator to distribute settlement funds	Within 10 calendar days of receipt of first two payments (totaling $450,000), plus the Employer's Withholding Share, the settlement administrator will distribute the court-approved payments

Event	Date
	to the Class Members, PAGA Employees and LWDA. Within 10 calendar days of receipt of the total Gross Settlement Amount, plus the Employer's Withholding Share, the settlement administrator will distribute the court-approved Class Representative Awards, the court-approved attorneys' fees and costs, and the court-approved administrator's fee.

IV. ARGUMENT

A. The Class Should be Certified for Settlement Purposes.

The proposed class satisfies the criteria for certification of a settlement class under California law. Section 382 of the Code of Civil Procedure "authorizes class suits in California 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." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000). "To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among the class members." *Id.*, at 435, citing *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981); also citing *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971). The community of interest requirement will be met when the following three factors exist: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th at 435.

1. An Ascertainable Class Exists that can easily be Determined from Defendant's Records.

"An ascertainable class exists when, based upon the class definition, it is possible to give adequate notice to class members or to determine after the litigation has concluded who is barred from re-litigating. (Citation omitted.) The goal in defining the class is to use terminology that will convey sufficient meaning to enable persons hearing it to determine whether they are members of the class plaintiff wishes to represent." *Marler v. E.M.*

Johansing, LLC, 199 Cal. App. 4th 1450, 1459-1460 (2011). Thus, a class is generally considered ascertainable when (i) under the class definition the members are clearly identifiable and (ii) the members can be located and notified through a reasonable expenditure of time and money. *See Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263, 1274-1275 (1987). Here, the Class definition is clear. The Class is defined as including "all individuals who were employed by Defendant in California as non-exempt employees at any time during the Class Period," which is the period from November 16, 2018, through September 19, 2024. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶¶ II.C., II.I.

2. There is a Well-Defined Community of Interest among the Class Members.

Plaintiffs contend that the community of interest requirement is met with respect to the Class and the claims asserted in the pleading. Common issues regarding Defendant's treatment of the Class Members as to meal and rest breaks, unpaid time, unpaid overtime and reimbursement of expenses, the sufficiency of wage statements issued to Class Members and the amounts paid to separated employees at time of separation. Further, the claims of the named Plaintiffs are typical of the claims of all Class Members, and they can and do adequately represent the Class. Parker-Fawley Decl., ¶ 16.

3. Common Issues of Law and Fact Predominate over any Individual Issues.

To determine whether common issues predominate in a class action matter, "a court must examine the plaintiff's theory of recovery and assess the nature of the legal and factual disputes *likely to be presented*…As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 716 (2013) (emphasis in original).

Here, Plaintiffs maintain that common issues exist with respect to Defendant's policies and practices with respect to meal and rest breaks, payment for overtime, payment for all time worked, reimbursement of expenses and payment for amounts due at time of separation. Parker-Fawley Decl., ¶¶18 (a)-(j). Plaintiffs maintain that the only individualized differences between Class Members relate to the amount of compensation each Class Member would be entitled to receive. However, it is well-settled that mere differences as to the amount of damages among Class Members are not sufficient to prevent certification. *Id.*; *Acree v. General Motors Acceptance Corp*., 92 Cal. App. 4th 385, 387 (2001) ("A class action may be maintained even if each class member must at some point individually show his or her eligibility for recovery or the amount of his or her damages…")

4. Plaintiffs' Claims are typical of the Claims of the Class.

"To maintain a class action, the representative plaintiff must adequately represent and protect the interests of other members of the class. (Citation omitted.) Therefore, a class representative plaintiff must be situated similarly to the other class members united by a common interest." *CashCall, Inc. v. Superior Court*, 159 Cal. App. 4th 273, 284 (2008). Thus, the typicality requirement focuses on whether the proposed representative's claims are typical of the claims of the rest of the class. *Id.*; *see Classen v. Weller*, 145 Cal. App. 3d 27, 47 (1983).

Here, Plaintiffs are seeking relief for the same wage and hour violations as are the rest of the Class Members. They seek to impose liability on Defendant based on the same claims and theories, as well as the same alleged injuries, which apply to the Class as a whole. Thus, the claims of the Representative Plaintiffs are typical of the claims of the Class.

5. The Representative Plaintiffs and Class Counsel Will Adequately Protect the Interests of the Class.

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal. App. 3d 442, 450 (1976). Here, the Representative Plaintiffs retained attorneys with extensive experience in prosecuting wage and hour class actions. Parker-Fawley Decl., ¶¶ 2-6; Gundzik Decl., ¶¶ 2-7.

Nor is there any conflict between the interests of the Representative Plaintiffs and the members of the Class. The Representative Plaintiffs and the Class are claiming the same injuries based upon the same alleged wage and hour policies existing while they were employed by Defendant. Parker-Fawley Decl., ¶¶ 18 (a)-(j).

B. Preliminary Approval is Appropriate Because the Settlement is Fair and Reasonable.

A trial court should approve a class action settlement agreement if it determines that the agreement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1801 (1996). In making this decision, a court "should consider relevant factors, which may include, but are not limited to the strength of the Plaintiff's case, the risk, expense, complexity and duration of further litigation as a class action, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement." *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

"At the same time, the trial court should give due regard to what is otherwise a private consensual agreement between the parties." *Id.* Thus, the Court "limits its inquiry to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *In re Microsoft I-V Cases,* 135 Cal. App. 4th at 723, citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801; also citing *Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d 615, 625 (9th Cir. 1982). Whether the settlement was reached through arms-length negotiations is also a strong factor which weighs in favor of presuming that the settlement is fair and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801.

These factors, as applied to this matter and as set forth below, strongly favor granting preliminary approval of the Settlement Agreement:

The Strength of Plaintiffs' Case. As set forth in the Section II above and the Declarations of Elizabeth Parker-Fawley and Aaron Gundzik, the parties have vigorously advocated the parties' respective positions in this matter, and Defendant has consistently disputed that it violated California's wage and hour laws. In fact, Defendant raised a colorable legal or factual defense to each claim Plaintiffs have alleged. Parker-Fawley Decl., ¶¶ 18 (a)-(j).

The Risk, Expense, Complexity and Likely Duration of Further Litigation. If the settlement is not approved, the Representative Plaintiffs would need to move forward with discovery and then move for class certification. Defendant will oppose certification on the grounds that numerous individualized fact issues allegedly exist. It will argue and could succeed in claiming that these individualized issues overwhelm common issues and will also argue that the action is not manageable on a classwide basis. The result could be that the case would not be certifiable as a class action. Parker-Fawley Decl., ¶ 20.

The Risk of Maintaining Class Action Status Through Trial. If the settlement is not approved, and the Representative Plaintiffs are successful on their motion for certification of the class, the Class would still be faced with significant risks in continuing with the litigation. Defendant could interpose a successful defense which could either cause the jury to reject Plaintiffs' claims or award the Class only a small amount of the unpaid wages and other amounts due to them. And, even if the Class ultimately prevailed, most of the Class Members would have to wait years or more before they received any payment from the lawsuit. Parker-Fawley Decl., ¶¶ 8, 25. Further, the Court would still retain authority to de-certify the case in the event the trial showed that common issues did not predominate. *See* Cal. Rule of Court 3.764; *Id.*

The Amount Offered in Settlement. In the experience of Class counsel, a gross settlement of $750,000 for a class of approximately 229, with the claims described above, is within the "ballpark" of a fair, reasonable and adequate settlement. Parker-Fawley Decl., ¶ 29; Gundzik Decl., ¶ 12. Taking into account the serious risks associated with proceeding—that the case might not be certified as a class action, that Plaintiffs might not succeed on the merits at trial, if Plaintiffs succeed at trial, that the case is reversed on appeal, or if Defendant does not have sufficient assets to pay a judgment at a later date – it is apparent that a settlement in this range is fair to the Class.

The Extent of Investigation and Discovery Completed and the Stage of the Proceedings. As set forth above and in the Declaration of Parker-Fawley the parties have engaged in extensive formal and informal discovery and factual investigation. Parker-Fawley Decl., ¶¶ 9-13.

The Experience and Views of Counsel. As set forth in the declarations of Elizabeth Parker-Fawley and Aaron Gundzik, Class Counsel has significant experience in wage and hour class actions. Parker-Fawley Decl., ¶¶ 2-6; Gundzik Decl., ¶¶ 2-7. Aaron Gundzik and Rebecca Gundzik have practiced law and been members of the California State Bar collectively for more than 70 years. Gundzik Decl., ¶¶ 2-7. The team from Lawyers *for* Justice also has significant experience. Parker-Fawley Decl., ¶¶ 2-6. Based upon their vast experience in the area, when they arrived at a settlement with Defendant, Class Counsel had sufficient information to assess the strengths and weaknesses of the claims against Defendant, and the benefits of the settlement in light of the significant risks of continuing with the litigation.

Whether the Settlement Was Reached Through Arm's-Length Bargaining or was a Product of Fraud or Overreaching. It is undisputed that the parties negotiated the settlement at arm's length during a mediation before a well-respected neutral third-party mediator who has significant experience settling wage and hour class action lawsuits. Parker-Fawley Decl., ¶ 9. The case settled after a full day of negotiation. *Id*. The settlement was negotiated at arms' length and was in no sense collusive.

C. The Proposed Notice of Settlement Fairly Apprises the Class of the Terms of the Settlement and Their Right to Object.

"The principal purpose of notice to the class is the protection of the integrity of the class action process, one of the functions of which is to prevent burdening the courts with multiple claims where one will do." *Cho v. Seagate Technology Holdings, Inc.*, 177 Cal.

App. 4th 734, 745-746 (2009). Thus, an appropriate notice is one which has a reasonable chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court,* 50 Cal. App. 3d 960, 974 (1975).

The proposed Notice of Settlement addresses these concerns. It identifies the Representative Plaintiffs and Defendant, provides a description of the lawsuit, the settlement amounts, the proposed plan of allocation and the attorneys' fees that class counsel may receive. The proposed Notice of Settlement provides information as to how to opt out of the Class and be excluded, how to object to the settlement, as well as the date of the final approval hearing. It also describes the Settlement Agreement with sufficient detail to allow Class Members to make an informed decision as to whether to accept or object to it. The proposed Notice of Settlement further provides that it will bind all Class Members who do not request exclusion. Parker-Fawley Decl., ¶ 7, Ex. A. to Ex. 1 thereto. As such, the proposed Notice of Settlement describes the settlement with enough specificity to allow Class Members to make an informed decision as to whether to participate in it. See California Rule of Court 3.766(d).

Further, the manner of giving notice is to be done in such a way as to maximize its reach. The Notice of Settlement will be sent to members of the Class by First Class regular U.S. mail by the Settlement Administrator. Parker-Fawley Decl., ¶ 7, Ex. 1, ¶ IV.C. Prior to mailing, the Settlement Administrator shall check all addresses on the Database Report against the National Change of Address (NCOA) database. *Id.* The Settlement Administrator will mail the Notice of Settlement to the most current mailing address as identified by reference to the Database Report and/or the NCOA database. *Id.*

Pursuant to California Rules of Court, Rule 3.766(e), in determining whether the manner of giving notice is sufficient, a court considers (1) the interests of the class; (2) the type of relief requested; (3) the stake of the individual class members; (4) the cost of notifying class members; (5) the resources of the parties; (6) the possible prejudice to class members who do not receive notice; and (7) the res judicata effect on class members. Here, the interests of the Class Members are in receiving notice of the lawsuit and settlement.

Delivering the Notice by mail complies with California Rules of Court, Rule 3.766(e) and the purpose of the Notice. An appropriate notice is one which has a reasonable chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court,* 50 Cal. App. 3d 960, 974 (1975). Because this is an opt-out settlement and Class Members who do nothing will still receive a settlement payment, the notice provisions agreed to by the parties will adequately serve the stakes of the individual Class Members in receiving the relief provided by the settlement.

V. CONCLUSION

For the foregoing reasons, Plaintiffs, on behalf of themselves and the Class, respectfully request that the Court grant preliminary approval of the settlement and set a final approval hearing to take place within approximately 120 days.

DATED: February 11, 2025

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By:______________________________

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