

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Brian J. St. John (SBN 304112)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

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

Plaintiff,

vs.

CONGREGATIONAL HOMES, INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 21STCV29229

Honorable William F. Highberger
Department SSC10

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Brian J. St. John); Declaration of
Proposed Class Representative (Keith
Pender); and [Proposed] Order filed
concurrently herewith]

Date: July 10, 2023
Time: 10:30 a.m.
Department: SSC10

Complaint Filed: August 9, 2021
FAC Filed: April 19, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that on July 10, 2023 at 10:3 a.m. or as soon thereafter as the matter may be heard before the Honorable William F. Highberger in Department SSC10 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Keith Pender (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Settlement,” “Settlement Agreement,” or “Agreement,”) attached as “**EXHIBIT 1**” to the Declaration of Brian J. St. John, 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 Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Enhancement Payment to Plaintiff, and Settlement Administrator Payment to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Keith Pender as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Proposed Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Enhancement Payment for Plaintiff, and Settlement Administrator Payment to Settlement Administrator.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement 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 (Brian J. St. John) and Proposed Class Representative (Keith Pender) 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: May 22, 2023

LAWYERS for JUSTICE, PC

By: _____



Brian J. St. John
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Keith Pender (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Settlement” or “Agreement,”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Congregational Homes, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of One Million Seven Hundred and Fifty-Four Thousand, Eight Hundred Dollars and Zero Cents (\$1,754,800.00).¹ The Maximum Settlement Amount includes the following: (1) Settlement Shares to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Enhancement Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff³; (3) the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or \$614,180.00, and reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)⁴; (4) the Settlement Administrator Payment to the Settlement Administrator in the amount not to exceed Fourteen Thousand Dollars and Zero Cents (\$14,000.00);⁵ and (5) the amount of One Hundred Thirty Thousand Dollars and Zero Cents (\$130,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$97,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$32,500.00) will be distributed to all current and former non-exempt employees who worked for Defendant in California during the PAGA Period (“PAGA Group” or “PAGA Group Members”).⁶

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Brian J. St. John (“St. John Decl.”), § I.19.

² *Id.*, § I.34.

³ *Id.*, §§ I.9 & IV.70(a).

⁴ *Id.*, §§ I.5, I.6 & IV.70(b).

⁵ *Id.*, §§ I.33 & IV.70(d).

⁶ *Id.*, §§ I.26 & IV.70(c). “PAGA Period,” means the period of time from August 9, 2017 through October 31, 2022. *See id.*, § I.27.

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

All current and former non-exempt employees who worked for Defendant in California during the period of time from August 9, 2017 through October 31, 2022 (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately seven hundred and seventy-three (773) individuals.⁸

Class Members who have not submitted a complete, valid, and timely Request for Exclusion (“Participating Class Member”) will receive a share of the Net Settlement Amount (“Settlement Share”) on a *pro rata* basis based upon any week in which a Class Member actually performed paid work for Defendant during the Class Period as a non-exempt employee (“Workweeks”).⁹

The Settlement resolves the Class Released Claims of Plaintiff and Participating Class Members, and the PAGA Released Claims of Plaintiff, PAGA Group Members, and the State of California, against the Released Parties.¹⁰

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a “life care” community that offers on-campus independent, assisted living, skilled nursing, and memory care communities. Plaintiff Keith Pender is a former employee of Defendant.

On August 9, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

⁷ Settlement Agreement, § I.2. “Class Period” is defined as the period of time from August 9, 2017 through October 31, 2022. *See id.*, § I.8.

⁸ St. John Decl., ¶ 8.

⁹ Settlement Agreement, §§ I.29, I.34 & I.36.

¹⁰ *See id.* at § V.75, for the full scope of the “Class Released Claims,” *id.* at § V.76, for the full scope of the “PAGA Released Claims,” and *id.* at § V.77 for the definition of the “Released Parties.”

1 On January 27, 2023, Plaintiff submitted notice to the California Labor & Workforce
2 Development Agency (“LWDA”) and Defendant of her intent to pursue civil penalties under
3 the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.* (“LWDA Exhaustion
4 Letter”).

5 On April 19, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages
6 & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*
7 (“Operative Complaint”).

8 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
9 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
10 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
11 and rest periods and associated premium pay, failing to timely pay wages during employment
12 and upon termination of employment, failing to provide compliant wage statements, failing to
13 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
14 thereby engaged in unfair business practices in violation of California Business and Professions
15 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff
16 contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
17 (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

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

22 The Parties have actively litigated the Action since it was commenced on August 9,
23 2021. On September 1, 2022, the Parties participated in a formal, full-day mediation conducted
24 by Lynn Frank, Esq., a well-regarded mediator experienced in mediating complex labor and
25 employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached
26 the Settlement described herein to resolve the Action in its entirety.

27 ///

28 ///

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

2 Under the terms of the Settlement, Defendant will pay a Maximum Settlement Amount
3 to resolve the Class Released Claims of Plaintiff and the Class Members who have not submitted
4 a complete, valid, and timely Request for Exclusion (i.e., Participating Class Member) and the
5 PAGA Released Claims of Plaintiff, PAGA Group Members, and the State of California, with
6 respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount
7 will be calculated by deducting the following amounts from the Maximum Settlement Amount:
8 (1) attorneys' fees in an amount not to exceed Six Hundred Fourteen Thousand One Hundred
9 Eighty Dollars and Zero Cents (\$614,180.00) (i.e., up to 35% of the Maximum Settlement
10 Amount) and reimbursement of costs and expenses in an amount not to exceed Twenty-Five
11 Thousand Dollars (\$25,000.00) to Class Counsel (collectively referred to as the "Class Counsel
12 Fees Payment and Class Counsel Litigation Expenses Payment"); (2) settlement administrator
13 payment, which are currently estimated not to exceed Fourteen Thousand Dollars and Zero
14 Cents (\$14,000.00) to the Settlement Administrator ("Settlement Administrator Payment"); (3)
15 payment PAGA Penalties (\$130,000.00), of which 75% will be distributed to the LWDA (i.e.,
16 \$97,500.00) ("LWDA Payment") and the remaining 25% (i.e., \$32,500.00) will be distributed
17 to PAGA Group Members ("PAGA Employee Payment"); and (4) payment in the amount of up
18 to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Keith Pender ("Class
19 Representative Enhancement Payment").¹² The Parties have agreed to retain Phoenix Settlement
20 Administrators ("Phoenix Settlement Administrators" or "Settlement Administrator") to handle
21 the notice and settlement administration process.

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

- 25 a. The Settlement Administrator shall determine the preliminary, estimated value of a
26 Workweek ("Preliminary Workweek Value") by taking the Net Settlement Amount
and dividing it by the sum of all Class Members' Individual Workweeks.¹³

27 ¹¹ Settlement Agreement, §§ V.75 & V76.

28 ¹² *Id.*, §§ I.5, I.6, I.9, I.26, I.33, IV.70(a), IV.70(b), IV.70(c) & IV.70(d).

¹³ *Id.*, § IV.65(b).

- b. After the Effective Date, the Settlement Administrator shall determine the final value of a Workweek (“Final Workweek Value”) by taking the Net Settlement Amount and dividing it by the sum of all Participating Class Members’ Individual Workweeks.¹⁴

The Parties have agreed that the Settlement Administrator shall determine the value of a Pay Period (“Pay period Value”) by taking the PAGA Payment amount and dividing it by the sum of all PAGA Group Members’ Pay Period.¹⁵ The Settlement Administrator shall assign to each PAGA Group Member an PAGA Payment Share which shall be equal to the Pay Period Value multiplied by each PAGA Group Member’s Individual Pay Periods.¹⁶

Each Participating Class Member’s Settlement Share will be allocated as follows: ten percent (10%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining ninety percent (90%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁷ One hundred percent (100%) of each PAGA Payment Share shall represent civil penalties.¹⁸ The portion of the Settlement Share shall representing wages shall be paid to each Participating Class Member subject to the any applicable employee-side tax withholdings and deductions.¹⁹ Defendant’s payment of the Employer’s Payroll Taxes attributable to the Settlement Share payments constituting wages will be made separately, and shall not come from the Maximum Settlement Amount.²⁰

All Settlement Share and/or PAGA Payment Share checks that are not cashed, deposited, or otherwise negotiated, will be cancelled after one hundred and eighty (180) calendar days after first issuance, or in the case of a re-mailed check, will be cancelled within ninety (90) calendar days of re-issuance, and funds from such cancelled checks shall be transmitted by the Settlement Administrator to the Controller of the State of California.²¹

Class Members who wish to exclude themselves from the Class Settlement (“opt out” of the Settlement) must submit to the Settlement Administrator, not later than forty-five (45) days after the date that the Settlement Administrator first mails the Class Notices (“Response

¹⁴ Settlement Agreement, § IV.65(b).

¹⁵ *Id.*, § IV.66(b).

¹⁶ *Id.*, § IV.66(c).

¹⁷ *Id.*, § IV.67.

¹⁸ *Id.*, § IV.68.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Id.*, § III.62.

Deadline”), an a written request to be excluded from the Class Settlement (“Request for Exclusion”).²² To be valid, Requests for Exclusion must be completed in full, signed, and returned to the Settlement Administrator no later than the Response Deadline.²³ To be valid, Class Members must complete, sign, date, and timely return a Request for Exclusion to the Settlement Administrator, setting forth their (i) full name, (ii) address, (iii) the Action name and case number (i.e., of *Pender v. Congregational Homes, Inc.*, Los Angeles, Case No. 21STCV29229), and (iii) the following statement or a similar statement: “I wish to exclude myself from the class settlement reached in the matter of *Pender v. Congregational Homes, Inc.* I understand that by excluding myself, I will not receive any money from the class settlement reached in this matter.”²⁴ A Class Member who timely submits a valid Request for Exclusion will not participate in, or be bound by, the Class Settlement and will not be issued any payment pursuant to the Class Settlement, and will not have any right to object, appeal, or comment thereon.²⁵ All PAGA Group Members will be bound to the PAGA Settlement, will release the PAGA Released Claims, and will be issued their PAGA Payment Share regardless of their decision to participate in the Class Settlement.²⁶

Class Members who do not request exclusion from the Class Settlement and who wish to object to the Class Settlement may submit a written (“Objection”) to the Settlement Administrator, not later than the Response Deadline, which sets forth the grounds for the objection.²⁷ The written Objection must (i) state the Class Member’s full name, (ii) state the Class Member’s address, (iii) state the Action name and case number (i.e., of *Pender v. Congregational Homes, Inc.*, Los Angeles, Case No. 21STCV29229), (iv) state the dates of the Class Member’s employment with Defendant, (v) state the basis for each objection in clear and concise terms, (vi) state the full name, address, and telephone number of any legal representative of the Class Member (vii) attach any documents upon which the Objection is based, and (viii)

²² Settlement Agreement, § III.51(b).

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ *Id.*, § III.51(c).

1 state whether the Class Member intends to appear at the Final Approval Hearing.²⁸ In addition
2 to, or in lieu of a written Objection in the manner and by the deadline specified herein, the Class
3 Member may appear at the Final Approval Hearing to state their objection to the Class
4 Settlement, orally.²⁹

5 If a Class Member and/or PAGA Group Member disputes the number of his or her
6 Individual Workweeks and/or PAGA Group Member must, by the Response Deadline, mail a
7 written dispute (“Workweeks or Pay Periods Dispute”) to the Settlement Administrator.³⁰ A
8 Workweeks or Pay Periods Dispute must include the Class Member’s (i) full name, (ii) address,
9 (iii) the Action name and case number (i.e., of *Pender v. Congregational Homes, Inc.*, Los
10 Angeles, Case No. 21STCV29229, (iv) a statement of the number of Workweeks and/or Pay
11 Periods that he or she contends were worked, and (v) include any documentation the Class
12 Member and/or PAGA Group Member has to support their contention.³¹

13 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
14 **SETTLEMENTS**

15 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
16 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
17 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
18 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
19 or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.*
20 (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and
21 reasonable, whether certification of the class was proper, and whether the attorney fee award
22 was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s
23 decision to approve a class action settlement may be reversed only upon a strong showing of
24 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
25 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

26
27 ²⁸ Settlement Agreement, § III.51(c).

28 ²⁹ Ibid.

³⁰ *Id.*, § III.53.

³¹ Ibid.

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

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

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

V. 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).

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 Action since it was commenced on August 9, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³²

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.³³ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members’ time and pay data, Defendant’s Employee Handbook, company policy acknowledgements (Acknowledgment of Receipt of MPN Information, Acknowledgement Form, Statement Acknowledging Requirement to Report Suspected Abuse of Dependent Adults and Elders), internal memoranda, job descriptions, new hire orientation checklists, operations

³² St. John Decl., ¶¶ 11-13.

³³ *Id.*, ¶ 12.

1 and employment practices, forms, procedures, and policies (including but not limited to, Direct
2 Deposit Agreement Form, Meal Period Agreement, Company Issued Cell Phone Policy,
3 Photography Model Release), among other information and documents.³⁴ Class Counsel
4 interviewed Plaintiff and other Class Members to gather facts and to identify potential
5 witnesses.³⁵ Counsel for the Parties also met and conferred on numerous occasions, e.g., to
6 discuss issues relating to the pleadings and the production of documents and data prior to the
7 mediation.³⁶ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended
8 court proceedings, settlement negotiations, and the mediation, among other tasks.³⁷

9 The Parties engaged in extensive settlement negotiations and participated in a formal,
10 full-day mediation conducted by Lynn Frank, Esq., a well-respected mediator experienced in
11 mediating complex labor and employment matters.³⁸ In the course of litigation and in connection
12 with mediation and settlement discussions, the Parties exchanged class information and engaged
13 in an intensive discussion regarding their evaluations of the case and various aspects of the case,
14 including but not limited to, the risks and delays of further litigation, the risks to the Parties of
15 proceeding with class certification and/or representative adjudication, the law relating to off-
16 the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative
17 claims, as well as the evidence produced and analyzed, and the possibility of appeals, among
18 other things.³⁹ During all settlement discussions, the Parties conducted their negotiations at
19 arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was acceptable to both
20 Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the
21 merits and at certification, and Plaintiff and Class Counsel believed that they would be able to
22 obtain class certification and prevail at trial.⁴¹ After conducting investigations, significant
23 informal discovery, extensive settlement negotiations, and with the aid of the mediator's
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25 ³⁴ St. John Decl., ¶ 12.

26 ³⁵ Ibid.

27 ³⁶ Ibid.

28 ³⁷ Ibid.

³⁸ *Id.*, ¶ 11.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ *Id.*, ¶¶ 11, 16-18.

1 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
2 issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that
3 would attend further litigation.⁴²

4 The Settlement takes into account the strengths and weaknesses of each side's position
5 and the uncertainty of how the case might have concluded at certification and trial.⁴³ The Parties
6 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴
7 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
8 the Class Members' employment with Defendant and performed significant research into the
9 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
10 rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto,
11 as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this large volume
12 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
13 employment class actions, including significant experience in California wage-and-hour
14 litigation.⁴⁶

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

16 The Settlement, which provides for a Maximum Settlement Amount of One Million,
17 Seven Hundred and Fifty-Four Thousand, Eight Hundred Dollars and Zero Cents
18 (\$1,754,800.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁷ The
19 Settlement was calculated using the information and data uncovered during litigation, case
20 investigation, as well as the informal exchange of information.⁴⁸ The Settlement takes into
21 account the potential risks and rewards inherent in any case and, in particular, in the case at
22 issue.⁴⁹ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement
23 represents a fair, reasonable, and adequate recovery for the Class.⁵⁰

24 _____
25 ⁴² St. John Decl., ¶¶ 11, 16-18.

26 ⁴³ Ibid.

27 ⁴⁴ Ibid.

28 ⁴⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁶ *Id.*, ¶¶ 6-7.

⁴⁷ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 16-18.

⁵⁰ *Id.*, ¶¶ 11, 13, & 21.

Assuming that the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Enhancement Payment, PAGA Penalties, and Settlement Administrator Payment 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 Nine Hundred Sixty-One Thousand Six Hundred Twenty Dollars and Zero Cents (\$961,620.00).⁵¹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Settlement Share will be calculated based on his or her Workweeks and the amount of each PAGA Group Member's PAGA Payment Share will be based on his or her Pay Periods.⁵² 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.⁵³ 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.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a large volume of documents, data, and information in the course of litigation and in connection with mediation and settlement

⁵¹ St. John Decl., ¶ 14.

⁵² Settlement Agreement, § III.53.

⁵³ St. John Decl., ¶¶ 11, 13, & 21.

negotiations.⁵⁴ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁵ As outlined in the Declaration of Brian J. St. John, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁷ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

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

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⁵⁴ St. John Decl., ¶¶ 11-13 & 18.

⁵⁵ *Id.*, ¶ 18.

⁵⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, § IV.64.

1 **A. The Class Is Ascertainable and Sufficiently Numerous.**

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

9 This action involves a class of approximately seven hundred and seventy-three (773)
10 individuals.⁵⁸ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
11 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
12 requirement as joinder is not practical at that point). Further, all Class Members can and will be
13 identified by Defendant to the Settlement Administrator through a review of Defendant’s
14 employment records regarding non-exempt employees in California during the Class Period. As
15 such, the Class is ascertainable and sufficiently numerous.

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

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

26 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
27 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155

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⁵⁸ St. John Decl., ¶ 9.

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁵⁹ Plaintiff’s claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁰

Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶¹ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶²

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

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⁵⁹ St. John Decl., ¶ 16.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

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

Class Counsel has litigated the matter for over two years, and was actively preparing the matter for class certification and trial.⁶³ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery. Class Counsel reviewed a large volume of documents and data⁶⁴ and also interviewed and obtained information from Defendant, Plaintiff, and other sources, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to mediation.⁶⁵ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁶

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁷

The Settlement establishes a Maximum Settlement Amount of One Million, Seven Hundred and Fifty-Four Thousand, Eight Hundred Dollars and Zero Cents (\$1,754,800.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$614,180.00) and an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) for costs and expenses.⁶⁸ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class

⁶³ St. John Decl., ¶¶ 11-13.

⁶⁴ *Id.*, ¶ 12.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 6-7.

⁶⁸ Settlement Agreement, §§ IV.70(b).

Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and that an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.⁶⁹

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

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

⁶⁹ 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.⁷⁰

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice⁷¹ describes the Settlement, the deadlines and procedures to

⁷⁰ St. John Decl., ¶ 19.

⁷¹ Settlement Agreement, Exh. A.

mail and Objection to the Class Settlement, Request for Exclusion from the Class Settlement, and/or Workweeks and/or Pay Periods Dispute, and the date and time set for the Final Approval Hearing.⁷²

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Settlement Share is calculated and the number of Workweeks credited to them.⁷⁵

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

IX. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

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

The Settlement Administrator will mail the Class Notice to all identified Class Members by First-Class U.S. mail.⁷⁶ If a Class Notice is returned by the U.S. Postal Service as undeliverable on or before the Response Deadline with a forwarding address, the Settlement

⁷² Settlement Agreement, Exh. A.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Id.*, § III.50(b).

1 Administrator will promptly re-mail the Class Notice to the Class Member using the forwarding
2 address.⁷⁷ If a Class Notice is returned by the U.S. Postal Service as undeliverable on or before
3 the Response Deadline without a forwarding address, the Settlement Administrator will
4 promptly, and not later than five (5) business days from receipt of the returned Class Notice,
5 search for a more current address for the Class Member and re-mail the Class Notice to the Class
6 member for whom new addresses are found.⁷⁸ Any such Class Members who failed to receive a
7 Class Notice, or who were subject to a re-mailing of the Class Notice shall have their Response
8 Deadline extended by fifteen (15) days from the original deadline.⁷⁹ The Settlement
9 Administrator will receive and process Requests for Exclusion, Objections, and Workweeks or
10 Pay Periods Disputes.⁸⁰

11 The Settlement Administrator's duties will include (i) calculating Settlement Shares and
12 PAGA Payment Shares; (ii) preparing, printing, and mailing the Class Notice to all Class
13 Members; (iii) using reasonable measures to contact all Class Members, including conducting a
14 National Change of Address search on all Class Members before mailing the Class Notice to
15 each Class Member's address; (iv) re-mailing the Class Notice; (v) setting up a toll-free
16 telephone number to receive calls from Class Members; (vi) receiving Requests for Exclusions
17 and Objections to the Class Settlement; (vii) providing the Parties with weekly status reports
18 about the delivery of Class Notices and any Requests for Exclusion and Objections received;
19 (viii) issuing the checks to effectuate the payments due under the Settlement; (ix) using
20 reasonable measures to deliver issued checks to Participating Class Members; and (x) otherwise
21 administering the Settlement pursuant to the Settlement Agreement including collecting from
22 Defendant and paying and reporting on behalf of Defendant, the Employer's Payroll Taxes to
23 the appropriate taxing agency.⁸¹ The Settlement Administrator Payment are currently estimated
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25

26 ⁷⁷ Settlement Agreement, § III.50(c).

27 ⁷⁸ Ibid.

28 ⁷⁹ Ibid.

⁸⁰ *Id.*, §§ III.51(b), III.51(c), & III.53.

⁸¹ *Id.*, § IV.72; St. John Decl., ¶ 15.

to be Fourteen Thousand Dollars and Zero Cents (\$14,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁸²

Accordingly, Plaintiff respectfully requests that the Court appoint Phoenix Settlement Administrators as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members 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, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸³

Within twenty-one (21) calendar days after the Motion for Preliminary Approval is granted, Defendant will provide the Settlement Administrator the "Class Members' Data," which will consist of an electronic database containing (i) each Class Member's last-known first and last name, (ii) the last-known mailing address, (iii) the Class Member's Social Security number or Tax ID, (iv) the Class Member's total number of Individual Workweeks, and (v) the Class Member/PAGA Group Member's total number of Individual Pay Periods, if applicable.⁸⁴

Within seven (7) business days after receiving the Class Members' Data, or as soon thereafter as it is able to do so, the Settlement Administrator will conduct a search of the U.S. Postal Services' National Change of Address ("NCOA") database to attempt to locate more recent addresses than those included in the Class Members' Data (and use any more recent addresses that are located), and mail the Class Notice to all identified Class Members via first-class U.S. Mail using the mailing address information wither obtain through the NCOA search or provided by Defendant.⁸⁵ If a Class Notice is returned by the U.S. Postal Service as undeliverable on or before the Response Deadline with a forwarding address, the Settlement

⁸² Settlement Agreement, § IV.72.

⁸³ *Id.*, § III.50.

⁸⁴ *Id.*, § III.50(a).

⁸⁵ *Id.*, § III.50(b).

1 Administrator will promptly re-mail the Class Notice to the Class Member using the forwarding
2 address.⁸⁶ If a Class Notice is returned by the U.S. Postal Service as undeliverable on or before
3 the Response Deadline without a forwarding address, the Settlement Administrator will
4 promptly, and later than five (5) business days from receipt of the returned Class Notice, search
5 for a more current address for the Class Member and re-mail the Class Notice to the Class
6 Members for whom new addresses are found.⁸⁷ Class Members will have until the applicable
7 Response Deadline to mail a Request for Exclusion, Workweeks and Pay Period Disputes,
8 and/or an Objection.⁸⁸

9 The Settlement Administrator shall establish a settlement account (“Settlement
10 Account”) within ten (10) days of the Effective Date and notify the Parties when the Settlement
11 Account has been established.⁸⁹ The Settlement Administrator shall also provide Defendant
12 with an itemized statement for the total amount to be deposited into the Settlement Account,
13 which shall equal the Maximum Settlement Amount and Employer’s Payroll Taxes (“Settlement
14 Account Deposit”).⁹⁰ Within ten (10) days after receiving notification of the Settlement Account
15 and statement for the Settlement Account Deposit, Defendant shall pay into the Settlement
16 Account an amount equal to the Settlement Account Deposit.⁹¹ Within fourteen (14) calendar
17 days of its receipt of the Settlement Account Deposit, the Settlement Administrator will
18 distribute: (1) the Settlement Shares to Participating Class Members; (2) the Court-approved
19 Class Representative Enhancement Payment to Plaintiff; (3) the Court-approved Class Counsel
20 Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel; (4) the PAGA
21 Employee Payment to PAGA Group Members; (5) the LWDA Payment to the LWDA; and (6)
22 the Court-approved Settlement Administrator Payment to itself.⁹²

23 All Settlement Share and/or PAGA Payment Share checks that are not cashed, deposited,
24 or otherwise negotiated, will be cancelled after one hundred and eighty (180) calendar days after

25 ⁸⁶ Settlement Agreement, § III.50(c).

26 ⁸⁷ Ibid.

27 ⁸⁸ *Id.*, §§ III.51(b), III.51(c), & III.53.

28 ⁸⁹ *Id.*, § III.58.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² *Id.*, §§ III.59, III.60, III.70(a), III.70(b).

first issuance, or in the case of a re-mailed check, will be canceled within ninety (90) calendar days of re-issuance, and funds from such cancelled checks shall be transmitted by the Settlement Administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*⁹³

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE ENHANCEMENT PAYMENT

Plaintiff Keith Pender respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Enhancement Payment in an amount up to Ten Thousand Dollars and Zero Cents (\$10,000.00).⁹⁴ 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 Class Representative Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁵ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁹⁶ Accordingly, it is appropriate and just for Plaintiff to receive an Class Representative Enhancement Payment for his services on behalf of the Class, PAGA Group Members, and the State of California, in addition to his Settlement Share.

⁹³ Settlement Agreement, § III.62.

⁹⁴ *Id.*, § IV.70(a).

⁹⁵ St. John Decl., ¶ 20; Declaration of Keith Pender in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Pender Decl."), ¶ 4.

⁹⁶ St. John Decl., ¶ 20; Pender Decl., ¶¶ 3-6.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Keith Pender as Class Representative; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Enhancement Payment, PAGA Penalties, and Settlement Administrator Payment; 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 months; and permit the filing of a memorandum that exceeds the page limit.

Dated: May 22, 2023

LAWYERS *for* JUSTICE, PC

By:



Brian J. St. John
Attorneys for Plaintiff