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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

SHANNON BOSTIC, SOCORRO
GAMBOA, individually, and on behalf of
other members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

LAMP COMMUNITY, an unknown business
entity; LAMP, INC., a California
corporation; THE PEOPLE CONCERN, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21STCV07381

Honorable Maren E. Nelson
Department SSC17

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND RENEWED 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 (Socorro
Gamboa); and [Proposed] Order filed
concurrently herewith]

Date: April 9, 2024
Time: 9:00 a.m.
Department: SSC17

Complaint Filed: February 24, 2021
FAC Filed: May 12, 2022
SAC Filed: June 20, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 9, 2024 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Maren E. Nelson in Department SSC17 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Socorro Gamboa (“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 Second Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement 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, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Socorro Gamboa as Class Representative;
- Preliminarily appointing Arby Aiwezian, Joanna Ghosh, Brian J. St. John, and Jeremy Stern 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 Atticus Administration, LLC 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 Attorneys' Fees and Costs to Class Counsel, Enhancement Payment for Plaintiff, and Settlement Administration Costs to the 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 (Socorro Gamboa) , 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: January 16, 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 Socorro Gamboa (“Plaintiff,” “Plaintiff Gamboa,” or “Class Representative”) seeks preliminary approval of the Second Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement 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 The People Concern, successor by merger to Lamp, Inc., dba Lamp Community (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this matter for a Total Settlement Amount of One Million Five Hundred Thousand dollars and no cents (\$1,500,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of Seven Thousand Five Hundred Dollars and no cents (\$7,500.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of one-third (33.33%) of the Total Settlement Amount, (i.e. \$500,000.00 if the Total Settlement Amount remains 1,500,000.00), and reimbursement of litigation costs and expenses not to exceed twenty five thousand dollars and no cents (\$25,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed fifteen thousand dollars and no cents (\$17,000.00)⁵; and (5) the amount of Two Hundred Thirty-Five Thousand Dollars and no cents (\$235,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$176,250.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e.,

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Brian J. St. John (“St. John Decl.”), ¶ 10.mm. If it is determined that the total number of Workweeks during the Class Period exceed 90,000 by more than ten percent (10%) (i.e., exceeds 99,000), then, the Total Settlement Amount will be increased on a proportional basis by the same number of percentage points above ten percent (10%) by which the actual number of Workweeks exceeds 99,000. *Id.*, ¶ 42.

² *Id.*, ¶ 10.r.

³ *Id.*, ¶ 15.

⁴ *Id.*, ¶ 14.

⁵ *Id.*, ¶ 16.

\$58,750.00) will be distributed to all Class Members employed by Defendant at any time during the PAGA Period (“PAGA Employees”).⁶

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

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately one thousand and eighty-nine (1,189) individuals.⁸

Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period (“Workweeks”).⁹

The Settlement resolves the Released Class Claims of Plaintiff and Settlement Class Members and the Released PAGA Claims of the State of California and PAGA Employees, 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.

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⁶ Settlement Agreement, ¶ 17. “PAGA Period” is defined as the time period from February 19, 2020, through January 28, 2022. *See id.*, ¶ 10.z.

⁷ *Id.*, ¶ 10.d. “Class Period” is defined as the time period from February 24, 2017, through January 28, 2022. *See id.*, ¶ 10.f.

⁸ St. John Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 10.s, 10.ll, 10.nn, & 18.

¹⁰ *See id.* at ¶ 10.ee, for the full scope of the “Released Class Claims,” *id.* at ¶ 10.ff, for the full scope of the Released PAGA Claims, and *id.* at ¶ 10.gg for the definition of the “Released Parties.”

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

2 Defendant is a social service agency that was formed as a result of a merger between two
3 long standing social service organizations based in Los Angeles County: Ocean Park
4 Community Center and The Lamp Community. Headquartered in Los Angeles, Defendant is a
5 501(c)(3) non-profit organization that provides an integrated system of care to homeless
6 individuals, domestic violence survivors, and challenged youth. Defendant's services include
7 outreach, interim housing, mental and medical health care, and domestic violence services.
8 Defendant employees over 100 employees including case managers, accounts receivable
9 specialists, certified nursing assistants, client services specialists, counselor advocates, and
10 maintenance technicians. Socorro Gamboa is a former employee of Defendant.

11 On February 19, 2021, Shannon Bostic ("Former Plaintiff Bostic") provided written
12 notice to the Labor and Workforce Development Agency by online submission and to Defendant
13 by certified mail, of the specific provisions of the California Labor Code that Defendant violated
14 ("PAGA Letter").

15 On February 24, 2021, Former Plaintiff Bostic filed a Class Action Complaint for
16 Damages in the Los Angeles County Superior Court ("Court"), thereby commencing the above-
17 captioned lawsuit ("Action").

18 On April 27, 2021, Former Plaintiff Bostic filed a Complaint for Enforcement Under the
19 Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* entitled *Shannon Bostic*
20 *v. Lamp Community, et al.* in the Superior Court of California for the County of Los Angeles,
21 Case No. 21CMCV00097 ("*Bostic PAGA Action*").

22 On May 28, 2021, Defendant filed an Answer to Former Plaintiff Bostic's PAGA
23 Complaint.

24 On July 7, 2021, Defendant filed an Answer to Former Plaintiff Bostic's Class Action
25 Complaint.

26 On May 12, 2022, Former Plaintiff Bostic filed a First Amended Consolidated Class
27 Action Complaint for Damages & Enforcement Under the Private Attorneys General Act,
28

1 California Labor Code § 2698, *Et Seq.* in the Action, which added the PAGA claims alleged in
2 the *Bostic* PAGA Action.

3 Together, the Action and *Bostic* PAGA Action are referred to as the “Actions”.

4 On June 1, 2022, Defendant filed an Answer to Plaintiff’s First Amended Consolidated
5 Complaint.

6 On September 29, 2022 Former Plaintiff Bostic filed a Motion for Preliminary Approval
7 of Class Action Settlement (“Original Motion for Preliminary Approval”) and supporting
8 documents seeking preliminary approval of the Joint Stipulation of Class Action and PAGA
9 Settlement (“Original Agreement”) entered into by Former Plaintiff Bostic and Defendant.

10 On May 31, 2023, Plaintiff Gamboa provided written notice to the LWDA by online
11 submission and to Defendant by Certified Mail, of her intent to seek civil penalties for
12 Defendant’s alleged violations of the California Labor Code (“*Gamboa* PAGA Letter”).
13 Together, the *Bostic* PAGA Letter and the *Gamboa* PAGA Letter are referred to as the “PAGA
14 Letters.”

15 On June 20, 2023, Former Plaintiff Bostic and Plaintiff Gamboa filed a Second Amended
16 Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys
17 General Act, California Labor Code § 2698, *Et Esq.* (“Operative Complaint”) in the *Bostic* Class
18 Action, which added Plaintiff Gamboa as a named plaintiff, and as a proposed representative
19 for the putative class claims and as a representative for the PAGA claim in the *Bostic* Class
20 Action.

21 On June 30, 2023, Former Plaintiff Bostic and Plaintiff Gamboa filed supplemental
22 briefing in support of the Original Motion for Preliminary Approval.

23 On October 11, 2023, the Court denied the Original Motion for Preliminary Approval
24 without prejudice.

25 On November 1, 2023, Former Plaintiff Bostic and Plaintiff Gamboa filed a Request for
26 Dismissal of Plaintiff Bostic’s Individual Claims Without Prejudice Pursuant to California Rules
27 of Court, Rule 3,770 in the Action. On November 9, 2023, the Court dismissed Former Plaintiff
28 Bostic’s individual claims in the Action without prejudice and ordered that Former Plaintiff
Bostic no longer be a plaintiff, proposed class representative, PAGA representative, or party in

1 the Action.

2 On November 1, 2023, Plaintiff Gamboa and Former Plaintiff Bostic requested dismissal
3 of the *Bostic* PAGA Action without prejudice, and the dismissal was entered by the *Bostic*
4 PAGA Action court on November 1, 2023.

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

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

19 The Parties have actively litigated the Actions since the Action was commenced on
20 February 24, 2021. On January 18, 2022, the Former Plaintiff Bostic and Defendant participated
21 in a formal, full-day mediation conducted by Lynn S. Frank, Esq., a well-regarded mediator
22 experienced in mediating complex labor and employment matters. With the aid of the mediator's
23 evaluation, the Former Plaintiff Bostic and Defendant reached the settlement described in the
24 Original Agreement. On November 9, 2023, the Parties participated in a second mediation
25 conducted by Lynn S. Frank, Esq. With the further aid of the mediator's evaluation, the Parties
26 ultimately reached the Settlement described herein to resolve the Actions in their entirety.

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

2 Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to
3 resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a
4 timely and valid Request for Exclusion (i.e., Settlement Class Members) and the Released
5 PAGA Claims of the State of California and the PAGA Employees with respect to the Released
6 Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by
7 deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an
8 amount not to exceed Five Hundred Thousand Dollars and no cents (\$500,000.00) (i.e., up to
9 33.33% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount
10 not to exceed Twenty Five Thousand Dollars and no cents (\$25,000.00) to Class Counsel
11 (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs,
12 which are currently estimated not to exceed Seventeen Thousand Dollars and no cents
13 (\$17,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) Two
14 Hundred Thirty-Five Thousand Dollars and no cents (\$235,000.00) allocated to penalties under
15 PAGA ("PAGA Amount"); and (4) payment in the amount of up to Seven Thousand Five
16 Hundred Dollars and no cents (\$7,500.00) to Plaintiff Socorro Gamboa ("Enhancement
17 Payment").¹² The Parties have agreed to retain Atticus Administration, LLC ("Atticus" or
18 "Settlement Administrator") to handle the notice and settlement administration process.

19 The Parties have agreed that the Settlement Administrator will determine each
20 Settlement Class Member's *pro rata* share of the available Net Settlement Amount (i.e.,
21 Individual Settlement Share), in accordance with the Settlement Agreement and as follows:

- 22 a. After Preliminary Approval of the Settlement, the Settlement Administrator will
23 divide the Net Settlement Amount by the Workweeks of all Class Members to yield
24 the "Estimated Workweek Value," and multiply each Class Member's individual
25 Workweeks by the Estimated Workweek Value to yield his or her estimated
26 Individual Settlement Share that he or she may be eligible to receive under the Class
Settlement.¹³
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the
final Net Settlement Amount by the Workweeks of all Settlement Class Members to

27 ¹¹ Settlement Agreement, ¶¶ 34 & 35.

28 ¹² *Id.*, ¶¶ 14, 15, 16, & 17.

¹³ *Id.*, ¶ 18.a. "Preliminary Approval" is defined as the entry of the Court order granting preliminary approval of the Settlement Agreement. *See id.*, ¶ 6.dd.

yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁴

The Parties have agreed that the Settlement Administrator will determine each PAGA Employee’s *pro rata* share of the twenty-five percent (25%) portion of the PAGA Amount (“Individual PAGA Payment”), in accordance with the Settlement Agreement and as follows: the Settlement Administrator will divide the twenty-five percent (25%) portion of the PAGA Amount (“PAGA Employee Amount”) by the total number of Workweeks each PAGA Employee worked for Defendant during the PAGA Period (“PAGA Workweeks”) to yield the “PAGA Workweek Value,” and multiply each PAGA Employee’s individual PAGA Workweeks by the PAGA Workweek Value to yield his or her Individual PAGA Payment.¹⁵

Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁶ 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 wage 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 taxes and contributions in connection with the wages portion of Individual Settlement Shares (“Employer Taxes”) in addition to the Total Settlement Amount.¹⁸ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an 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 the checks are issued,

¹⁴ Settlement Agreement, ¶ 18.b. “Final Approval” is defined as the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon. *See id.*, ¶ 6.o.

¹⁵ *Id.*, ¶¶ 10.bb, 10.q, 10.y, & 19.

¹⁶ *Id.*, ¶ 29.

¹⁷ *Id.*, ¶¶ 10.r & 29.

¹⁸ *Id.*, ¶¶ 6.m & 29.

¹⁹ *Id.*, ¶ 29.

1 and thereafter, shall be cancelled.²⁰ In recognition that Defendant is a non-profit organization
2 providing charitable and other services to the public, pursuant to California Code of Civil
3 Procedure Section 384, all funds associated with such cancelled checks will be transmitted to
4 Defendant.²¹ Defendant shall hold said funds for one hundred eighty (180) calendar days to pay
5 the Settlement Class Members and/or PAGA Employees whose checks were cancelled should
6 they come forward to request payment from Defendant.²² Should the Court reject Defendant as
7 a viable *cy pres* recipient, the Parties agree to select California Rural Legal Assistance, Inc. as
8 an alternative *cy pres* recipient.²³

9 Any Class Member wishing to be excluded from the Class Settlement must submit a
10 written letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked
11 on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice
12 by the Settlement Administrator (“Response Deadline”).²⁴ A Request for Exclusion must: (a)
13 contain the case name and number of the Action; (b) contain the full name, signature, address,
14 telephone number, and the last four (4) digits of the Social Security Number of the Class
15 Member requesting exclusion; (c) clearly state that the Class Member does not wish to be
16 included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at
17 the specific address, postmarked on or before the Response Deadline.²⁵ Any Class Member who
18 submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and
19 will not be issued an Individual Settlement Payment.²⁶ Notwithstanding the above, all PAGA
20 Employees will be bound to the PAGA Settlement and will be issued their Individual PAGA
21 Payment, irrespective of whether they submit a Request for Exclusion.²⁷

22 To object to the Class Settlement, Class Members who have not opted out of the Class
23 Settlement (i.e., Settlement Class Members) must submit a timely and complete written
24

25 ²⁰ Settlement Agreement, ¶ 24.

26 ²¹ Ibid.

27 ²² Ibid.

28 ²³ Ibid.

²⁴ *Id.*, ¶¶ 10.hh, 10.ii, & 25.

²⁵ *Id.*, ¶ 10.hh.

²⁶ *Id.* ¶ 25.

²⁷ Ibid.

objection to the Class Settlement (“Notice of Objection”) to the Settlement Administrator, by mail, on or before the Response Deadline.²⁸ The Notice of Objection must: (a) contain the case name and number of the Action; (b) contain the objector’s full name, signature, address, telephone number, and the last four (4) digits of his or her 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 returned by mail to the Settlement Administrator at the specific address, postmarked on or before the Response Deadline.²⁹ Settlement Class Members, individually or through counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection.³⁰

Class Members who wish to dispute the number of Workweeks and/or PAGA Workweeks to which they have been credited, as reflected in their respective Class Notices, may do so by submitting a written letter to the Settlement Administrator that: (a) contains the case name and number of the Action; (b) contains the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the disputing Class Member; (c) clearly states that the Class Member disputes the number of Workweeks and/or PAGA Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (d) includes information and/or attaches documentation demonstrating that the number of Workweeks and/or PAGA Workweeks that he or she contends should be credited to him or her are correct; and (f) is returned by mail to the Settlement Administrator at the specific 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

²⁸ Settlement Agreement, ¶¶ 10.v & 26.

²⁹ *Id.*, ¶ 10.v.

³⁰ *Id.*, ¶ 26.

³¹ *Id.*, ¶ 23.

1 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
2 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
3 or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer,*
4 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair
5 and reasonable, whether certification of the class was proper, and whether the attorney fee award
6 was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s
7 decision to approve a class action settlement may be reversed only upon a strong showing of
8 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
9 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

22 In considering a potential class settlement, a court need not reach any ultimate
23 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
24 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495
25 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San*
26 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required
27 for the trial court to grant provisional class certification and preliminary approval; the court may
28

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 Actions since the Action was commenced on February 24, 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: Plaintiff's employment records, a detailed sampling³⁴ of Class Members' time and pay data, multiple iterations of Defendant's Employee Handbook, company policy acknowledgements (including, but not limited to, Defendant's Acknowledgment of Receipt of Handbook), forms, new hire checklist, Defendant's operations and employment practices, forms, procedures, and policies (including, not limited to, Defendant's policies regarding Workweek, Work Day, and Work Schedule, Meal and Rest Periods, Dress Code, Compensation, Overtime Pay, Payroll, Paychecks, and Deductions, and Expenses and Vehicle Use), among other information and documents.³⁵ Class Counsel also gathered and considered information regarding Defendant's financial circumstances and its non-profit status and related governance and management structure and restriction on use of funds, all of which impacted potential financial terms of a settlement resolution.³⁶ Class Counsel interviewed Plaintiff and conducted investigations to gather facts and circumstances surrounding Plaintiff and putative class members' employment and to identify potential witnesses.³⁷ Counsel for the Parties also met

³² St. John Decl., ¶¶ 13-15.

³³ *Id.*, ¶ 14.

³⁴ On December 21, 2021, Defendant's counsel provided Plaintiffs' Counsel with a detailed sampling of Class Members' time and pay data which consisted of a 50% class-wide sampling of time and payroll records for the time period from February 24, 2017 and December 17, 2021. See Declaration of Evelyn Zarraga re: Sampling of Records ("Zarraga Decl."), filed June 30, 2023, ¶¶ 3 & 6. Defendant's counsel also provided a redacted version of the Class list that included an assigned identification number in place of the putative class member's name, and the corresponding employment start and end dates, last rate of pay, and job. position. *Id.*, ¶ 7. Defendant provided Defendant's Counsel with time record reports from Defendant's electronic timekeeping system and payroll reports corresponding to the time period between February 24, 2017 to December 17, 2021. *Id.*, ¶¶ 4 & 5. Defendant's counsel used a standardized criteria to randomly select a fifty percent (50%) sampling of the time and pay records. *Id.* ¶ 3. Defendant's counsel selected a 50% sampling of time and pay records by first alphabetizing the Class List by last name and then selecting the time and pay records of every other individual on the Class List. *Ibid.* Defendant's counsel provided the sampling to Plaintiffs' Counsel without modification to the substantive data. *Id.* ¶ 6. Plaintiffs' Counsel used its past experience and expertise to review and analyze the data and concluded that the sampling was statistically sufficient to be extrapolated to the Class. St. John Decl., ¶ 14.

³⁵ St. John Decl., ¶ 14.

³⁶ *Ibid.*

³⁷ *Ibid.*

1 and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, informal
2 discovery and the production of documents and data in the course of litigation and mediation,
3 and Defendant's financial and organizational circumstances.³⁸ Class Counsel also drafted
4 Plaintiff's mediation brief and prepared for and attended court proceedings, settlement
5 negotiations, and the mediation, among other tasks.³⁹

6 The Parties engaged in extensive settlement negotiations and participated in formal,
7 mediations conducted by Lynn S. Frank, Esq., a well-respected mediator experienced in
8 mediating complex labor and employment matters.⁴⁰ Prior to and during the mediation and
9 settlement discussions, the Parties exchanged class information and engaged in an intensive
10 discussion regarding their evaluations of the cases and various aspects of the cases, including
11 but not limited to, Defendant's financial circumstances, the risks and delays of further litigation,
12 the risks to the Parties of proceeding with class certification and/or representative adjudication,
13 the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and
14 enforcement, and PAGA representative claims, as well as the evidence produced and analyzed,
15 and the possibility of appeals, among other things.⁴¹ During all settlement discussions, the
16 Parties conducted their negotiations at arm's length in an adversarial position.⁴² Arriving at a
17 settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt
18 strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class
19 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴³ After
20 conducting extensive investigations, informal discovery, extensive settlement negotiations, and
21 with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited
22 for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs
23 and risks to both sides that would attend further litigation.⁴⁴

24
25
26 ³⁸ St. John Decl., ¶ 14.

³⁹ Ibid.

⁴⁰ *Id.*, ¶ 13.

⁴¹ Ibid.

⁴² Ibid.

⁴³ *Id.*, ¶¶ 13, 18-20.

⁴⁴ Ibid.

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.⁴⁵ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁶ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁷ 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.⁴⁸

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

The Settlement, which provides for a Total Settlement Amount of one million five hundred thousand dollars and no cents (\$1,500,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁹ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁵⁰ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.⁵¹ Moreover, considering all of the facts and circumstances of the matter, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵²

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is

⁴⁵ St. John Decl., ¶¶ 13, 18-20.

⁴⁶ Ibid.

⁴⁷ *Id.*, ¶¶ 13-15 & 18-20.

⁴⁸ *Id.*, ¶¶ 3-8.

⁴⁹ *Id.*, ¶¶ 13, 15, 16 & 26.

⁵⁰ *Id.*, ¶¶ 13-15.

⁵¹ *Id.*, ¶¶ 18-20.

⁵² *Id.*, ¶¶ 13, 15, & 26.

currently estimated to be seven hundred fifteen thousand five hundred dollars and no cents (\$715,500.00).⁵³ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, 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.⁵⁴ 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 and PAGA Employees.⁵⁵ 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 informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁶ The discovery and information that Class Counsel obtained from Plaintiff, Defendant, and 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.⁵⁷ As outlined in the Declaration of Brian J. St. John,

⁵³ St. John Decl., ¶ 16.

⁵⁴ Settlement Agreement, ¶ 22.

⁵⁵ St. John Decl., ¶¶ 14, 17, & 27.

⁵⁶ *Id.*, ¶¶ 14-16 & 21.

⁵⁷ *Id.*, ¶ 21.

Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

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.⁵⁹ 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 matter. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v.*

⁵⁸ St. John Decl., ¶¶ 24-25.

⁵⁹ Settlement Agreement, ¶ 40.a.

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

3 This matter involves a class of approximately one thousand and eighty-nine (1,189)
4 individuals.⁶⁰ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
5 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
6 requirement as joinder is not practical at that point). Further, all Class Members can and will
7 be identified by Defendant to the Settlement Administrator through a review of Defendant's
8 employment records regarding hourly-paid or non-exempt employees in California during the
9 Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

25 Here, common issues of fact and law predominate as to each of the claims alleged and
26 asserted in the Operative Complaint. Based on the documents and information obtained through
27 informal discovery and exchange of information in this matter, Plaintiff contends that Class
28

⁶⁰ St. John Decl., ¶ 12.

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.⁶¹ 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.⁶²

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.⁶³ 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.⁶⁴

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 hourly-paid or non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for several years and was actively preparing for class certification and trial.⁶⁵ 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 pages of documents and data⁶⁶ and also interviewed and obtained information from Plaintiff, researched applicable law, undertook damages/valuation calculations, and met

⁶¹ St. John Decl., ¶ 19.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ *Id.*, ¶ 19.

⁶⁵ *Id.*, ¶¶ 14-16.

⁶⁶ *Id.*, ¶ 15.

1 and conferred with Defendant's counsel regarding the pleadings and the production of
2 documents and data prior to mediation.⁶⁷ Counsel for the Parties also undertook extensive
3 settlement discussions, which included participating in a formal, full-day mediation and a
4 second formal mediation.⁶⁸

5 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
6 experience to obtain a great result for the Class.⁶⁹

7 The Settlement establishes a Total Settlement Amount of One Million Five Hundred
8 Thousand and no cents (\$1,500,000.00), and provides for Class Counsel to apply to the Court
9 for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed one-third
10 (33.33%) of the Total Settlement Amount (i.e., \$500,000.00) and an amount not to exceed
11 Twenty-Five Thousand Dollars and no cents (\$25,000.00) for costs and expenses.⁷⁰ The
12 attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class
13 Counsel took in bringing and litigating the matter, (2) the extensive time, effort and expense that
14 Class Counsel dedicated to the matter, (3) the skill and determination that Class Counsel has
15 shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of
16 the Settlement that Class Counsel has achieved for the Class Members and PAGA Employees,
17 and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts
18 to this matter. The proposed Class Notice provides Class Members with information about the
19 amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys'
20 Fees and Costs will be sought, as provided for by the Settlement.⁷¹

21 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
22 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
23 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced
24 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
25 *v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should

26 ⁶⁷ St. John Decl., ¶ 15.

27 ⁶⁸ *Id.*, ¶ 13.

28 ⁶⁹ *Id.*, ¶¶ 2-7.

⁷⁰ Settlement Agreement, ¶ 14.

⁷¹ *Id.*, Exh. A.

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).

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).

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1 Class Counsel has borne all of the risks and costs of litigation and will not receive any
2 compensation until recovery is obtained.⁷²

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

8 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

14 The proposed Class Notice⁷³ describes the Settlement, the deadlines and procedures to
15 submit a Notice of Objection, Request for Exclusion, and/or dispute regarding Workweeks
16 and/or PAGA Workweeks, and the date and time set for the Final Approval Hearing.⁷⁴

17 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
18 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class
19 members to make an informed decision about their participation." *Manual for Complex*
20 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
21 proceedings to date and the terms and conditions of the Settlement in an informative and
22 coherent manner.⁷⁵ The proposed Class Notice recognizes that the Court has not yet granted
23 final approval of the settlement.⁷⁶ The proposed Class Notice also apprises the Class Members
24 and PAGA Employees of, *inter alia*, how their Individual Settlement Share and Individual
25 PAGA Payment is calculated and the number of Workweeks and PAGA Workweeks credited

26 ⁷² St. John Decl., ¶ 21.

27 ⁷³ Settlement Agreement, Exh. A.

28 ⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

1 to them.⁷⁷

2 The proposed Class Notice satisfies all due process requirements and complies with the
3 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23©(2) and 23(e); *Newberg*,
4 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The
5 essentials of due process of law in class suits would appear to be afforded by fair representation
6 in the assertion of claims of class members against the opposing parties in any lawsuit, and
7 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

8 **IX. APPOINTMENT OF ATTICUS ADMINISTRATION, LLC AS THE**
9 **SETTLEMENT ADMINISTRATOR**

10 The Parties have selected Atticus to administer the Settlement.

11 The Settlement Administrator will mail the Class Notice to each Class Member by First-
12 Class U.S. mail in English and Spanish.⁷⁸ With respect to Class Notices that are returned as
13 undeliverable on or before the Response Deadline, after the initial mailing of the Class Notice,
14 the Settlement Administrator will perform a single search for an alternative address by way of
15 skip-trace and perform a single re-mailing of the Class Notice within five (5) calendar days.⁷⁹
16 The Response Deadline to submit a Request for Exclusion, Noticed of Objection, or dispute
17 regarding Workweeks and/or PAGA Workweeks for Class Members to whom a Class Notice is
18 re-sent, after having been returned as undeliverable to the Settlement Administrator, will be
19 extended fifteen (15) calendar days.⁸⁰ The Settlement Administrator will receive and process
20 Requests for Exclusion, Notices of objection, and any disputes regarding Workweeks and/or
21 PAGA Workweeks.⁸¹

22 The Settlement Administrator will calculate the amounts of the Individual Settlement
23 Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal
24 taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual
25 Settlement Payment checks to Settlement Class Members and Individual PAGA Payment

26 ⁷⁷ Settlement Agreement, Exh. A.

27 ⁷⁸ *Id.*, ¶ 22.a.

28 ⁷⁹ *Id.*, ¶ 22.b.

⁸⁰ *Id.*, ¶ 10.ii.

⁸¹ *Id.*, ¶ 23, 25, & 26.

checks to PAGA Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and PAGA Amount; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸² The Settlement Administration Fees are currently estimated not to exceed Seventeen Thousand Dollars and no cents (\$17,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁸³

Accordingly, Plaintiff respectfully requests that the Court appoint Atticus Administration, LLC 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.⁸⁴

Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Settlement Administrator with the following information for each Class Member: full name, last known mailing address, Social Security Number, and dates worked for Defendant during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (collectively, "Class List").⁸⁵

Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail the Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail.⁸⁶ With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, after the initial mailing of the Class Notice, the Settlement Administrator will perform a single search for an alternative address by way of

⁸² Settlement Agreement, ¶ 16; St. John Decl., ¶ 17.

⁸³ Settlement Agreement, ¶ 16.

⁸⁴ *Id.*, ¶ 22.a.

⁸⁵ *Id.*, ¶¶ 10.c & 21.

⁸⁶ *Id.*, ¶ 22.a.

skip-trace and perform a single re-mailing of the Class Notice within five (5) calendar days.⁸⁷ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, dispute regarding Workweeks and/or PAGA Workweeks, and/or Notice of Objection.⁸⁸

Defendant will fund the Total Settlement Amount pursuant to an installment plan, in accordance with the Settlement Agreement and as follows:

- a. Within five (5) business days of Final Approval, Defendant will make a deposit of one-third of the Total Settlement Amount (i.e., \$500,000.00) into a qualified settlement account established by the Settlement Administrator (“First Installment”).⁸⁹
- b. One (1) year after the funding of the First Installment, Defendant will make a deposit of one-third of the Total Settlement Amount (i.e., \$500,000.00), plus an amount sufficient to pay Employer Taxes, into the qualified settlement account established by the Settlement Administrator (“Second Installment”).⁹⁰
- c. One (1) year after the funding of the Second Installment, Defendant will make a deposit of the remaining one-third of the Total Settlement Amount (i.e., \$500,000.00), into the qualified settlement account established by the Settlement Administrator (“Third Installment”).⁹¹

The Settlement Administrator will disburse payments allocated under the Settlement, in accordance with the Settlement Agreement and as follows:

- a. Within seven (7) calendar days of the funding of the Second Installment, the Settlement Administrator will issue the Individual Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees, LWDA Payment to the LWDA, and Enhancement Payment to Plaintiff.⁹²
- b. Within seven (7) calendar days of the funding of the Third Installment, the Settlement Administrator will issue the Attorneys’ Fees and Costs to Class Counsel and the Settlement Administration Costs to itself.⁹³

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.⁹⁴ In recognition that Defendant is a non-profit organization providing charitable and other services to the public, pursuant to California Code of Civil

⁸⁷ Settlement Agreement, ¶ 22.b.

⁸⁸ *Id.*, ¶¶ 23, 25, & 26.

⁸⁹ *Id.*, ¶ 13.b.i.

⁹⁰ *Id.*, ¶ 13.b.ii.

⁹¹ *Id.*, ¶ 13.b.iii.

⁹² *Id.*, ¶ 13.d.i.

⁹³ *Id.*, ¶ 13.d.ii.

⁹⁴ *Id.*, ¶ 24.

Procedure Section 384, all funds associated with such cancelled checks will be transmitted to Defendant.⁹⁵ Defendant shall hold said funds for one hundred eighty (180) calendar days to pay the Settlement Class Members and/or PAGA Employees whose checks were cancelled should they come forward to request payment from Defendant.⁹⁶ Any funds received as the *cy pres* will be used by The People Concern, as *cy pres* funds, only for the sole purpose of financing the \$250 per person training fee to administer to volunteers, the domestic violence counselor training program for said volunteer to participate in The People Concern's domestic violence program "Sojourn," to finance Sojourn's legal department's offering referrals, assistance with restraining orders, support navigating the domestic violence-related housing environment, and court accompaniment, among other things, to individuals receiving The People Concern's services, and to finance Sojourn's outreach and education department's providing trainings, technical assistance, advocacy events, and educational resources to clients, their families, Sojourn staff, organizational partners, and the community at-large.⁹⁷ Should the Court reject Defendant as a viable *cy pres* recipient, the Parties agree to select California Rural Legal Assistance, Inc. as an alternative *cy pres* recipient.⁹⁸

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Socorro Gamboa respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to Seven Thousand Five Hundred Dollars and no cents (\$7,500.00) to Plaintiff.⁹⁹ 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

⁹⁵ Settlement Agreement, ¶ 24.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Id.*, ¶ 15.

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 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.¹⁰⁰ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.¹⁰¹ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for her services on behalf of the Class, PAGA Employees, and the State of California in addition to her Individual Settlement Payment and Individual PAGA Payment.

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 Arby Aiwazian, Joanna Ghosh, Brian St. John, and Jeremy Stern of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Socorro Gamboa as Class Representative; appoint Atticus Administration, LLC as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, 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: January 16, 2024

LAWYERS for JUSTICE, PC

By: 

Brian J. St. John
Attorneys for Plaintiff

¹⁰⁰ St. John Decl., ¶ 22; Declaration of Socorro Gamboa in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Gamboa Decl."), ¶ 3-4.

¹⁰¹ St. John Decl., ¶ 22; Gamboa Decl., ¶¶ 3-4.