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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CANDON LOVETT, KENNITH BOOZE,
DEARTIS SUDDUTH, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiffs,

vs.

WONDER ICE CREAM, INC., a California
corporation; WONDER ICE CREAM
COMPANY, LLC, an unknown business
entity; WIC, LLC, an unknown business
entity; WONDER ICE CREAM, LLC, an
unknown business entity, and DOES 1
through 100, inclusive,

Defendants.

Case No.: RG21109738

Honorable Evelio Grillo
Department 21

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Alexandra Rose); Declarations of
Proposed Class Representatives (Candon
Lovett, Kenneth Booze, DeArtis Sudduth,
and Jonathan Girvin); and [Proposed]
Order filed concurrently herewith]

Reservation ID: 139158272617
Date: April 11, 2023
Time: 10:00 a.m.
Department: 21

Complaint Filed: August 4, 2021
FAC Filed: September 1, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 11, 2023 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Evelio Grillo in Department 21 of the Superior Court of California for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612, Plaintiffs Candon Lovett, Kenneth Booze, DeArtis Sudduth, and Jonathan Girvin (collectively, “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class and representative action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Alexandra Rose, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Fees and Costs to Class Counsel, Service Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes only;
- Preliminarily appointing Plaintiffs Candon Lovett, Kenneth Booze, DeArtis Sudduth, and Jonathan Girvin as Class Representatives;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Alexandra Rose of Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and

- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees and Costs to Class Counsel, Service Awards for Plaintiffs, and Settlement Administration Costs to the Settlement Administrator.

This Motion is made pursuant to Rule 3.764, Rule 3.769, and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Alexandra Rose) and Proposed Class Representatives (Candon Lovett, Kenneth Booze, DeArtis Sudduth, and Jonathan Girvin) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: March 15, 2023

LAWYERS for JUSTICE, PC

By:



Alexandra Rose
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Candon Lovett, Kenneth Booze, DeArtis Sudduth, and Jonathan Girvin (collectively, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint 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 Wonder Ice Cream, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this matter for a Gross Settlement Amount of One Million One Hundred Thousand Dollars and No Cents (\$1,100,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Service Awards of Ten Thousand Dollars and No Cents (\$10,000.00) each to Plaintiffs (total, \$40,000.00)³; (3) the Class Counsel Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$385,000.00 if the Gross Settlement Amount is \$1,100,000.00, and reimbursement of litigation costs and expenses not to exceed Seventeen Thousand Dollars and No Cents (\$17,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Twelve Thousand Dollars and No Cents (\$12,000.00);⁵ and (5) the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development

¹ Settlement Agreement, attached as “EXHIBIT 1” to Declaration of Alexandra Rose (“Rose Decl.”), § I.19. Defendant estimated that for the period of August 4, 2017 to September 7, 2022, there were approximately 31,933 Workweeks. If it is determined that the total number of Workweeks during the Class Period actually exceeds this amount by more than twelve point five percent (12.5%) (i.e., the Workweeks during the Class Period are actually more than 35,992), then, at Defendant’s option, the Class Period and PAGA Period will end on the last day that the total Workweeks do not exceed 35,992 Workweeks or the Gross Settlement Amount will increase on a proportional basis to the extent the threshold is exceeded. *See id.*, § II.15.

² *Id.*, § II.12(a).

³ *Id.*, § I.43.

⁴ *Id.*, § I.7.

⁵ *Id.*, § I.45.

Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to all of Defendant’s current and former non-exempt employees in the State of California and all salaried sales employees who worked for Defendant in the State of California as DSD Route Sales Representatives, or other similar positions, classified under the outside salesperson exemption, during the PAGA Period (“Aggrieved Employees”).⁶

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

All of Defendant’s current and former non-exempt employees in the State of California and all salaried sales employees who worked for Defendant in the State of California as DSD Route Sales Representatives, or other similar positions, classified under the outside salesperson exemption, during the Class Period (“Class” or “Class Members”).⁷

Based on information provided by Defendant, as of January 27, 2023, the Class is estimated to consist of approximately four hundred and fifty (450) individuals.⁸

Class Members who do not submit a timely and valid Opt-Out Request (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) based upon the number of weeks each Settlement Class Member performed work for Defendant as a non-exempt employee in the State of California during the Class Period (“Non-exempt Workweeks”) and the number of weeks each Settlement Class Member performed work for Defendant in the State of California as a salaried sales employee as a DSD Route Sales Representative, or other similar position, classified under the outside salesperson exemption during the Class Period (“Salaried Workweeks”) (together, Non-exempt Workweeks and Salaried Workweeks are referred to as “Workweeks”).⁹

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⁶ Settlement Agreement, §§ I.2 & I.31. “PAGA Period” is defined as the time period from August 4, 2020 through entry of an order of the Court preliminarily approving the Settlement. *See id.*, § I.32.

⁷ *Id.*, § I.4. “Class Period” is defined as the time period from August 4, 2017 through entry of an order of the Court preliminarily approving the Settlement. *See id.*, § I.10.

⁸ Rose Decl., ¶ 9.

⁹ Settlement Agreement, §§ I.22, I.28, I.42, I.46, & I.48.

1 The Settlement resolves the Released Class Claims of Plaintiffs and Settlement Class
2 Members, and the Released PAGA Claims of the State of California and Aggrieved Employees,
3 against the Released Parties.¹⁰

4 In order to efficiently present the Court with adequate information to determine whether
5 to grant preliminary approval of the Settlement, Plaintiffs also move for an order permitting the
6 filing of this single consolidated memorandum, although it exceeds the page limit established
7 by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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

9 Defendant manufactures specialty ice cream products under various trademarks,
10 maintains a fleet of ice cream delivery vehicles, and delivers ice cream products to customers.
11 Defendant is headquartered in Santa Clara, California and delivers products throughout
12 Northern California. Plaintiffs Candon Lovett (“Plaintiff Lovett”), Kenneth Booze (“Plaintiff
13 Booze”), DeArtis Sudduth (“Plaintiff Sudduth”), and Jonathan Girvin (“Plaintiff Girvin”) are
14 all former employees of Defendant.

15 On August 4, 2021, Plaintiffs Lovett and Booze filed a Class Action Complaint for
16 Damages in the Alameda County Superior Court (“Court”), thereby commencing the above-
17 captioned lawsuit (“Action”).

18 On September 1, 2021, Plaintiffs Lovett, Booze, and Sudduth filed a First Amended
19 Class Action Complaint for Damages in the Action, which added Plaintiff Sudduth as a named
20 plaintiff.

21 On November 18, 2021, Defendant filed an Answer to Plaintiffs Lovett and Booze’s
22 Class Action Complaint.

23 On April 28, 2022, Plaintiff Girvin filed a Class Action Complaint for Restitution
24 initiating the action entitled *Jonathan Girvin v. Wonder Ice Cream Company, LLC, et al.*, in the
25 Superior Court of California for the County of Santa Clara, Case No. 22CV397371 (“*Girvin*
26 *Action*”).

27
28 ¹⁰ Settlement Agreement, § 9. See *id.* at § I.37 for the full scope of the “Released Claims”, *id.* at § I.38 for the full
scope of the “Released Class Claims,” *id.* at § I.39 for the full scope of the Released PAGA Claims, and *id.* at §
I.40 for the definition of the “Released Parties.”

1 Together, the Action and the *Girvin* Action are referred to as the “Actions.”

2 On September 21, 2022, Plaintiff Sudduth provided written notice to the LWDA by
3 online submission and to Defendant by certified mail, of the specific provisions of the California
4 Labor Code that Defendant allegedly violated (“Sudduth LWDA Letter”).

5 On October 5, 2022, Plaintiff Lovett provided written notice to the LWDA by online
6 submission and to Defendant by certified mail, of the specific provisions of the California Labor
7 Code that Defendant allegedly violated (“Lovett LWDA Letter”).

8 On October 5, 2022, Plaintiff Booze provided written notice to the LWDA by online
9 submission and to Defendant by certified mail, of the specific provisions of the California Labor
10 Code that Defendant allegedly violated (“Booze LWDA Letter”).

11 On October 5, 2022, Plaintiff Girvin provided written notice to the LWDA by online
12 submission and to Defendant by certified mail, of the specific provisions of the California Labor
13 Code that Defendant allegedly violated (“Girvin LWDA Letter”).

14 Collectively, the Sudduth LWDA Letter, Lovett LWDA Letter, Booze LWDA Letter,
15 and Girvin LWDA Letter are referred to as the “LWDA Letters.”

16 In order to implement the Settlement, the Parties have agreed to file a Second Amended
17 Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act,
18 California Labor Code § 2698, Et Seq. (“Second Amended Complaint” or “Operative
19 Complaint”) in the Action, which, *inter alia*, adds Plaintiff Girvin as a named plaintiff and adds
20 a cause of action under PAGA. On February 22, 2023, the Parties filed a Joint Stipulation
21 Granting Plaintiffs Leave to File Second Amended Complaint; and [Proposed] Order Thereon
22 in the Action.

23 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by
24 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
25 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
26 and rest periods and associated premium pay, failing to timely pay wages during employment
27 and upon termination of employment, failing to provide a day of rest, failing to provide
28 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse

necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the Actions since the Action was commenced on August 4, 2021. On September 7, 2022, the Parties participated in a formal, full-day mediation conducted by Francis J. Ortman III, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a timely and valid Opt-Out Request (i.e., Settlement Class Members) and the Released PAGA Claims of the State of California and the Aggrieved Employees with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$385,000.00 if the Gross Settlement Amount is \$1,100,000.00) and reimbursement of costs and expenses in an amount not to exceed Seventeen Thousand Dollars and No Cents (\$17,000.00) to Class Counsel (collectively referred to as the "Class Counsel Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed Twelve Thousand Dollars and No Cents (\$12,000.00) to the Settlement Administrator ("Settlement Administration Costs");

¹¹ Settlement Agreement, § II.9.

(3) One Hundred Thousand Dollars and No Cents (\$100,000.00) allocated to penalties under PAGA (“PAGA Penalties”); and (4) payments in the amount of up to Ten Thousand Dollars and No Cents (\$10,000.00) each to Plaintiffs Lovett, Booze, Sudduth, and Girvin (for a combined total of \$40,000.00) (“Service Awards”).¹² The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Settlement Administrator will determine each Settlement Class Member’s share of the available Net Settlement Amount (i.e., Individual Settlement Share), in accordance with the Settlement Agreement and as follows:

- a. After entry of an order of the Court preliminarily approving the Settlement, the Settlement Administrator will (i) determine the Workweeks of each Class Member; (ii) multiply the Salaried Workweeks of each Class Member by two (2) to yield the Class Member’s “Weighted Salaried Workweeks” and add the Class Member’s number of Non-exempt Workweeks, resulting in the Class Member’s “Total Weighted Workweeks;” (iii) divide the Net Settlement Amount by the Total Weighted Workweeks of all Class Members to yield the “Estimated Workweek Value;” and (iv) multiply each Class Member’s individual Total Weighted Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹³
- b. After entry of an order of the Court finally approving the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Total Weighted Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Total Weighted Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁴

The Settlement Administrator will determine each Aggrieved Employee’s share of the Aggrieved Employee Amount (“Individual PAGA Payment”), in accordance with the Settlement Agreement as follows:

- a. The Settlement Administrator will (i) determine the Workweeks of each Aggrieved Employee during the PAGA Period; (ii) multiply the Salaried Workweeks of each Aggrieved Employee during the PAGA Period by two (2) to yield the Aggrieved Employee’s “Weighted Salaried PAGA Workweeks” and add the Aggrieved Employee’s number of Non-exempt Workweeks during the PAGA Period, resulting in the Aggrieved Employee’s “Total Weighted PAGA Workweeks;” (iii) divide the Aggrieved Employee Amount by the Total Weighted PAGA Workweeks of all Aggrieved Employees to yield the “Estimated PAGA Workweek Value;” and (iv) multiply each Aggrieved Employee’s individual Total Weighted PAGA Workweeks

¹² Settlement Agreement, §§ I.7, I.26, I.31, I.43, & I.45.

¹³ *Id.*, § II.12(a)(i).

¹⁴ *Id.*, § II.12(a)(ii).

by the Estimated PAGA Workweek Value to yield his or her estimated Individual PAGA Payment that he or she is eligible to receive under the PAGA Settlement.¹⁵

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: one-third (1/3) as wages, which will be reported on an IRS Form W-2; and the remaining two-thirds (2/3) as interest, penalties, and non-wage damages, which will be reported on an IRS Form 1099 by the Settlement Administrator.¹⁶ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").¹⁷ Defendant will pay the employer's share of payroll taxes, deductions, and contributions, if any, with respect to the wages portion of Individual Settlement Shares ("Defendant's Payroll Tax") separately and in addition to the Gross Settlement Amount.¹⁸ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on IRS Form 1099 (if applicable) by the Settlement Administrator.¹⁹

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and thereafter, shall be canceled.²⁰ All funds associated with such canceled checks will be transmitted by the Settlement Administrator to California Rural Legal Assistance, Inc., pursuant to Cal. Code Civ. Proc. § 384.²¹ The Parties have represented that they do not have any significant affiliation or involvement with the proposed *cy pres* recipient.²²

Any Class Member who wishes to opt out of the Class Settlement must submit a written request for exclusion ("Opt-Out Request") to the Settlement Administrator, by mail, on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator ("Response Deadline").²³ An Opt-Out Request must: (a) contain the

¹⁵ Settlement Agreement, § II.12(b).

¹⁶ *Id.*, § II.12(c).

¹⁷ *Id.*, §§ I.21 & II.12(c).

¹⁸ *Id.*, §§ II.12(c) & II.13.

¹⁹ *Ibid.*

²⁰ *Id.*, § II.12(f).

²¹ *Ibid.*

²² *Ibid.*

²³ *Id.*, §§ I.29, I.41, & II.6(b).

case name and number of the Action; (b) contain the full name, signature, address, telephone number, and last four digits of the Social Security number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁴ Any Class Member who submits a timely and valid Opt-Out Request will not be bound by the Class Settlement and will not be issued an Individual Settlement Payment.²⁵ However, if the Class Member is also an Aggrieved Employee, he or she will be bound to the release of the Released PAGA Claims and will still be issued an Individual PAGA Payment, irrespective of whether they submit an Opt-Out Request.²⁶

Any Settlement Class Member who wishes to make an objection to the Class Settlement may submit a timely and complete written objection (“Objection”) to the Settlement Administrator, by mail, on or before the Response Deadline.²⁷ The Objection must: (a) contain the case name and number of the Action; (b) contain the objector’s full name, signature, address, telephone number, and last four digits of Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁸ Settlement Class Members may also present their objection orally at the Final Approval Hearing, irrespective of whether they submit an Objection.²⁹

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by submitting a written letter (“Workweeks Dispute”) to the Settlement Administrator, by mail, on or before the Response Deadline.³⁰ The Workweeks Dispute must: (a) contain the case name and number of the Action; (b) contain the full name, signature, address, telephone number, and the last four digits of the Social Security number of the disputing Class

²⁴ Settlement Agreement, § II.29.

²⁵ *Id.*, § II.6(b).

²⁶ *Ibid.*

²⁷ *Id.*, §§ I.28 & II.6(a).

²⁸ *Id.*, § I.28.

²⁹ *Id.*, § I.6(a).

³⁰ *Id.*, §§ I.49 & II.6(d).

Member; (c) clearly state that the Class Member disputes the number of Non-exempt Workweeks, Salaried Workweeks, or both, credited to him or her and what he or she contends is the correct number to be credited to him or her; (d) include information and/or attach documentation demonstrating that the number of Non-exempt Workweeks, Salaried Workweeks, or both that he or she contends should be credited to him or her are correct; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³¹

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

³¹ Settlement Agreement, § I.49.

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

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

The Parties actively litigated the Actions since the Action was commenced on August 4, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.³²

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the matter, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.³³ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs’ employment records, a detailed sampling of Class Members’ time and pay records, Defendant’s Employee Handbook, company policy acknowledgements, job descriptions, Defendant’s operations and employment practices, forms (including, but not limited to, Defendant’s First Meal Period Waiver Form), procedures, and policies (including, but not limited to, Defendant’s policies regarding Employee Classifications, Work Schedule, Timekeeping, Meal and Rest Periods, Overtime, Expense Reimbursement, Travel Expense, and Dress Code), among other information and documents.³⁴ Class Counsel interviewed Plaintiffs and conducted investigations to gather facts and circumstances surrounding Plaintiffs’ and

³² Rose Decl., ¶¶ 12-14.

³³ *Id.*, ¶ 13.

³⁴ *Ibid.*

putative class members' employment and identified potential witnesses.³⁵ Counsel for the Parties met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, informal discovery, and the production of documents and data in the course of litigation and prior to the mediation.³⁶ Class Counsel also drafted pleadings and the mediation brief and prepared for and attended court appearances, mediation, and settlement negotiations, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Francis J. Ortman III, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁸ In the course of mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the cases and various aspects of the matter, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and avoid certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴¹ After conducting investigations, significant informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that

³⁵ Rose Decl., ¶ 13.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Id.*, ¶ 12.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 12, 17-19.

would attend further litigation.⁴²

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.⁴³ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' 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 law and enforcement, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁶

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

The Settlement, which provides for a Gross Settlement Amount of One Million One Hundred Thousand Dollars and No Cents (\$1,100,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁷ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴⁸ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the matter, the Settlement represents a fair, reasonable, and adequate recovery for the Class, the State of California, and the Aggrieved Employees.⁵⁰

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⁴² Rose Decl., ¶¶ 12, 17-19.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶¶ 12-14 & 17-19.

⁴⁶ *Id.*, ¶¶ 2-7.

⁴⁷ *Id.*, ¶¶ 12, 14, 15, & 22.

⁴⁸ *Id.*, ¶¶ 12-14.

⁴⁹ *Id.*, ¶¶ 17-19.

⁵⁰ *Id.*, ¶¶ 12, 14, & 22.

Assuming that the Class Counsel Fees and Costs, Service Awards, PAGA Penalties, 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 Five Hundred Forty-Six Thousand Dollars and No Cents (\$546,000.00).⁵¹ Additionally, 75% of the PAGA Penalties, which is \$75,000.00 out of \$100,000.000, will be distributed to the LWDA and 25% of the PAGA Penalties, which is \$25,000.00 out of \$100,000.00, will be distributed to the Aggrieved Employees.⁵² As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members and the PAGA Penalties will be fully paid out to the LWDA and Aggrieved Employees, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during the Class Period and the amount of each Aggrieved Employee's Individual PAGA Payment will be calculated based on his or her Workweeks during the PAGA Period.⁵³ 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, the State of California, and the Aggrieved Employees.⁵⁴ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, § 11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

⁵¹ Rose Decl., ¶ 15.

⁵² *Ibid.*

⁵³ Settlement Agreement, §§ II.12(a) and II.12(b).

⁵⁴ Rose Decl., ¶¶ 12, 14, & 22.

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

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted significant informal discovery and exchanged a large volume of documents, data, and
4 information in the course of litigation and prior to mediation.⁵⁵ The discovery and information
5 that Class Counsel obtained from Plaintiffs, Defendant, and other sources allowed Class Counsel
6 to develop valuation models in order to evaluate the potential value and merit of the claims, and
7 perform a complete evaluation of Defendant’s defenses thereto.⁵⁶ As outlined in the Declaration
8 of Alexandra Rose, Class Counsel performed an extensive analysis of each and every claim
9 pursuant to *Kullar* prior to entering into the Settlement.⁵⁷

10 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE**

11 For settlement purposes, the requisites for establishing class certification are met, and
12 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁸
13 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
14 one of a common or general interest, of many persons, or when the Parties are numerous, and it
15 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
16 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
17 “both [1] an ascertainable class and [2] a well-defined community of interest among class
18 members.” *Id.*

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact that predominate over any questions
21 affecting any individual Class Member. Further, Plaintiffs’ claims are typical of the claims of
22 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
23 Class. Finally, prosecution of separate actions by individual Class Members would create the
24 risk of inconsistent or varying adjudications, and a class action is superior to other available
25 means for the fair and efficient adjudication of the matter. The Class is amenable to class

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27 ⁵⁵ Rose Decl., ¶¶ 12-14 & 19.

28 ⁵⁶ *Id.*, ¶ 19.

⁵⁷ *Id.*, ¶¶ 12-14 & 17-19.

⁵⁸ Settlement Agreement, § I.5.

certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This matter involves a class of approximately four hundred and fifty (450) individuals.⁵⁹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding non-exempt employees in California and salaried sales employees who worked for Defendant in California as DSD Route Sales Representatives, or other similar positions, classified under the outside salesperson exemption, during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

⁵⁹ Rose Decl., ¶ 9.

1 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

7 Here, common issues of fact and law predominate as to each of the claims alleged and
8 asserted in the Operative Complaint. Based on the documents and information obtained through
9 informal discovery and exchange of information in the matter, Plaintiffs contend that Class
10 Members were subject to the same or similar job duties and uniform operations and employment
11 practices, policies, and procedures during the time period at issue.⁶⁰ Plaintiffs’ claims arise from
12 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiffs and the
13 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
14 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
15 to timely pay wages during employment and upon termination of employment, failing to provide
16 a day of rest, failing to provide complaint wage statements, failing to keep requisite payroll
17 records, and failing to reimburse necessary business-related expenses.⁶¹

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

22 Plaintiffs maintain that the outcome of this litigation would be determined by
23 Defendant’s alleged uniform operations and employment policies and procedures that applied
24 across its non-exempt employees in California and salaried sales employees who worked for
25 Defendant in California as DSD Route Sales Representatives, or other similar positions,
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27 ⁶⁰ Rose Decl., ¶ 17.

28 ⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

classified under the outside salesperson exemption, during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over a year, and was actively preparing the matter for class certification and trial.⁶⁴ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the matter and informal discovery. Class Counsel reviewed a large volume of documents and data⁶⁵ and 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 production of documents and data prior to mediation.⁶⁶ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁷

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

The Settlement establishes a Gross Settlement Amount of One Million One Hundred Thousand Dollars and No Cents (\$1,100,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$385,000.00 if the Gross Settlement Amount is \$1,100,000.00) and an amount not to exceed Seventeen Thousand Dollars and No Cents (\$17,000.00) for costs and expenses.⁶⁹ The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the matter, (2) the extensive time, effort and expense that Class Counsel dedicated to the matter, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel

⁶⁴ Rose Decl., ¶¶ 12-14.

⁶⁵ *Id.*, ¶ 13.

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶ 12.

⁶⁸ *Id.*, ¶¶ 2-7.

⁶⁹ Settlement Agreement, § I.7.

1 has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has
2 achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in
3 order to devote its time and efforts to this matter. The proposed Class Notice provides Class
4 Members with information about the amount allocated toward the Class Counsel Fees and Costs,
5 and that an award of the Class Counsel Fees and Costs will be sought, as provided for by the
6 Settlement.⁷⁰

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

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

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28 ⁷⁰ Settlement Agreement, Exh. A.

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

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⁷¹ Rose Decl., ¶ 20.

1 The proposed Class Notice⁷² describes the Settlement, the deadlines and procedures to
2 submit an Objection, Opt-Out Request, and/or Workweeks Dispute, and the date and time set
3 for the Final Approval Hearing.⁷³

4 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
5 *Newberg*, at § 8.29. “Sufficient information about the case should be provided to enable class
6 members to make an informed decision about their participation.” *Manual for Complex*
7 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
8 proceedings to date and the terms and conditions of the Settlement in an informative and
9 coherent manner.⁷⁴ The proposed Class Notice recognizes that the Court has not yet granted
10 final approval of the settlement.⁷⁵ The proposed Class Notice also apprises the Class Members
11 of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payment are
12 calculated and the number of Workweeks credited to them.⁷⁶

13 The proposed Class Notice satisfies all due process requirements and complies with the
14 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); Cal.
15 Rules of Court, Rule 3.766; *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*,
16 *supra*, 50 Cal.App.3d at 960 (“The essentials of due process of law in class suits would appear
17 to be afforded by fair representation in the assertion of claims of class members against the
18 opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should
19 approve the proposed Class Notice.

20 **IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE**
21 **SETTLEMENT ADMINISTRATOR**

22 The Parties have selected Phoenix to administer the Settlement.

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27 ⁷² Settlement Agreement, Exh. A.

28 ⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

The Settlement Administrator will mail the Class Notice in English and Spanish to each Class Member by First-Class U.S. mail.⁷⁷ The Settlement Administrator will receive and process Opt-Out Requests, Objections, and Workweeks Disputes.⁷⁸

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wages portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees and Costs, Service Awards, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁷⁹

The amount not to exceed Twelve Thousand Dollars and No Cents (\$12,000.00) has been allocated toward Settlement Administration Costs, and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁰

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 reasonably ascertainable Class Members based on Defendant's records.⁸¹

Within twenty-one (21) calendar days after the date of entry of an order of the Court preliminarily approving the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) last-known full name; (2) mailing

⁷⁷ Settlement Agreement, § II.5.

⁷⁸ *Id.*, § 6.

⁷⁹ Settlement Agreement, § I.45; Rose Decl., ¶ 16.

⁸⁰ Settlement Agreement, § II.5.

⁸¹ *Id.*, § I.9.

address; (3) Social Security number; (4) dates worked as a non-exempt employee or salaried employee of Defendant as a DSD Route Sales Representative, or other similar position, classified under the outside salesperson exemption in the State of California during the Class Period, (4) and such other information as is necessary for the Settlement Administrator to calculate Workweeks (collectively, “Class List”).⁸²

Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and mail the Class Notice in English and Spanish to the Class Members via First-Class U.S. Mail.⁸³ If any mailed Class Notices are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will perform one “skip-trace” or similar search and re-mail the same Class Notice within five (5) calendar days to any new addresses disclosed by such search via First-Class regular U.S. Mail indicating on the Class Notice the date it was re-mailed, and including the extended date of the Response Deadline.⁸⁴ In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fifteen (15) calendar days from the original Response Deadline.⁸⁵

Within thirty (30) calendar days of the Effective Date, Defendant will deposit the Gross Settlement Amount, including an amount sufficient for Defendant’s Payroll Tax, if any, into a Qualified Settlement Fund to be established by the Settlement Administrator.⁸⁶ Within seven (7) calendar days after the Defendant deposits these amounts, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Individual PAGA Payments to Aggrieved Employees; (3) the Service Awards to Plaintiffs; (4) Class Counsel Fees and Costs to Class Counsel; (5) the LWDA Payment to the LWDA; and (6)

⁸² Settlement Agreement, §§ I.8 & II.4.

⁸³ *Id.*, § II.5.

⁸⁴ *Ibid.*

⁸⁵ *Id.*, § I.41.

⁸⁶ *Id.*, § II.13.

Settlement Administration Costs to itself.⁸⁷

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and thereafter, shall be canceled.⁸⁸ All funds associated with such canceled checks will be transmitted by the Settlement Administrator to California Rural Legal Assistance, Inc., pursuant to Cal. Code Civ. Proc. § 384.⁸⁹

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR SERVICE AWARDS

Plaintiffs Lovett, Booze, Sudduth, and Girvin respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Service Awards in amounts up to Ten Thousand Dollars and No Cents (\$10,000.00) each (for a combined total of \$40,000.00).⁹⁰ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Service Awards are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹¹ Plaintiffs were available

⁸⁷ Settlement Agreement, § II.13.

⁸⁸ *Id.*, § II.12(f).

⁸⁹ *Ibid.*

⁹⁰ *Id.*, § I.43.

⁹¹ Rose Decl., ¶ 21; Declaration of Candon Lovett in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Lovett Decl."), ¶¶ 3-4; Declaration of Kenneth Booze in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Booze Decl."), ¶¶ 3-4; Declaration of DeArtus Sudduth in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Sudduth Decl."), ¶¶ 3-4; Declaration of Jonathan Girvin in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Girvin Decl."), ¶¶ 3-4.

whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹² Accordingly, it is appropriate and just for Plaintiffs to each receive a Service Award for their services in the matter, in addition to their individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes only; preliminary appoint and designate Edwin Aiwasian, Arby Aiwasian, Joanna Ghosh, and Alexandra Rose of Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiffs Candon Lovett, Kenneth Booze, DeArtis Sudduth, and Jonathan Girvin as Class Representatives; appoint Phoenix Settlement Administrators as the Settlement Administrator; preliminarily approve the allocations for Class Counsel Fees and Costs, Service Awards, PAGA Penalties, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: March 15, 2023

LAWYERS for JUSTICE, PC

By:



Alexandra Rose
Attorneys for Plaintiffs

⁹² Rose Decl., ¶ 21; Lovett Decl., ¶¶ 3-5; Booze Decl., ¶¶ 3-5; Sudduth Decl., ¶¶ 3-5; Girvin Decl., ¶¶ 3-5.