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

JESSE JOERGER, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

IES RESIDENTIAL, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CVRI2205490

Honorable Harold Hopp
Department 1

**PLAINTIFF'S 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); Declaration of
Settlement Administrator; and [Proposed]
Order filed concurrently herewith]

Date: Please see Notice of Hearing
Time: ~~October 24, 2023~~
8:30 a.m.
Department: 1

Complaint Filed: December 16, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 24, 2023 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Harold Hopp in Department 1 of the Superior Court of California for the County of Riverside, located at 4050 Main Street, Riverside California 92501, Plaintiff Jesse Joerger (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“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, Class Representative Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Jesse Joerger as Class Representative;
- 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”), Objection Form, and Exclusion Form (together, “Notice Packet”), attached as “**EXHIBIT A**”, “**EXHIBIT B**”, “**EXHIBIT C**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and

- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Class Representative Enhancement Payment for Plaintiff, 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 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 of the Settlement Administrator, 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: October 2, 2023

LAWYERS for JUSTICE, PC

By: /s/ Vartan Madoyan
Joanna Ghosh
Vartan Madoyan
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jesse Joerger (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and on behalf of the State of California with respect to PAGA Aggrieved Employees, on the one hand, and Defendant IES Residential Inc., (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Five Hundred Forty-Seven Thousand Dollars (\$547,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Enhancement Payment of Nine Thousand Dollars (\$9,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$191,450.00, and reimbursement of litigation costs and expenses not to exceed Fifteen Thousand Dollars (\$15,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount estimated not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00)⁵; and (5) the amount of Seventy-Five Thousand Dollars (\$75,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$56,250.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$18,750.00) will be distributed to PAGA Aggrieved Employees (i.e., the PAGA Aggrieved Employee Amount) on a pro rata basis, based on the number of PAGA

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to the Declaration of Vartan Madoyan (“Madoyan Decl.”), ¶ 6.t.

² *Id.*, ¶ 6.r.

³ *Id.*, ¶ 11.

⁴ *Id.*, ¶ 10.

⁵ *Id.*, ¶ 12.

Workweeks worked for Defendant during the PAGA Period (Defendant utilized weekly pay periods, therefore the number of pay periods are equal to the number of workweeks).⁶

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

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

Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) based upon the number of calendar weeks each Class Member worked for Defendant for at least one day as a non-exempt employee in California during the Class Period (“Workweeks”).⁸ All current and former hourly-paid or non-exempt employees who were employed by Defendant within the State of California at any time during the PAGA Period (“PAGA Aggrieved Employees”) will receive a pro rata share of the PAGA Aggrieved Employee Amount (“Individual PAGA Payment”), based on the number of Workweeks during the PAGA Period.⁹

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

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement and provisional certification of the Class for settlement purposes and to address the requirements set forth in the Class Action Case Management Order #1 (“CMO”) issued by this Court, Plaintiff also moves for an order

⁶ *Id.*, ¶ 13. “PAGA Period,” means October 11, 2021, to the date the Court grants Preliminary Approval, or an earlier date pursuant to Paragraph 35 of the Agreement (if applicable). *See id.*, ¶ 6.z.

⁷ *Id.*, ¶ 6.d. “Class Period” means the time period from October 6, 2018, to the date the Court grants Preliminary Approval, or an earlier date pursuant to Paragraph 35 of the Agreement (if applicable). *See id.*, ¶ 6.f.

⁸ *Id.*, ¶¶ 6. s., 6.ll and 6.mm.

⁹ *Id.*, ¶¶ 6.p. and 6.y.

¹⁰ *See id.* at ¶ 6. ee, for the full scope of the “Released Class Claims,” and *id.* at ¶ 6. ff, for the full scope of the “Released PAGA Claims,” and *id.* At ¶ 6. gg for the definition of the “Released Parties.”

1 permitting the filing of this memorandum which exceeds the page limit established by California
2 Rules of Court, Rule 3.1113(d).

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

4 Defendant is a provider of electrical, plumbing, HVAC, solar, and cable solutions
5 services for single-family homes and multi-family complexes in the United States, including
6 California. Plaintiff is a former employee of Defendant.

7 On December 16, 2022, Plaintiff filed a Class Action Complaint for Damages in the
8 Riverside County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
9 (“Action”).

10 On March 9, 2023, Defendant filed an Answer to Plaintiff’s Complaint for Damages.

11 On June 27, 2023, Plaintiff submitted notice to the California Labor & Workforce
12 Development Agency (“LWDA”) and Defendant of his intent to pursue civil penalties under the
13 Private Attorneys General Act, Cal. Labor Code § 2698, *et seq.* (“PAGA”).

14 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
15 engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and
16 PAGA Aggrieved Employees, of, *inter alia*, failing to pay all overtime and minimum wages,
17 failing to provide compliant meal and rest periods and associated premium pay, failing to timely
18 pay wages during employment and upon termination of employment, failing to provide
19 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse
20 necessary business expenses, and thereby engaged in unfair business practices in violation of
21 California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to
22 penalties pursuant to PAGA. Plaintiff contends that he, the Class Members, and the PAGA
23 Aggrieved Employees are entitled to, *inter alia*, unpaid wages, penalties, and attorneys’ fees.

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

27 The Parties have actively litigated the Action since its commencement. On June 5, 2023,
28 the Parties participated in a formal, full-day, arms’-length mediation conducted by the Hon. S.

James Otero (Ret.), a well-regarded mediator and retired judge who is experienced in mediating complex wage and hour class action and PAGA 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 Gross Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Member), and the Released PAGA Claims of Plaintiff 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 Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed One Hundred Ninety-One Thousand Four Hundred Fifty Dollars (\$191,450.00) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment of PAGA Amount (\$75,000.00), of which 75% will be distributed to the LWDA (i.e., \$56,250.00) ("LWDA Payment") and the remaining 25% (i.e., \$18,750.00) will be distributed to PAGA Aggrieved Employees; and (4) payment in the amount of up to Nine Thousand Dollars (\$9,000.00) to Plaintiff Jesse Joerger ("Class Representative Enhancement Payment").¹² 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 share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement and as follows:

¹¹ *Id.*, ¶¶ 29.a and 29.b.

¹² *Id.*, ¶¶ 10, 11, 12 and 13.

- a. To determine the estimated Individual Settlement Shares (for purposes of mailing the Class Notice), the Settlement Administrator will use the following formula: Net Settlement Amount will be divided by the aggregate total number of Workweeks worked by all Class Members during the Class Period, resulting in the “Estimate Workweek Value.” Each Class Member’s Individual Settlement Share will then be calculated by multiplying each individual Class Member’s total number of Workweeks by the Estimated Workweek Value.¹³
- b. After Final Approval of the Settlement, to determine the final Individual Settlement Share (for purposes of distribution of payments under the Settlement), the Settlement Administrator will divide the final, Court-approved Net Settlement Amount by the Workweeks of all Settlement 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.¹⁴

The Parties have agreed that the Individual PAGA Payments will be calculated and apportioned from the PAGA Aggrieved Employee Amount based on the PAGA Aggrieved Employees’ number of Workweeks during the PAGA Period as follows: The Settlement Administrator will divide the PAGA Aggrieved Employee Amount, i.e., 25% of the PAGA Amount, by the total number of PAGA Workweeks of all PAGA Aggrieved Employees during the PAGA Period to yield the “PAGA Workweek Value,” and multiply each PAGA Aggrieved Employee’s individual Workweeks by the PAGA Aggrieved Workweek Value to yield his or her Individual PAGA Payment.¹⁵

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁶ 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 Payment

¹³ *Id.*, ¶ 14.a.

¹⁴ *Id.*, ¶ 14.b.

¹⁵ *Id.*, ¶ 15. As noted above, Defendant utilizes weekly pay periods, and thus the number of workweeks is equal to the number of pay periods.

¹⁶ *Id.*, ¶ 24.

¹⁷ *Ibid.*

(i.e., payment of their Individual Settlement Share net of these taxes and withholdings).¹⁸ The Employer Taxes will be paid separately and in addition to the Gross 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 cancelled.²⁰ All funds remaining in the Qualified Settlement Fund in connection with cancelled checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law.²¹

Any Class Member wishing to be excluded from the Class Settlement must submit a timely and complete Exclusion Form or a written letter indicating a request to be excluded from the Settlement (together, “Request for Exclusion”) to the Settlement Administrator by mail, postmarked on or the date that is sixty (60) calendar days from the initial mailing of the Notice, Objection Form, and Exclusion Form (“Response Deadline”).²² To be valid, an Exclusion Form must be complete and a written Request for Exclusion must contain: (a) the case name and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and last four (4) digits of Social Security Number; (c) a clear written statement indicating that the Class Member seeks exclusion from the Class Settlement; and (d) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²³ The proposed Exclusion Form that is attached as “**EXHIBIT C**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement includes this information.²⁴ Class Members who submit a valid and timely Request for Exclusion will not be bound by the Class Settlement and will not be issued an Individual Settlement Payment.²⁵ However, all PAGA Aggrieved Employees will be bound to the release of the PAGA Settlement

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Id.*, ¶ 19.

²¹ *Ibid.* Pursuant to the Court’s CMO, Plaintiff’s counsel addresses the allocation of the uncashed checks in Paragraph 25 of the Madoyan Declaration.

²² *Id.*, ¶¶ 6.hh and 6.ii

²³ *Id.*, ¶ 6.hh

²⁴ *Id.*, Exh. C.

²⁵ *Id.*, ¶ 20.

1 and will still be issued an Individual PAGA Payment, irrespective of whether they submit a
2 Request for Exclusion.²⁶

3 To object to the Settlement, a Class Member who has not opted out of the Class
4 Settlement (i.e., a Settlement Class Member) must submit a complete and timely Objection Form
5 or a written objection (“Objection”) to the Settlement Administrator, by mail, on or before the
6 Response Deadline or directly present his or her objection orally to the Court at the Final
7 Approval Hearing.²⁷ To be valid, an Objection Form must be complete and a written Objection
8 must be in writing and include: (a) contain the case name and number of the Action; (b) contain
9 the Class Member’s full name, signature, address, telephone number, and last four (4) digits of
10 Social Security Number; (c) contain a written statement of all grounds for the objection
11 accompanied by any legal support for such objection; (d) contain copies of any papers, briefs,
12 or other documents upon which the objection is based; and (e) be submitted by mail to the
13 Settlement Administrator at the specified address, postmarked on or before the Response
14 Deadline.²⁸ The proposed Objection Form is attached as “**EXHIBIT B**” to the [Proposed] Order
15 Granting Preliminary Approval of Class Action Settlement includes this information.²⁹

16 Class Members who wish to dispute the number of Workweeks credited to them in their
17 Class Notice may do so by mailing a written letter (“Workweeks Dispute”) to the Settlement
18 Administrator on or before the Response Deadline.³⁰ The Workweeks Dispute must: (a) contain
19 the case name and number of the Action; (b) contain the Class Member’s full name, signature,
20 address, telephone number, and last four (4) digits of Social Security Number; (c) clearly state
21 that the Class Member disputes of the number of Workweeks credited to him or her and what
22 he or she contends is the correct number to be credited to him or her; (d) attach any
23 documentation that he or she has to support the dispute; and (e) be submitted by mail to the
24

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26 _____
²⁶ *Ibid.*

27 ²⁷ *Id.*, ¶ 21.

28 ²⁸ *Id.*, ¶ 6.v.

²⁹ *Id.*, Exh. B.

³⁰ *Id.*, ¶ 6.nn.

Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³¹

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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).

³¹ *Ibid.*

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

9 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

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

22 The proponent of the settlement has the burden to show that it is fair and reasonable.
23 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the
24 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
26 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
28 1151.

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

The Parties actively litigated the Action since it was commenced on December 16, 2022. 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 subsequent trial.³²

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.³³ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a detailed sampling of Plaintiff's, Class Members', and Aggrieved Employees' timekeeping and payroll and reimbursement data, Defendant IES Residential, Inc.'s Employee Handbook and wage and hour policies, earning statements, company policy acknowledgements, internal memoranda, job descriptions, and meal and rest period policies, among other information and documents.³⁴ Class Counsel had the opportunity to interview Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁵ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings and the production of documents and data prior to the mediation.³⁶ Class Counsel also drafted pleadings, court filings, and a mediation brief, and prepared for and attended mediation and settlement negotiations, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Hon. S. James Otero (Ret.), a well-respected mediator and retired judge who is experienced in mediating complex labor and employment matters.³⁸ In the course of litigation and in connection with mediation and settlement discussions, the Parties

³² Madoyan Decl., ¶¶ 11-12.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Id.*, ¶ 10.

engaged in confidential mediation discovery (described above), and engaged in an intensive discussion 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 as it applies to off-the-clock and rounding claims, regular rate claims, meal and rest period claims and premium pay, piece-rate claims, reimbursement claims, record keeping and the applicable wage orders, and PAGA claims (among other claims), wage and hour enforcement and class certification, as well as the evidence produced and analyzed and the possibility of appeals, among other things.³⁹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴¹ After conducting investigations, 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 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴²

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴³ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's, Class Members', and PAGA Aggrieved Employees' employment with Defendant and performed significant research into the law concerning class certification, representative PAGA claims, off-the-clock and rounding theories, meal and rest periods, reimbursement, wage-and-

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶ 17.

⁴⁴ *Ibid.*

hour enforcement, Plaintiff's claims and damages, and Defendants' defenses thereto, as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁶

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

The Settlement, which provides for a Gross Settlement Amount of Five Hundred Forty-Seven Thousand Dollars (\$547,000.00), represents a fair, adequate, and reasonable resolution of the matter. As detailed above and in the Declaration of Vartan Madoyan, the Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue. Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁷

Assuming that the Attorneys' Fees and Costs, Class Representative Enhancement Payment, PAGA Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Two Hundred Forty-Nine Thousand Five Hundred Fifty Dollars (\$249,050.00).⁴⁸ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during the Class Period and the amount of each Aggrieved Employee's Individual PAGA Payment will be based on his or her PAGA Workweeks during the PAGA Period. 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

⁴⁵ *Id.*, ¶ 12.

⁴⁶ *Id.*, ¶¶ 2-6.

⁴⁷ *Id.*, ¶¶ 10 & 75.

⁴⁸ *Id.*, ¶ 13.

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. Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a large volume of documents, data, and information in the course of litigation and in connection with mediation and settlement negotiations.⁴⁹ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and of Defendant’s defenses thereto.⁵⁰ As outlined in the Declaration of Vartan Madoyan, Class Counsel performed an extensive analysis of each and every claim and the defenses, pursuant to *Kullar* prior to entering into the Settlement.⁵¹

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.⁵² 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*

⁴⁹ *Id.*, ¶¶ 10-12.

⁵⁰ *Id.*, ¶ 17.

⁵¹ *Id.*, ¶¶ 25-74.

⁵² Settlement Agreement, ¶ 7.

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

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 one hundred and sixty-five (165) individuals.⁵³ 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 and non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

⁵³ Madoyan Decl., ¶ 21.

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

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

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

16 Here, common issues of fact and law predominate as to each of the claims alleged and
17 asserted in the Operative Complaint. Based on the documents and information obtained through
18 informal discovery and exchange of information in this case, Plaintiff contends that Class
19 Members were subject to the same or similar job duties and uniform operations and employment
20 practices, policies, and procedures during the relevant time period.⁵⁴ Plaintiff’s claims arise
21 from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and
22 the Class Members, of, *inter alia*, failing to properly pay all wages due (including, *inter alia*,
23 minimum, regular, overtime, and reporting time wages), to provide compliant meal and rest
24 periods and to pay associated premium pay, to timely pay wages during employment and upon
25 termination of employment, to provide complaint wage statements, to maintain requisite payroll
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⁵⁴ Madoyan Decl., ¶¶ 15 & 26.

records, and to reimburse necessary business expenses, and thereby engaging in unfair business practices (in addition to the PAGA claim).⁵⁵

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time periods at issue.⁵⁶ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁵⁷ 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 investigated and litigated this matter for nearly one year, and was actively preparing the matter for class certification and trial.⁵⁸ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery. As noted above, Class Counsel reviewed a large volume of documents and data, and also interviewed and obtained information from Plaintiff and other sources, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to mediation. Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day arm's-length mediation.

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁵⁹

The Settlement establishes a Gross Settlement Amount of Five Hundred Forty-Seven Thousand Dollars (\$547,000.00), 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 Gross Settlement Amount (i.e., \$191,450.00) and an amount not to exceed

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Id.*, ¶ 10.

⁵⁹ *Id.*, ¶¶ 2-7.

Fifteen Thousand Dollars (\$15,000.00) for costs and expenses.⁶⁰ 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.⁶¹

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

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California

⁶⁰ Settlement Agreement, ¶ 10.

⁶¹ *Id.*, Exh. A.

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).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶²

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff’s motion for final approval of the Settlement and application for the 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. 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

⁶² Madoyan Decl., ¶ 18.

1 matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623
2 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

3 The proposed Class Notice describes the Settlement, the deadlines and procedures to
4 mail an Objection to the Class Settlement, Request for Exclusion from the Class Settlement,
5 and/or Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁶³

6 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
7 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
8 members to make an informed decision about their participation.” *Manual for Complex*
9 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
10 proceedings to date and the terms and conditions of the Settlement in an informative and
11 coherent manner.⁶⁴ The proposed Class Notice recognizes that the Court has not yet granted
12 final approval of the settlement.⁶⁵ The proposed Class Notice also apprises the Class Members
13 of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks
14 credited to them.⁶⁶

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 SETTLEMENT ADMINISTRATORS AS THE**
22 **SETTLEMENT ADMINISTRATOR**

23 The Parties have selected, subject to Court approval, Phoenix Settlement Administrators
24 to administer the Settlement.

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26
27 ⁶³ Settlement Agreement, Exh. A.

28 ⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁶⁷ With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will re-mail the Notice Packet within five (5) calendar days to any forwarding address that is indicated on the returned Notice, or in the event that no such forwarding address is indicated, then the Settlement Administrator will search for an alternate address by way of skip-trace, and if an alternate address is located, will re-mail the Class Notice within five (5) calendar days.⁶⁸ In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fifteen (15) calendar days from the initial Responses Deadline.⁶⁹ The Settlement Administrator will receive and process Requests for Exclusion, Objections, and any Workweek Disputes.⁷⁰

The Settlement Administrator's duties will include translating the Class Notice in Spanish, printing, distributing, and tracking Class Notices, and other documents for this Settlement, calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filing, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth to process this Settlement, and as requested by the Parties.⁷¹ The Settlement Administration Costs are currently estimated to be Six Thousand Dollars (\$6,000.00), but out of an abundance of caution, the Parties request that the Court set Settlement Administration Costs to not exceed \$7,500.00 in order to provide a cushion to resolve any reasonable unforeseen issues, with any excess balance reverting back to be added to the Net Settlement Amount for distribution to the Class Members.⁷² The Settlement Administration Costs will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁷³

Accordingly, Plaintiff respectfully requests that the Court appoint Phoenix Settlement Administrators as the Settlement Administrator and direct the mailing of the Notice to the Class

⁶⁷ *Id.*, ¶ 18.a.

⁶⁸ *Id.*, ¶ 18.b.

⁶⁹ *Id.*, ¶ 6.ii.

⁷⁰ *Id.*, ¶¶ 18.c, 20 and 21.

⁷¹ *Id.*, ¶ 12;

⁷² Madoyan Decl, ¶ 14.

⁷³ *Ibid.*

Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records, and as may be updated based on the Settlement Administrator performing a search based on the National Change of Address Database or other similar service available, such as provided by Experian, for information to update and correct for any known or identifiable address changes.⁷⁴

Within twenty-one (21) calendar days of Preliminary Approval, Defendants will provide the Settlement Administrator with the following information for each Class Member: last-known full name, mailing address, telephone number, Social Security Number, dates employed as a non-exempt employee of Defendant in California during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks (collectively, "Class List").⁷⁵

Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will mail the Notice to the Class Members via First-Class U.S. Mail.⁷⁶ With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will re-mail the Notice Packet within five (5) calendar days to any forwarding address that is indicated on the returned Notice, or in the event that no such forwarding address is indicated, then the Settlement Administrator will search for an alternate address by way of skip-trace, and if an alternate address is located, will re-mail the Class Notice within five (5) calendar days.⁷⁷ Class Members will have until the Response Deadline to mail a Request for Exclusion, Workweek Disputes, and/or Objection.⁷⁸

⁷⁴ *Id.*, ¶ 6.c & 18.b.

⁷⁵ *Ibid.*

⁷⁶ *Id.*, ¶ 18.a.

⁷⁷ *Id.*, ¶ 18.b.

⁷⁸ *Id.*, ¶ 6.ii.

Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting estimate of the amounts to be paid by Defendant pursuant to the terms of the Settlement and establish a qualified settlement account for administration of the Settlement.⁷⁹ Within thirty (30) calendar days after the Effective Date, Defendant will make a one-time deposit of the Gross Settlement Amount plus an amount sufficient for Employer's Taxes into the settlement account to be established by the Settlement Administrator.⁸⁰ Within seven (7) calendar days of the funding of the Gross Settlement Amount and an amount sufficient for Employer Taxes, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) Individual PAGA Payments to PAGA Aggrieved Employees; (c) LWDA Payment to the LWDA; (d) Class Representative Enhancement Payment to Plaintiff; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to itself (the Settlement Administrator).⁸¹

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 cancelled.⁸² All funds remaining in the Qualified Settlement Fund in connection with cancelled checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*⁸³

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

Plaintiff Jesse Joerger respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Enhancement Payment in an amount up to Nine Thousand Dollars (\$9,000.00) to Plaintiff Jesse Joerger.⁸⁴ It is within the

⁷⁹ *Id.*, ¶ 9.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Id.*, ¶ 19.

⁸³ *Ibid.* Pursuant to the Court's CMO, Plaintiff's counsel addresses the allocation of the uncashed checks in Paragraph 25 of the Madoyan Declaration.

⁸⁴ *Id.*, ¶ 11.

Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Class Representative Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁸⁵ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁸⁶ Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Enhancement Payment for his services on behalf of the Class, PAGA Aggrieved Employees, and the State of California in addition to his individual settlement payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Jesse Joerger as Class Representative; appoint Phoenix Settlement Administrators as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Class Representative Enhancement Payment, PAGA Amount, and Settlement Administration Costs; approve the proposed Class Notice, Objection Form, and Exclusion Form; direct the Settlement Administrator to undertake the notice and settlement

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⁸⁵ Madoyan Decl., ¶ 19.

⁸⁶ *Ibid.*

administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing.

Dated: October 2, 2023

LAWYERS for JUSTICE, PC

By: /s/ Vartan Madoyan
Joanna Ghosh
Vartan Madoyan
Attorneys for Plaintiff