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

BRANDON MCCRAY, individually, and on behalf of other members of the general public similarly situated, SERGIO ACOSTA, 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;

Plaintiffs,

vs.

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

Defendants.

Case No.: 22STCV18793

Honorable Lawrence P. Riff
Department SSC7

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Jeremy Stern); Declaration of Proposed Class Representatives (Brandon McCray and Sergio Acosta); and [Proposed] Order filed concurrently herewith]

Date: April 10, 2024
Time: 10:00 a.m.
Department: SSC7

Complaint Filed: June 7, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 10, 2024, at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Lawrence P. Riff in Department SSC7 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Brandon McCray and Sergio Acosta (together, “Plaintiffs” or “Class Representatives”) will, and hereby do, 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 and PAGA Representative Action Settlement and Release Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) attached as “**EXHIBIT 1**” to the Declaration of Jeremy Stern, 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 Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Settlement Class for settlement purposes;
- Preliminarily appointing Plaintiffs Brandon McCray and Sergio Acosta as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action 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 Settlement Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and

- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Awards for Plaintiffs, and Settlement Administration Costs 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 the settlement of a putative class action, allows the Court to preliminarily certify a class for settlement purposes, and permits 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 (Jeremy Stern) and Proposed Class Representatives (Brandon McCray and Sergio Acosta) 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: February 20, 2024

LAWYERS for JUSTICE, PC

By: _____


Jeremy Stern
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Brandon McCray and Sergio Acosta (together, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint Stipulation of Class and PAGA Representative Action Settlement and Release Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of other members of the general public similarly situated, and other aggrieved employees, on the one hand, and Defendant DailyLook, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Eight Hundred Fifty Thousand Dollars and No Cents (\$850,000.00), subject to increase.¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) Enhancement Awards of Ten Thousand Dollars and No Cents (\$10,000.00) each to Plaintiffs Brandon McCray and Sergio Acosta, for a total of \$20,000.00³; (3) the Attorneys’ Fees and Costs to Settlement Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, (i.e. \$297,500.00, if the Gross Settlement Amount remains \$850,000.00) and reimbursement of reasonable 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 Ten Thousand Five Hundred Dollars and No Cents (\$10,500.00);⁵ and (5) the amount of One Hundred Thousand Dollars (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Allocation”), of which seventy-five percent (75%) or Seventy-Five Thousand Dollars (\$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA Payment”) and twenty-five percent (25%) or Twenty-Five Thousand Dollars

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Jeremy Stern (“Stern Decl.”), ¶¶ I.31 and V.1.B.

² *Id.*, ¶ I.6.

³ *Id.*, ¶ I.12.

⁴ *Id.*, ¶ I.22.

⁵ *Id.*, ¶ V.5.

1 (\$25,000.00) will be distributed to PAGA Employees on a *pro rata* basis, based on each PAGA
2 Employee's PAGA Pay Periods during the PAGA Period ("PAGA Employee Amount").⁶

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

5 All current and former hourly-paid or non-exempt employees in California at any
6 time during the Settlement Class Period ("Settlement Class" or "Settlement Class
7 Members").⁷

8 The Settlement Class is estimated to consist of approximately four hundred fifty-five
9 (455) individuals.⁸

10 Settlement Class Members who do not timely and properly opt out of the Class
11 Settlement ("Qualified Class Member") will receive a *pro rata* share of the Net Settlement
12 Amount ("Individual Settlement Share") on a *pro rata* basis based the Settlement Class
13 Member's Workweeks, which means the weeks Settlement Class Members worked for
14 Defendant during the Settlement Class Period as hourly-paid or non-exempt employees in
15 California ("Workweeks").⁹

16 All current and former hourly-paid or non-exempt employees in California during the
17 PAGA Period ("PAGA Employees"), will receive a share of the PAGA Employee Amount
18 ("Individual PAGA Settlement Share") on a *pro rata* basis based on PAGA Employees' PAGA
19 Pay Periods, which means the pay periods PAGA Employees worked for Defendant during the
20 PAGA Period ("PAGA Pay Periods"). The PAGA Employees will receive a payment regardless
21 of whether they opt out of the Class Settlement.¹⁰

22 The Settlement, if granted preliminary and final approval by the Court, will operate to
23 resolve the Released Class Claims of Plaintiffs and Qualified Class Members, and the Released
24

25 _____
26 ⁶ Settlement Agreement, ¶ I.18.

27 ⁷ *Id.*, ¶ I.7. "Settlement Class Period" is defined as the period of time from June 7, 2018 through May 28, 2023 or
28 the date on which the number of Class Workweeks exceeds 27,000, whichever is later.

⁸ Stern Decl., ¶ 10.

⁹ Settlement Agreement, ¶¶ I.9. and VIII.2.B.

¹⁰ *Id.*, ¶¶ I.19 and VIII.1.B. "PAGA Period" is defined as the period of time from June 7, 2021 through May 28,
2023 or the end of the Settlement Class Period.

PAGA Claims of Plaintiff Acosta, PAGA Employees, and of the State of California with respect to the PAGA Employees, against the Released Parties.¹¹

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a clothing ecommerce platform that curates monthly subscription boxes for its consumers. Plaintiff Brandon McCray is a former employee of Defendant and Plaintiff Sergio Acosta is a current employee of Defendant.

On June 7, 2022, Plaintiff Brandon McCray filed a Class Action Complaint for Damages in the Los Angeles County Superior Court (“Court”).

On May 30, 2023, Plaintiff Sergio Acosta submitted notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendant of his intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“Lopez LWDA Letter”).

On February 14, 2024, the Parties filed a Joint Stipulation Granting Leave To File First Amended Complaint, which is currently being processed by the Court, and Plaintiff anticipates filing a First Amended Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., in the above-captioned Action.

Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Settlement Class Members, and the PAGA Employees of, *inter alia*, failing to pay all overtime and minimum wages, 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 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Settlement Class Members and

¹¹ See *id.* at ¶ VI.1.A., for the full scope of the “Released Class Claims,” *id.* at ¶ VI.2, for the full scope of the “Released PAGA Claims,” and *id.* at ¶ I.26 for the definition of the “Released Parties.”

PAGA Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the Action since it was commenced on June 7, 2022. On January 19, 2023, the Parties participated in a formal, full-day mediation conducted by Steven Rottman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluations, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Settlement Class Members who do not timely and properly opt out of the Class Settlement (i.e., Qualified Class Members) and the Released PAGA Claims of Plaintiff Acosta, PAGA Employees, and the State of California, with respect to the Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount equal to thirty-five percent (35%) of the Gross Settlement Amount (i.e. \$297,500.00, if the Gross Settlement Amount remains \$850,000.00) and reimbursement of reasonable costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed Ten Thousand Five Hundred Dollars (\$10,500.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) the PAGA Allocation (\$100,000.00), of which 75% will be distributed to the LWDA (i.e., \$75,000.00) ("LWDA Payment") and the remaining 25% (i.e., \$25,000.00) will be distributed to PAGA Employees ("PAGA Employee Amount"); and (4) payment in the amount

¹² Settlement Agreement, ¶¶ VI.1.A. and VI.1.B.

of up to Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Brandon McCray and Sergio Acosta, for a total of \$20,000.00 (“Enhancement Awards”).¹³ The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member’s *pro rata* share of the available Net Settlement Amount (“Individual Settlement Share”), in accordance with the Settlement Agreement and as follows:

- a. After Preliminary Approval of the Settlement Agreement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Estimated Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement Agreement.¹⁴
- b. After Final Approval of the Settlement Agreement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Qualified Class Members to 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.¹⁵

The Parties have agreed that the Settlement Administrator shall determine each PAGA Employee’s Individual PAGA Settlement Share will be calculated and apportioned from the 25% of the PAGA Employee Amount payable to PAGA Employees based on the PAGA Employees’ PAGA Pay periods during the PAGA period, as follows: the Settlement Administrator will divide the 25% of the PAGA Allocation by the PAGA Pay Periods of all PAGA Employees during the PAGA Period to yield the “PAGA Pay Periods Value,” and multiply each PAGA Employees’ individual PAGA Pay Periods during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Settlement Share.¹⁶

Each Qualified Class Member’s Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties and interest, which will be reported on an IRS Form 1099.¹⁷ One hundred percent (100%) of each Individual PAGA Settlement Share shall represent

¹³ Settlement Agreement, ¶ I.12.

¹⁴ *Id.*, ¶ VIII.2.A

¹⁵ *Id.*, ¶ VIII.2.B.

¹⁶ *Id.*, ¶ VIII.3.A.

¹⁷ Settlement Agreement, ¶ VIII.4.D.

civil penalties.¹⁸ Qualified Class Members shall be responsible for the proper payment of the employee's taxes on all Qualified Class Member Payments and any tax withholding and deductions shall be deducted from the Qualified Class Member Payments.¹⁹ Defendant's portion of employer taxes and contributions mandated by law on that portion of the Individual Settlement Share allocated to wages ("Employer Taxes") will be paid by Defendant in addition to the Gross Settlement Amount.²⁰

All settlement checks will expire after one hundred eighty (180) calendar days of issuance, after which point they will be canceled.²¹ The funds remaining and associated with canceled Individual Settlement Share and/or Individual PAGA Settlement Share checks will be paid to Asian Americans Advancing Justice Southern California, after the Court enters an order approving the Parties' stipulation to amend the judgment, which Parties shall prepare and file in accordance with California Code of Civil Procedure section 384.5, *et seq.*²²

Settlement Class Members who wish to exclude themselves from the Class Settlement must submit a written letter seeking exclusion from the Class Settlement ("Request for Exclusion"), to the Settlement Administrator, postmarked on or before forty-five (45) calendar days after the Settlement Administrator mails the Class Notice to Settlement Class Members ("Response Deadline").²³ A Request for Exclusion must: (a) contain the case name and number of the Action (*Brandon McCray, et al. v. DailyLook, Inc.*, Los Angeles County Superior Court Case No. 22STCV18793); (b) contain the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the Settlement Class Member requesting exclusion from the Class Settlement; (c) clearly state that the Settlement Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁴ All PAGA Employees will be issued an Individual PAGA Settlement Share and will be bound to

¹⁸ Ibid.

¹⁹ *Id.*, ¶ VIII.4.E.

²⁰ *Id.*, ¶ VII.4.B.

²¹ *Id.*, ¶ VIII.D.2.

²² Ibid.

²³ *Id.*, ¶¶ I.27 and IX.B.1.

²⁴ Settlement Agreement, ¶¶ I.27 and IX.2.A.

the PAGA Settlement, irrespective of whether they participate in or opt out of the Class Settlement.²⁵

Qualified Class Members (i.e., those Settlement Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement) who wish to object to the Class Settlement may submit a written objection to the Class Settlement (“Objection”), to the Settlement Administrator, postmarked on or before the Response Deadline.²⁶ An Objection must: (a) contain the case name and number of the Action (*Brandon McCray v. DailyLook, Inc.*, Los Angeles County Superior Court Case No. 22STCV18793); (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) include copies of any papers, briefs, or other documents upon which the objection is based; (e) state whether the objector is represented by counsel and provide said counsel’s name, law firm, and address; and (f) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁷ Settlement Class Members may also appear at the Final Approval Hearing to present any oral objections to the Class Settlement regardless of whether they have submitted a written Objection.²⁸

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

²⁵ *Id.*, ¶ IX.2.C.

²⁶ *Id.*, ¶ IX.1.A.

²⁷ *Ibid.*

²⁸ *Id.*, ¶ IX.1.B.

reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."'). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

1 this fairness determination, courts must consider several relevant factors, including “the strength
2 of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the
3 risk of maintaining class action status through trial, the amount offered in settlement, the extent
4 of discovery completed and the stage of the proceedings, the experience and view of counsel,
5 the presence of a governmental participant, and the reaction of the class members to the
6 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
7 and the court is free to engage in a balancing and weighing of the factors depending on the
8 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
9 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at
10 1027 (citation omitted).

11 The proponent of the settlement has the burden to show that it is fair and reasonable.
12 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
13 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
14 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
15 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
16 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
17 1151.

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

20 The Parties actively litigated the Action since it was commenced on June 7, 2022. Both
21 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
22 claims, and Class Counsel was actively preparing the case for class certification and trial.²⁹

23 Prior to engaging in mediation, Class Counsel conducted significant investigation and
24 informal discovery regarding the facts of the case, including and not limited to, the exchange,
25 review, and analysis of a large volume of documents and data produced by Defendant.³⁰ The
26 volume of data and documents that Class Counsel reviewed and analyzed included and was not
27

28 ²⁹ Stern Decl., ¶ 13.

³⁰ *Ibid.*

1 limited to: Plaintiffs' employment records, a sampling of time and pay records, internal
2 memoranda, Defendants' operations and employment practices, job descriptions, forms,
3 procedures, and policies (including, and not limited to, Attendance Policy, Timekeeping Policy,
4 Meal Policy, and Break Policy), among other information and documents.³¹ Class Counsel had
5 the opportunity to interview Plaintiffs and other Settlement Class Members to gather facts and
6 to identify potential witnesses.³² Counsel for the Parties also met and conferred on numerous
7 occasions, e.g., to discuss issues relating to the pleadings, case management, and the production
8 of documents and data prior to the mediation.³³ Class Counsel also drafted pleadings and
9 mediation brief, and prepared for and attended court proceedings, settlement negotiations, and
10 the mediation, among other tasks.³⁴

11 The Parties engaged in extensive settlement negotiations and participated in a formal,
12 full-day mediation conducted by a well-respected mediator experienced in mediating complex
13 labor and employment matters.³⁵ Prior to and during the mediation and settlement discussions,
14 the Parties exchanged class information and engaged in an intensive discussion regarding their
15 evaluations of the case and various aspects of the case, including but not limited to, the risks and
16 delays of further litigation, the risks to the Parties of proceeding with class certification and/or
17 representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-
18 and-hour law and enforcement, and PAGA representative claims, as well as the evidence
19 produced and analyzed, and the possibility of appeals, among other things.³⁶ During all
20 settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial
21 position.³⁷ Arriving at a settlement that was acceptable to the Parties was not easy. Defendant
22 and its counsel felt strongly about their ability to prevail on the merits and at certification, and
23 Plaintiffs and Settlement Class Counsel believed that they would be able to obtain class
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25 ³¹ Stern Decl., ¶ 13.

26 ³² Ibid.

27 ³³ Ibid.

28 ³⁴ Ibid.

³⁵ Stern Decl., ¶ 12.

³⁶ Ibid.

³⁷ Ibid.

certification and prevail at trial.³⁸ After conducting investigations, significant informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluations, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.³⁹

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁰ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴¹ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs', Settlement Class Members', and PAGA Employees' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.⁴² 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.⁴³

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

The Settlement, which provides for a Gross Settlement Amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁴ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴⁵ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the

³⁸ Stern Decl., ¶¶ 12, 17-19.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Stern Decl., ¶¶ 12-15 & 17-19.

⁴³ *Id.*, ¶¶ 7-8.

⁴⁴ *Id.*, ¶¶ 12, 14, 15 & 22.

⁴⁵ *Id.*, ¶¶ 12-14.

case at issue.⁴⁶ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Settlement Class.⁴⁷

Assuming that the Attorneys' Fees and Costs, Enhancement Awards, PAGA Allocation, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Three Hundred Ninety-Seven Thousand Dollars and Zero Cents (\$397,000.00).⁴⁸ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Qualified Class Members, in accordance with the Settlement Agreement. The amount of each Qualified Class Member's Individual Settlement Share will be calculated based on his or her Workweeks and the amount of each PAGA Employee's Individual PAGA Settlement Share will be based on his or her PAGA Pay Periods during the PAGA Period.⁴⁹ 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, Settlement Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Settlement Class Members, the PAGA Employees, and the State of California.⁵⁰ 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.

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⁴⁶ Stern Decl., ¶¶ 17-19.

⁴⁷ *Id.*, ¶¶ 12, 14, & 22.

⁴⁸ *Id.*, ¶ 15.

⁴⁹ Settlement Agreement, ¶¶ VIII.B and VIII.C.

⁵⁰ Stern Decl., ¶¶ 12, 14, & 22.

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

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted significant informal discovery and exchanged a large volume of documents, data, and
4 information prior to mediation.⁵¹ The discovery and information that Class Counsel obtained
5 from Defendant, Plaintiffs, and other sources allowed Class Counsel to develop valuation
6 models in order to evaluate the potential value and merit of the claims, and perform a complete
7 evaluation of Defendant’s defenses thereto.⁵² As outlined in the Declaration of Jeremy Stern,
8 Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior
9 to entering into the Settlement.⁵³

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

11 For settlement purposes, the requisites for establishing class certification are met, and
12 the Parties have stipulated to conditional certification of the Settlement Class for settlement
13 purposes only.⁵⁴ California Code of Civil Procedure Section 382 “authorizes class actions when
14 the question is one of a common or general interest, of many persons, or when the Parties are
15 numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc.*
16 *v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the
17 plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest
18 among class members.” *Id.*

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

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27 ⁵¹ Stern Decl., ¶¶ 12-14 & 19.

28 ⁵² *Id.*, ¶ 19.

⁵³ *Id.*, ¶¶ 12-14 & 17-19.

⁵⁴ Settlement Agreement, ¶ IV.1.

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

This Action involves a class of approximately four hundred fifty-five (455) individuals.⁵⁵ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Settlement Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding non-exempt employees in California during the Class Period. As such, the Settlement Class is ascertainable and sufficiently numerous.

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

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

⁵⁵ Stern Decl., ¶ 10.

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

6 Here, common issues of fact and law predominate as to each of the claims alleged and
7 asserted in the Action. Based on the documents and information obtained through informal
8 discovery and exchange of information in this case, Plaintiffs contend that Settlement Class
9 Members were subject to the same or similar job duties and uniform operations and employment
10 practices, policies, and procedures during the time period at issue.⁵⁶ Plaintiffs’ claims arise from
11 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiffs and the
12 Settlement Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages
13 for all hours worked, failing to provide compliant meal and rest periods and associated premium
14 pay, failing to timely pay wages during employment and upon termination of employment,
15 failing to provide compliant wage statements, failing to keep requisite payroll records, and
16 failing to reimburse necessary business-related expenses.⁵⁷

17 Plaintiffs also contend that Defendant’s payroll and recordkeeping practices with respect
18 to Plaintiffs and the Settlement Class Members were substantially the same during the time
19 period at issue.⁵⁸ As a result, Plaintiffs claim that all of the Settlement Class Members were
20 uniformly not paid all compensation due to them from Defendant during the time period at
21 issue.⁵⁹

22 Plaintiffs maintain that the outcome of this litigation would be determined by
23 Defendant’s alleged uniform operations and employment policies and procedures that applied
24 across its hourly-paid and non-exempt employees who worked in California during the
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27 ⁵⁶ Stern Decl., ¶ 17.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

Settlement Class Period. Accordingly, the Court should certify the Settlement Class for settlement purposes only.

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

Settlement Class Counsel has litigated the matter for over one (1) year and was actively preparing the matter for class certification and trial.⁶⁰ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Settlement Class Counsel conducted extensive investigations into the facts of the case and informal discovery. Settlement Class Counsel reviewed a large volume of documents and data⁶¹ and also interviewed and obtained information from Plaintiffs and other Settlement Class Members, 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 the mediation.⁶² Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶³

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Settlement Class.⁶⁴

The Settlement establishes a Gross Settlement Amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$297,500.00, if the Gross Settlement Amount remains \$850,000.00)⁶⁵ and an amount not to exceed Twenty Five Thousand Dollars (\$25,000.00) for costs and expenses.⁶⁶ The attorneys' fees provided for by the Settlement is commensurate with: (1) the

⁶⁰ Stern Decl., ¶¶ 12-14.

⁶¹ *Id.*, ¶ 13.

⁶² *Ibid.*

⁶³ *Id.*, ¶ 12.

⁶⁴ Stern Decl., ¶¶ 7-8.

⁶⁵ The Settlement Agreement provides for an increase to the Gross Settlement Amount should the actual Workweeks during the period from November 7, 2015 through April 15, 2022 (the "Relevant Period") increase by more than 10%. Should this escalator provision be triggered, the 35% Attorneys' Fees would be of a higher dollar amount than \$297,500.00). Settlement Agreement, ¶ V.1.B.

⁶⁶ *Ibid.*

1 risk that Settlement Class Counsel took in bringing and litigating the case, (2) the extensive
2 time, effort and expense that Settlement Class Counsel dedicated to the case, (3) the skill and
3 determination that Settlement Class Counsel has shown, (4) the results that Settlement Class
4 Counsel has achieved throughout the litigation, (5) the value of the Settlement that Settlement
5 Class Counsel has achieved for the Settlement Class Members, and (6) the other cases that
6 Settlement Class Counsel had to turn down in order to devote its time and efforts to this matter.
7 The proposed Class Notice provides Settlement Class Members with information about the
8 amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys'
9 Fees and Costs will be sought, as provided for by the Settlement.⁶⁷

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

23 The propriety of calculating and awarding attorneys' fees as a percentage of a settlement
24 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
25 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California
26 Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar
27 cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check
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⁶⁷ Settlement Agreement, Exh. A.

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).

Settlement Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁸

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

⁶⁸ Stern Decl., ¶ 20.

1 The proposed Class Notice⁶⁹ describes the Settlement, the deadlines and procedures to
2 mail an Objection to the Class Settlement and/or Request for Exclusion from the Class
3 Settlement, and/or challenges regarding Workweeks and PAGA Pay Periods, and the date and
4 time set for the Final Approval Hearing.⁷⁰

5 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
6 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
7 members to make an informed decision about their participation.” *Manual for Complex*
8 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
9 proceedings to date and the terms and conditions of the Settlement in an informative and
10 coherent manner.⁷¹ The proposed Class Notice recognizes that the Court has not yet granted
11 final approval of the settlement.⁷² The proposed Class Notice also apprises the Settlement Class
12 Members and/or PAGA Employees of, *inter alia*, how their Individual Settlement Share and/or
13 Individual PAGA Settlement Share is calculated and the number of Workweeks and/or PAGA
14 Pay Periods credited to them.⁷³

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

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

22 The Parties have selected Phoenix to administer the Settlement.

23 The Settlement Administrator will mail the Class Notice to all identified Settlement
24 Class Members by First-Class U.S. mail within twenty-one (21) calendar days after receipt of
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26 ⁶⁹ Settlement Agreement, Exh. A.

27 ⁷⁰ Settlement Agreement, Exh. A.

28 ⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

the Class Data.⁷⁴ If a Class Notice is returned because of an undeliverable address, the Settlement Administrator shall conduct a skip trace to locate a correct address. There will be one search by the Settlement Administrator, via U.S. Postal Service Records. One supplemental Class Notice will be mailed to each member of the Settlement Class whose notice is returned to the Settlement Administrator within five (5) calendar days of the initial mailing on the notices by the Settlement Administrator, or other such notice as ordered by the Court.⁷⁵ If no current address can be located, the Class Notice for that individual will be deemed undeliverable. If despite the Settlement Administrator's re-mailing the Class Notice, the remailed Class Notice is returned as undeliverable, the Class Notice for that individual will be deemed undeliverable however the Class Member will nevertheless remain bound by the Class Settlement.⁷⁶ The Response Deadline will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Class Notice by the Settlement Administrator.⁷⁷ The Settlement Administrator will receive and process Requests for Exclusion, Objections, and/or disputes regarding Owrkweeks and/or PAGA Pay Periods.⁷⁸

The Settlement Administrator's duties will include mailing the Class Notice, handling the Class Data, updating Settlement Class Members' mailing addresses before the initial mailing of the Class Notice, calculating Individual Class Settlement Shares and Individual PAGA Settlement Shares, preparing declarations regarding the settlement administration, providing weekly status reports, establishing a Qualified Settlement Fund account pursuant to Section 468B(g) of the Internal Revenue Service Code, issuing individual settlement payment checks, voiding uncashed settlement checks, calculate Employer Taxes, and issue to Settlement Class Members forms W-2 and forms 1099 for all amounts paid under this Settlement Agreement.⁷⁹ The Settlement Administration Costs are currently estimated not to exceed Ten Thousand Five

⁷⁴ *Id.*, ¶ VII.2.

⁷⁵ Settlement Agreement, ¶ VII.3.

⁷⁶ *Ibid.*

⁷⁷ *Id.*, ¶ I.27.

⁷⁸ *Id.*, ¶¶ IX.1.A and IX.2.A.

⁷⁹ Stern Decl., ¶ 16.

Hundred Dollars and Zero Cents (\$10,500.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁰

Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix as the Settlement Administrator and direct the mailing of the Class Notice to the Settlement Class Members and PAGA Employees 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 Settlement Class Members based on Defendant's records.⁸¹

Within forty-five (45) calendar days of preliminary approval by the Court of the Settlement, a database containing the following information for all Settlement Class Members: (1) full name, (2) last known address, (3) full social security number, (4) the total number of Workweeks, and (5) the total number of PAGA Pay Periods (collectively, "Class Data").⁸²

The Settlement Administrator will conduct a search of the United States Postal Service's National Change of Address database, to locate updated addresses for Settlement Class Members, and send the Class Notice to each Class Member by First Class U.S. Mail within twenty-one (21) calendar days of receipt of the Class Data.⁸³ If a Class Notice is returned because of an undeliverable address, the Settlement Administrator shall conduct a skip trace to locate a correct address. There will be one search by the Settlement Administrator, via U.S. Postal Service Records. One supplemental class settlement notice will be mailed to each Settlement Class Member whose Class Notice is returned to the Settlement Administrator within five (5) calendar days of the initial mailing of the Class Notice by the Settlement Administrator, or other such notice as ordered by the Court. If no current address can be located, the Class

⁸⁰ Settlement Agreement, ¶ V.5.

⁸¹ Settlement Agreement, ¶ V.5.

⁸² *Id.*, ¶ VII.1.

⁸³ *Id.*, ¶ VII.2.

1 Notice for that individual will be deemed undeliverable. If despite the Settlement
2 Administrator's re-mailing the Class Notice, the re-mailed Class Notice is returned as
3 undeliverable, the Class Notice for that individual will be deemed undeliverable however the
4 Settlement Class Member will nevertheless remain bound by the Class Settlement.⁸⁴ Settlement
5 Class Members will have until the applicable Response Deadline to mail a Request for
6 Exclusion, disputes regarding Workweeks and/or PAGA Pay Periods, and/or an Objection.⁸⁵

7 The Settlement Administrator shall establish a Qualified Settlement Fund account
8 pursuant to Section 468B(g) of the Internal Revenue Service Code for the purpose of
9 administering the Settlement Agreement, into which the Gross Settlement Amount and
10 Employer Taxes will be deposited.⁸⁶ Within thirty (30) calendar days after the Effective Date,
11 Defendant shall deposit the Gross Settlement Amount and Employer Taxes into the Qualified
12 Settlement Fund.⁸⁷ Within fifteen (15) business days after the Effective Date, the Settlement
13 Administrator shall distribute all Individual Settlement Payments, all Individual PAGA
14 Settlement Shares, the Enhancement Awards, Attorneys' Fees and Costs, and Settlement
15 Administration Costs.⁸⁸

16 Each Individual Settlement Payment and Individual Settlement PAGA Share check will
17 expire after one hundred eighty (180) calendar days of issuance, after which point they will be
18 canceled.⁸⁹ The funds remaining and associated with canceled Individual Settlement Payment
19 and/or Individual PAGA Settlement Share check will be paid to Asian Americans Advancing
20 Payment, after the Court enters an order approving the Parties' stipulation to amend the
21 judgment, which Parties shall prepare and file in accordance with California Code of Civil
22 Procedure section 384.5, et seq.⁹⁰

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25 ⁸⁴ Settlement Agreement, ¶ VII.3.

26 ⁸⁵ *Id.*, ¶ I.22.

27 ⁸⁶ *Id.*, ¶ VIII.1.A.

28 ⁸⁷ *Id.*, ¶ VIII.1.B.

⁸⁸ *Id.*, ¶¶ VIII.4.A., VIII.5 and VIII.6.

⁸⁹ *Id.*, ¶ VIII.4.B.

⁹⁰ *Ibid.*

**XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR
ENHANCEMENT AWARDS**

Plaintiffs Brandon McCray and Sergio Acosta respectfully request that the Court appoints them as the Class Representatives and preliminarily approve the Enhancement Awards in an amount up to Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Brandon McCray and Sergio Acosta, for a combined amount of \$20,000.00.⁹¹ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Van 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 Enhancement Awards are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹² Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁹³ Accordingly, it is appropriate and just for Plaintiffs to receive Enhancement Awards for their services on behalf of the Settlement Class, PAGA Employees, and the State of California, in addition to their individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Settlement Class for settlement purposes;

⁹¹ *Id.*, ¶ V.C.1.

⁹² Stern Decl., ¶ 21; Declaration of Brandon McCray in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("McCray Decl."), ¶ 4. Declaration of Sergio Acosta in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Acosta Decl."), ¶ 4.

⁹³ Stern Decl., ¶ 21; McCray Decl., ¶¶ 3-6. Acosta Decl., ¶¶ 3-6.

1 preliminarily appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary
2 appoint and designate Plaintiffs Brandon McCray and Sergio Acosta as Class Representatives;
3 appoint Phoenix as Settlement Administrator; preliminarily approve the allocations for
4 Attorneys' Fees and Costs, Enhancement Awards, PAGA Allocation, and Settlement
5 Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator
6 to undertake the notice and settlement administration process in conformity with the deadlines
7 and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing
8 to take place in approximately six (6) months.

9 Dated: February 20, 2024

LAWYERS *for* JUSTICE, PC

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11 By:



12 _____
13 Jeremy Stern
14 *Attorneys for Plaintiffs*
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