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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JAMIE SANDOVAL and VICTOR RODRIGUEZ, individually, and on behalf of other members of the general public similarly situated; Plaintiffs, vs. NEILL AIRCRAFT CO., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No.: 21STCV29248 Honorable Elihu M. Berle Department 6 **<u>CLASS ACTION</u>** **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [Declaration of Proposed Class Counsel (Vartan Madoyan); Declarations of Proposed Class Representatives (Jamie Sandoval and Victor Rodriguez); and [Proposed] Order filed concurrently herewith] Date: October 9, 2024 Time: 9:00 a.m. Department: 6 Complaint Filed: August 9, 2021 FAC Filed: February 15, 2022 Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 9, 2024 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Elihu M. Berle in Department 6 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Jamie Sandoval and Victor Rodriguez (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 Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Vartan Madoyan, 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 Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Jamie Sandoval and Victor Rodriguez as Class Representatives;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Vartan Madoyan 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 and PAGA Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris 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, Enhancements Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator.

This Motion is made pursuant to Rule 3.769, Rule 3.764, 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 (Vartan Madoyan) and Proposed Class Representatives (Jamie Sandoval and Victor Rodriguez) 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: August 19, 2024

LAWYERS *for* JUSTICE, PC

By: Vartan S. Madoyan

Vartan Madoyan
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Jamie Sandoval and Victor Rodriguez (together, "Plaintiffs" or "Class Representatives") seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Neill Aircraft Co. ("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 Total Settlement Amount of Nine Hundred Thousand Dollars and Zero Cents ($900,000.00).[1] The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount[2]; (2) Enhancement Payments of Five Thousand Dollars and Zero Cents ($5,000.00) each to Plaintiffs, for a total of $10,000.00[3]; (3) the Class Counsel Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or $315,000.00, if the Total Settlement Amount remains $900,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00)[4]; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000);[5] and (5) the amount of Eighty Thousand Dollars and Zero Cents ($80,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $60,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") ("LWDA

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Vartan Madoyan ("Madoyan Decl."), ¶ 8.mm. Defendant represents that there are approximately 64,431 Workweeks during the period from August 9, 2017 to March 13, 2023. Should the Workweeks increase beyond ten percent (10%) of 64,431 on or before July 17, 2023 (i.e., the Workweeks increase by more than 6,443 Workweeks, so that the Workweeks total exceeds 70,874), Defendant, at its sole discretion, shall have the option of either: (1) agreeing to increase the Total Settlement Amount on a *pro-rata* basis according to the number of additional Workweeks over the 10% cap, or (2) agreeing to end the Class Period and PAGA Period on the day before the date on which the number of Workweeks exceed the 10% cap. *See id.*, ¶ 41.

[2] *Id.*, ¶ 8.r.

[3] *Id.*, ¶ 15.

[4] *Id.*, ¶ 14.

[5] *Id.*, ¶ 16.

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Payment") and 25% (i.e., $20,000.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the PAGA Period ("PAGA Members") ("PAGA Member Amount").[6]

Plaintiffs 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 of Defendant within the State of California at any time during the Class Period.[7]

Based on information provided by Defendant for mediation, the Class is estimated to consist of approximately 485 individuals who worked a total of approximately 64,431 workweeks, and there are approximately 245 PAGA Members who worked a total of approximately 13,072 pay periods.[8]

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

The Settlement resolves the Released Class Claims of Plaintiffs and Settlement Class Members and the Released PAGA Claims of the State of California and PAGA Members, 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, Plaintiffs also move 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, ¶¶ 8.t., 8.y., 8.x., & 17. "PAGA Period" is defined as the time period from May 9, 2022 through July 17, 2023, subject to Paragraph 41 of the Settlement Agreement. *See id*., ¶ 8.z.

[7] *Id*., ¶ 8.d. "Class Period" is defined as the time period from August 9, 2017 through July 17, 2023, subject to Paragraph 41 of the Settlement Agreement. *See id*., ¶ 8.f.

[8] Madoyan Decl., ¶ 9.

[9] Settlement Agreement, ¶¶ 8.s., 8.ll, & 8.nn.

[10] *Id*., ¶¶ 34 & 35. See *id.* at ¶¶ 8.ee., for the full scope of the "Released Class Claims," *id*. at ¶ 8.ff., for the full scope of the Released PAGA Claims, and *id.* at ¶ 8.gg., for the definition of the "Released Parties."

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides "built to print" parts, assemblies, and kitting services to the aerospace community. Plaintiffs Jamie Sandoval and Victor Rodriguez are both former hourly-paid, non-exempt employees who worked for Defendant during the Class Period.

On August 9, 2021, Plaintiff Jamie Sandoval filed a Class Action Complaint for Damages ("Original Complaint") against Defendant in the Los Angeles County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On February 15, 2022, Plaintiffs filed a First Amended Class Action Complaint for Damages ("First Amended Complaint"), thereby adding Plaintiff Victor Rodriguez as an additional named plaintiff.

On May 9, 2023, Plaintiff Jamie Sandoval provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice I").

As part of the settlement process, Plaintiffs are sending an amended letter to the LWDA and Defendants ("PAGA Notice II") (together with PAGA Notice I, the "PAGA Notices").

As part of the settlement process, Plaintiffs are filing a Second Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698 Et Seq. ("Second Amended Complaint" or "Operative Complaint"), thereby adding a cause of action under PAGA on behalf of Plaintiffs and fleshing out the allegations that have been investigated, litigated, and mediated.

Plaintiffs' core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members, 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

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contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

On January 28, 2022, Defendant propounded multiple sets of discovery, including Requests for Production of Documents (Set One) and Form Interrogatories – General (Set One), on Plaintiff Jamie Sandoval and noticed the deposition of Plaintiff Jamie Sandoval.

On March 23, 2022, Plaintiff Jamie Sandoval responded with objections to Defendant's notice of deposition of Plaintiff Jamie Sandoval.

On March 31, 2022, Plaintiff Jamie Sandoval responded to Defendant's discovery requests.

On April 4, 2022, Plaintiff Jamie Sandoval propounded multiple sets of discovery, including Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two), Form Interrogatories – General (Set One), and Requests for Admission (Set One) on Defendant.

On April 15, 2022, Defendant propounded multiple sets of discovery, including Requests for Production of Documents (Set One) and Form Interrogatories – General (Set One), on Plaintiff Victor Rodriguez and noticed the deposition of Plaintiff Victor Rodriguez.

On June 3, 2022, Defendant responded to Plaintiff Jamie Sandoval's discovery requests.

On June 9, 2022, Plaintiff Victor Rodriguez responded with objections to Defendant's notice of deposition of Plaintiff Victor Rodriguez.

The Parties actively litigated the Action since it was commenced on August 9, 2021. On March 6, 2023, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq. (the "Mediator"), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Settlement Class Members and the Released PAGA Claims of Plaintiffs, PAGA Members, and the State of California with respect to the Released Parties.[11] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed Three Hundred Fifteen Thousand Dollars and Zero Cents (i.e., up to 35% of the Total Settlement Amount), and reimbursement of costs and expenses in an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00); (2) settlement administration costs, which are currently estimated not to exceed Twenty Thousand Dollars and Zero Cents ($20,000) to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Amount of Eighty Thousand Dollars and Zero Cents ($80,000), of which seventy-five percent (75%) (i.e., $60,000.00 out of $80,000.00) will be paid to the LWDA ("LWDA Payment") and twenty-five percent (25%) (i.e., $20,000.00 out of $80,000.00) will be distributed to PAGA Members on a *pro rata* basis ("PAGA Member Amount"); and (4) payments in the amount of up to Five Thousand Dollars and Zero Cents ($5,000.00) each to Plaintiffs Jamie Sandoval and Victor Rodriguez, for a total of $10,000.00 ("Enhancement Payment").[12] The Parties have agreed to retain Simpluris ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

The Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Share as follows:

a. After Preliminary Approval, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks <u>during the Class Period</u> by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.[13]

b. After Final Approval, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members during the Class Period to yield the "Final Workweek Value," and multiply each Settlement

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[11] Settlement Agreement, ¶¶ 34 & 35.
[12] *Id..*, ¶¶ 14, 15, 16, & 17.
[13] Settlement Agreement*,* ¶ 18.a.

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Class Member's individual Workweeks during the Class Period by the Final Workweek Value to yield his or her Individual Settlement Share.[14]

Individual PAGA Payments will be calculated and apportioned from the PAGA Member Amount based on the PAGA Members' number of Workweeks during the PAGA Period as follows: The Settlement Administrator will divide the PAGA Member Amount, i.e., 25% of the PAGA Amount, by the total number of Workweeks during the PAGA Period for all PAGA Members to yield the "PAGA Workweek Value," and multiply each PAGA Member's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.[15]

Each Settlement Class Member's Individual Settlement Payment 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 other non-wage damages, which will be reported on an IRS Form 1099.[16] 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.[17] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).[18] The employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares ("Employer Taxes") will be paid separately and in addition to the Total Settlement Amount.[19]

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled.[20] All funds associated with such canceled checks

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[14] *Id.,* ¶ 18.b.
[15] *Id.,* ¶ 19.
[16] *Id.*, ¶ 29.
[17] Ibid.
[18] Ibid.
[19] Settlement Agreement, ¶¶ 8.n. & 29.
[20] *Id.*, ¶ 24.

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will be transmitted to the Legal Aid Foundation of Los Angeles, after entry of an amended judgment in compliance with California Code of Civil Procedure section 384.[21]

Any Class Member wishing to be excluded from the Class Settlement (i.e., opt out) must submit a written letter ("Request for Exclusion") to the Settlement Administrator, by mail, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice by the Settlement Administrator ("Response Deadline").[22] The Request for Exclusion must: (a) contain the case name and number of the Action, (b) contain the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the Class Member requesting exclusion, (c) clearly state that the Class Member does not wish to be included in the Class Settlement, and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[23] Any Class Member who does not affirmatively request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion will be bound by all of the terms of the Class Settlement, including and not limited to those pertaining to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants Final Approval.[24] Any Class Member who submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will not be issued an Individual Settlement Payment.[25] All PAGA Members will be bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.[26]

To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) must submit a written objection ("Notice of Objection") to the Settlement Administrator, by mail, postmarked on or before the Response Deadline.[27] A 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

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[21] Ibid.
[22] *Id.*, ¶¶ 8.hh. & 8.ii.
[23] *Id.*, ¶ 8.hh.
[24] *Id.*, ¶ 25.
[25] Ibid.
[26] Settlement Agreement, ¶ 25.
[27] *Id.*, ¶ 8.v.

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(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, and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[28] Settlement Class Members, individually or through counsel, may present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection.[29]

A Class Member who wishes to dispute the number of Workweeks which have been credited to him or her, as reflected in their respective Class Notices, may do so by submitting a written letter to the Settlement Administrator, by mail, postmarked on or before the Response Deadline.[30] A written dispute must: (a) contain the case name and number of the Action, (b) contain the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the disputing Class Member, (c) clearly state that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her, (d) include information and/or attach documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct, and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[31]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

[28] Ibid.
[29] *Id.*, ¶ 26.
[30] *Id.*, ¶ 23.
[31] Settlement Agreement, ¶ 23.

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(2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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.

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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.

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

[32] Madoyan Decl., ¶¶ 12-14.

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Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data obtained from Defendant, Plaintiffs, and other sources.[33] On April 4, 2022, Class Counsel served Plaintiff Jamie Sandoval's multiple sets of formal written discovery requests onto Defendant (specifically, Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two), Form Interrogatories – General (Set One), and Requests for Admission (Set One)).[34] Thereafter, on June 3, 2022, Defendant served its responses to Plaintiff Jamie Sandoval's written discovery requests.[35] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs' employment records, a detailed sampling of Plaintiffs' and other Class Members' time data and pay records, Defendant's Employee Handbook, internal memoranda, new hire orientation checklists, company policy acknowledgments (including, and not limited to, Employee Handbook Acknowledgment, Pamphlets Acknowledgment Form, Employee Acknowledgment, Benefits Packet Acknowledgment), forms (including but not limited to, Employee Warning Form, Status/Payroll Change Report, Manual Paycheck Worksheet), procedures (including but not limited to, Company Performance Evaluation), and policies (including but not limited to Expense Reimbursement Policy and Uniform Rental Agreement), among other information and documents.[36] Class Counsel had the opportunity to interview Plaintiffs and other class members to gather information regarding the facts and circumstances surrounding Plaintiffs' and putative class members' employment and to identify potential witnesses.[37] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.[38] Class Counsel

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[33] *Id.*, ¶ 13.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Madoyan Decl., ¶ 13.
[38] Ibid.

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also drafted pleadings and the mediation brief and prepared for and attended court proceedings, mediation, and settlement negotiations, among other tasks.[39]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq. (the "Mediator"), a well-respected mediator experienced in mediating complex labor and employment matters.[40] Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in extensive discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[41] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[42] Arriving at a settlement that was acceptable to all Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[43] After conducting extensive investigations, formal and informal discovery, exchange of information, and extensive settlement negotiations, and with the aid of the Mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.[44]

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, trial, and/or appeals.[45] The Parties have had the opportunity to interview and obtain information from their respective

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[39] Ibid.
[40] *Id*., ¶ 12.
[41] Ibid.
[42] Ibid.
[43] *Id*., ¶¶ 12, 17-19.
[44] Madoyan Decl., ¶ 12.
[45] *Id*., ¶ 12 & 18-19.

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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 Settlement was 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 Nine Hundred Thousand Dollars and Zero Cents ($900,000.00), 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 formal and informal exchange of information.[50] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[51] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, PAGA Members, and the State of California.[52]

Assuming that the Attorneys' Fees and Costs, Enhancement Payments, Settlement Administration Costs, and allocation of PAGA Amount 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 Four Hundred Forty Thousand Dollars and Zero Cents ($440,000.00).[53] Additionally, 75% of the PAGA Amount (i.e., the LWDA Payment), which is $60,000.00 out of $80,000.00, will be distributed to the LWDA and 25% of the PAGA Amount

[46] *Id.*, ¶ 13.
[47] *Id.*, ¶¶ 12-14 & 17-19.
[48] *Id.*, ¶¶ 2-7.
[49] *Id.*, ¶¶ 12, 14, 15, & 22.
[50] *Id.*, ¶¶ 12-14.
[51] *Id.*, ¶¶ 17-19.
[52] *Id.*, ¶¶ 12, 14, & 22.
[53] Madoyan Decl., ¶ 15.

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(i.e., the PAGA Member Amount), which is $20,000.00 out of $80,000.00, will be distributed to PAGA Members on a *pro rata* basis.[54] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members and the PAGA Amount will be fully paid out to the LWDA and PAGA 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, and the amount of each PAGA Members' Individual PAGA Payment will be calculated based on his or her Workweeks during the PAGA Period.[55] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, the State of California, and PAGA Members.[56] 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. <u>The Settlement Is of Significant Value.</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[57] The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop

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[54] Ibid.
[55] Settlement Agreement, ¶¶ 18 & 19.
[56] Madoyan Decl., ¶¶ 12, 14, & 22.
[57] Madoyan Decl., ¶¶ 12-14 & 22.

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valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.[58] As outlined in the Declaration of Vartan Madoyan, Class Counsel performed an extensive analysis of each claim pursuant to *Kullar* prior to entering into the Settlement.[59]

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.[60] 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, Plaintiffs' claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

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

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[58] *Id.*, ¶ 19.
[59] *Id.*, ¶¶ 12-14 & 17-19.
[60] Settlement Agreement, ¶ 53.

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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 485 individuals, as detailed above.[61] This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through

[61] Madoyan Decl., ¶ 9.

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informal discovery and exchange of information in this case, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.[62] Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs 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.[63]

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.[64] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.[65]

Plaintiffs maintain 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 employed by Defendant 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 nearly three (3) years and was actively preparing for class certification and trial.[66] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery. Class Counsel reviewed a large volume of documents and data[67] and also interviewed and

[62] Madoyan Decl., ¶ 17.
[63] Ibid.
[64] Ibid.
[65] Ibid.
[66] Madoyan Decl., ¶¶ 12-14.
[67] *Id.*, ¶ 13.

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obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to mediation.[68] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[69]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[70]

The Settlement establishes a Total Settlement Amount of Nine Hundred Thousand Dollars and Zero Cents ($900,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (i.e., $315,000.00) and an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00) for costs and expenses.[71] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[72]

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*

[68] *Id.*, ¶ 13.
[69] *Id.*, ¶ 12.
[70] *Id.*, ¶¶ 2-7.
[71] Settlement Agreement, ¶ 14.
[72] Madoyan Decl., Exh. A.

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v. Moses (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao*, *supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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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Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[73]

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 Class Counsel are well within the range of reasonableness.

VIII. <u>THE PROPOSED CLASS NOTICE IS ADEQUATE</u>

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

The proposed Class Notice[74] describes the Settlement, the deadlines and procedures to submit a Notice of Objection, Request for Exclusion, and/or dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.[75]

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg,* at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[76] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[77] The proposed Class Notice also apprises the Class Members

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[73] Madoysn Decl., ¶ 20.
[74] Settlement Agreement, Exh. A.
[75] Ibid.
[76] Ibid.
[77] Ibid.

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and PAGA Members of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payment is calculated and the number of Workweeks credited to them.[78]

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

IX. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member and PAGA Member by First-Class U.S. mail.[79] With respect to Class Notices that are returned as undeliverable with a forwarding address on or before the Response Deadline, the Settlement Administrator will re-mail the Class Notice within five (5) calendar days to the forwarding address.[80] With respect to Class Notices that are returned as undeliverable without a forwarding address on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.[81] In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be the extended by fifteen (15) calendar days from the original deadline.[82]

The Settlement Administrator duties will include, calculating the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks to PAGA Members; issue W-2 and 1099 forms and all

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[78] Ibid.
[79] *Id.*, ¶ 22.a.
[80] Settlement Agreement, ¶ 22.b.
[81] Ibid.
[82] *Id.*, ¶ 8.ii.

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required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payments, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[83] The Settlement Administration Costs are currently estimated not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.[84]

Accordingly, Plaintiffs respectfully request that the Court appoint Simpluris 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.[85]

Within thirty (30) calendar days of Preliminary Approval, Defendant will provide the Settlement Administrator with a list of each Class Member's full name, last known mailing address, Social Security Number, the number of Workweeks worked as an hourly-paid or non-exempt employee of Defendant in California during the Class Period and during the PAGA Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks during the Class Period and during the PAGA Period ("collectively, Class List").[86]

Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database, for information to update and correct for any known or identifiable address changes,

[83] *Id*, ¶ 16.
[84] Ibid.
[85] Settlement Agreement, ¶ 22.
[86] *Id.*, ¶¶ 8.c. & 21.

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and will mail a Class Notice in to all Class Members in English and Spanish via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.[87]

With respect to Class Notices that are returned as undeliverable with a forwarding address on or before the Response Deadline, the Settlement Administrator will re-mail the Class Notice within five (5) calendar days to the forwarding address.[88] With respect to Class Notices that are returned as undeliverable without a forwarding address on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.[89] In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be the extended by fifteen (15) calendar days from the original deadline.[90]

Within thirty (30) calendar days after the Effective Date, Defendant will fund the first installment of Four Hundred Fifty Thousand Dollars and Zero Cents ($450,000.00) ("First Installment"), plus an amount sufficient for Employer Taxes, into a settlement account to be established by the Settlement Administrator.[91] Nine (9) months after payment of the first installment, Defendant will fund the second installment of Four Hundred Fifty Thousand Dollars and Zero Cents ($450,000.00) ("Second Installment") of the Total Settlement Amount, plus an amount sufficient for Employer Taxes, into a settlement account to be established by the Settlement Administrator.[92] Within seven (7) calendar days of the date on which the Settlement Administrator receives the First Installment of the Total Settlement Amount, the Settlement Administrator will distribute the Court-approved Individual Settlement Payments to Settlement Class Members.[93] Within seven (7) calendar days of the date on which the Settlement Administrator receives the Second Installment of the Total Settlement Amount, the Settlement Administrator will distribute the Court-approved Enhancement Payments to Plaintiffs, the

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[87] *Id.*, ¶ 22.a.
[88] *Id.*, ¶ 22.b.
[89] Ibid.
[90] *Id.*, ¶ 8.ii.
[91] Settlement Agreement, ¶¶ 8.mm. & 12.
[92] Ibid.
[93] *Id.*, ¶ 13.

Individual PAGA Payments to PAGA Members, the LWDA Payment to the LWDA, the Settlement Administration Costs to itself (the Settlement Administrator), and the Attorneys' Fees and Costs to Class Counsel.[94]

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled.[95] All funds associated with such canceled checks will be transmitted to the Legal Aid Foundation of Los Angeles, after entry of an amended judgment in compliance with California Code of Civil Procedure section 384.[96]

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT PAYMENTS

Plaintiffs Jamie Sandoval and Victor Rodriguez respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Payments in an amount up to Five Thousand Dollars and Zero Cents ($5,000.00) to each, for a total of $10,000.00.[97] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Enhancement Payments are fair and appropriate. Plaintiffs spent time and effort in producing relevant documents and past employment records and providing the facts and

[94] *Id*., ¶ 13.
[95] *Id*., ¶ 24.
[96] Ibid.
[97] Settlement Agreement, ¶ 15.

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evidence necessary to attempt to prove the allegations.[98] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.[99] Accordingly, it is appropriate and just for Plaintiffs to each receive a Enhancement Payment for their services on behalf of the Class, PAGA Members, 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 Class for settlement purposes; preliminary appoint and designate Arby Aiwazian, Joanna Ghosh, and Vartan Madoyan of Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiffs Jamie Sandoval and Victor Rodriguez as Class Representatives; appoint Simpluris as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payments, Settlement Administration Costs, and PAGA Amount; 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: August 19, 2024

LAWYERS *for* JUSTICE, PC

By: Vartan S. Madoyan

Vartan Madoyan
Attorneys for Plaintiffs

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[98] Madoyan Decl., ¶ 21; Declaration of Jamie Sandoval in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Sandoval Decl."), ¶ 4; Declaration of Victor Rodriguez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Rodriguez Decl."), ¶ 4.

[99] Madoyan Decl., ¶ 21; Sandoval Decl., ¶¶ 3-5; Rodriguez Decl., ¶¶ 3-5.

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