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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

AMANDA SIRA, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs. FOUNDATION PARTNERS GROUP, LLC, a Delaware limited liability company; MISSION MORTUARY, an unknown business entity; and DOES 1 through 100, inclusive, Defendants.	Case No.: 37-2023-00036172-CU-OE-CTL Honorable James A. Mangione Department C-75 **CLASS ACTION** **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 (Selena Matavosian); Declaration of Proposed Class Representative (Amanda Sira); and [Proposed] Order filed concurrently herewith] Date: September 20, 2024 Time: 9:00 a.m. Department: C-75 Complaint Filed: August 21, 2023 FAC Filed: December 18, 2023 Trial Date: None Set

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

PLEASE TAKE NOTICE that on September 20, 2024 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable James A. Mangione in Department C-75 of the Superior Court of California for the County of San Diego, located at Hall of Justice Courthouse, 330 West Broadway, San Diego, California 92101, Plaintiff Amanda Sira ("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 Between Plaintiff and Defendant ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT A**" to the Declaration of Selena Matavosian, 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 litigation costs to Class Counsel, Enhancement Award to Plaintiff, and settlement administration expenses to the Settlement Administrator;
- Conditionally certifying the Settlement Class for settlement purposes;
- Preliminarily appointing Plaintiff Amanda Sira as Class Representative;
- Preliminarily appointing Joanna Ghosh and Selena Matavosian of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement ("Class and PAGA Notice"), attached as "**Exhibit 1**" to the Settlement Agreement;
- Directing the mailing of the Class and PAGA Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrator ("Phoenix") 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 litigation costs to Class Counsel, Enhancement Award to Plaintiff, and settlement administration expenses to the Settlement Administrator.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of the settlement of a putative class action, allows the Court to preliminarily certify a class for settlement purposes, and permits the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Selena Matavosian) and Proposed Class Representative (Amanda Sira) 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 28, 2024

LAWYERS *for* JUSTICE, PC

By: ______________________________
Selena Matavosian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Amanda Sira ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release Between Plaintiff and Defendant ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Foundation Partners Group, LLC ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (together, the "Parties") have agreed to settle this lawsuit for a Maximum Settlement Amount of Eight Hundred Thousand Dollars and No Cents ($800,000.00).[1] The Maximum Settlement Amount includes the following: (1) Settlement Awards to Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Enhancement Award of Seven Thousand Five Hundred Dollars and No Cents ($7,500.00) to Plaintiff[3]; (3) the Class Counsel's attorneys' fees and litigation expenses, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or $280,000.00 if the Maximum Settlement Amount is $800,000.00, and reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and No Cents ($25,000.00)[4]; (4) the settlement administration expenses to the Settlement Administrator in the amount not to exceed Ten Thousand Dollars and No Cents ($10,000.00);[5] and (5) the amount of Eighty Thousand Dollars and No 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")

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[1] Settlement Agreement, attached as "**EXHIBIT A**" to Declaration of Selena Matavosian ("Matavosian Decl."), ¶ 15.c. Defendant represent that the Class Members consist of 307 employees who have worked 18,667 workweeks from July 17, 2019 to October 24, 2023. The Parties further agree that if the final number of workweeks from July 17, 2019 to October 24, 2023, which formed the basis of the Settlement, increases by more than ten percent (10%) above 18,667 workweeks (e.g., to greater than 20,534 workweeks), Defendant at its sole discretions shall either: (1) increase the Gross Settlement amount by the proportional amount for the percentage of workweeks above ten percent (10%) (*i.e.*, by the percentage of workweeks above 20,534 workweeks); or (2) end the Class Period at the point in time ("Alternate Date") where workweeks equal 20,534 workweeks. *See id.*, ¶ 15.c.ix.

[2] *Id.*, ¶ 15.c.

[3] *Id.*, ¶15.vi.

[4] *Id.*, ¶ 17.

[5] *Id.*, ¶ 15.c.v.ii.

and 25% (i.e., $20,000.00) will be distributed to all Class Members who worked any hours for Defendant in California from March 13, 2022 through the date the Court preliminarily approves the Settlement ("PAGA Members") on a *pro rata* basis based on the number of weeks worked by PAGA Members during the PAGA Period.[6]

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

> All persons employed by Defendant in California as a non-exempt employee from July 17, 2019 through preliminary approval of the Settlement. The Settlement Class, however, shall not include any person who previously settled or released any of the claims covered by this Settlement, any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement, or any person who submits a timely and valid Request for Exclusion as provided in this Settlement. ("Settlement Class or "Class Members").[7]

Based on information provided by Defendant on June 25, 2024, the Settlement Class is estimated to consist of approximately three hundred fifty-seven (357) individuals who worked approximately twenty-three thousand six hundred twenty (23,620) workweeks.[8]

Class Members who do not submit a valid and timely Request for Exclusion will receive a share of the Net Settlement Amount ("Settlement Award") on a *pro rata* basis based upon the number of weeks worked by all Class Members during the Class Period. [9]

All PAGA Members will receive a *pro rata* share of the twenty-five percent (25%) portion of the PAGA penalties allocation based upon the number of pay periods worked by each PAGA Member during the PAGA Period.[10]

The Settlement, if granted preliminary and final approval by the Court, will resolve the Released Class Claims of Plaintiff and the Settlement Class and the Released PAGA Claims of Plaintiff, the State of California and PAGA Members, against the Released Parties.[11]

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[6] Settlement Agreement, ¶¶ 7 & 15.c.ii. The "PAGA Period" is from March 13, 2022 through the date the Court preliminarily approves the Settlement. *Id.*, ¶ 6.

[7] *Id.*, ¶ 7. "Class Period" is from July 17, 2019 through the date the Court preliminarily approves of the Settlement, or the Alternate Date described in Paragraph 15.c.ix of the Settlement Agreement, unless the Escalator Clause is triggered and Defendant chooses to increase the Maximum Settlement Amount. *See id.*, ¶ 6.

[8] Matavosian Decl., ¶ 9.

[9] Settlement Agreement, ¶ 15.c.i.

[10] *Id.*, ¶¶ 15.c. & 15.c.ii.

[11] *Id.*, ¶¶ 24 & 25. See *id.* at ¶ 24 for the full scope of the "Released Class Claims," *id.* at ¶ 25 for the full scope of the "Released PAGA Claims," and *id.* at ¶ 11 for the definition of the "Released Parties."

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides funeral, cemetery and cremation services. Plaintiff Amanda Sira was a former employee of Defendant.

On June 15, 2023, Plaintiff Amanda Sira provided written notice by online submission to the LWDA and by certified mail to Defendant and Mission Mortuary of the specific provisions of the California Labor Code that were alleged to be violated ("LWDA Notice").

On August 21, 2023, Plaintiff filed a Class Action Complaint for Damages ("Original Complaint") in the Superior Court of California for the County of San Diego ("Court"), thereby commencing the above-captioned lawsuit entitled *Amanda Sira v. Foundation Partners Group, LLC, et al.*, Case No. 37-2023-00036172-CU-OE-CTL ("Action").

On August 21, 2023, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* ("PAGA Complaint"), against Defendant and Mission Mortuary in Superior Court of California for the County of San Diego, thereby commencing the lawsuit entitled *Amanda Sira v. Foundation Partners Group, LLC, et al.*, Case No. 37-2023-00036177-CU-OE-CTL ("PAGA Action").

On October 26, 2023, Defendant filed an Answer to the Original Complaint.

On October 26, 2023, Defendant filed an Answer to the PAGA Complaint.

On November 7, 2023, Plaintiff filed a Notice of Settlement of Entire Case in the Action.

On November 7, 2023, Plaintiff filed a Notice of Settlement of Entire Case in the PAGA Action.

On December 18, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq*. ("Operative Complaint") in the Action, thereby consolidating the claims alleged in the Action and PAGA Action into a single consolidated complaint.

On January 3, 2024, Plaintiff filed a Request for Dismissal in the PAGA Action, and on January 3, 2024, the Court dismissed the PAGA Action.

On January 19, 2024, Defendant filed an Answer to the Operative Complaint.

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

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

The Parties have actively litigated the Action since it was commenced on August 21, 2023. On November 2, 2023, the Parties participated in a private mediation conducted by Russ J. Wunderli, Esq., 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 Maximum Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class) and Released PAGA Claims of Plaintiff, the State of California, and the PAGA Members, with respect to the Released Parties.[12] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., up to $280,000.00 if the Maximum Settlement Amount is $800,000.00) and reimbursement of costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars and No Cents

[12] Settlement Agreement, ¶¶ 24 & 25.

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($25,000.00) to Class Counsel; (2) settlement administration expenses, which are currently estimated not to exceed Ten Thousand Dollars and No Cents ($10,000.00) to the Settlement Administrator; (3) PAGA penalties allocation in the amount of Eighty Thousand Dollars and No Cents ($80,000.00), of which seventy-five percent (75%) (i.e., $60,000.00 out of $80,000.00) will be distributed to the LWDA and the remaining 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; and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars and No Cents ($7,500.00) to Plaintiff Amanda Sira ("Enhancement Award").[13] The Parties have agreed to retain Phoenix Settlement Administrator ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.

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

a. Payments to Class Members under the Settlement ("Settlement Awards") will be determined by Defendant, based on Defendant's time clock records, by calculating the number of weeks worked by all Class Members during the Class Period. [14]
b. The Settlement Administrator will calculate the amount to be paid to Class Members on a per workweek basis by dividing the Net Settlement Amount by the aggregate number of weeks worked by all Class Members. Partial workweeks will not be counted; however, if a Class Member worked only one day as a Class Member, such Class Member will be credited with having worked one workweek for purposes of the Settlement.[15]

The Parties have agreed that the Settlement Administrator will determine each PAGA Member's *pro rata* share of the twenty-five percent (25%) portion of the PAGA allocation (i.e., PAGA Shares), in accordance with the Settlement Agreement and as follows: The amount to be paid per workweek to PAGA Members will be calculated by the Settlement Administrator by dividing the Net PAGA Settlement Amount by the aggregate number of pay periods worked by PAGA Members.[16]

Each Class Member's Settlement Award will be allocated as follows: one-third (1/3) as wages, which will be reported on an IRS Form W-2; and one-third (1/3) as penalties and one-

[13] Settlement Agreement, ¶¶ 15.c, 15.c.ii, 15.c.vi, 15.c.vii & 17.
[14] *Id.*, ¶ 15.c.i.
[15] Ibid.
[16] *Id.*, ¶ 15.c.ii.

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third (1/3) as interest, which will be reported on an IRS Form 1099.[17] Defendant will pay the employer's share of the payroll taxes for the wage portion of the Settlement Awards in addition to the Maximum Settlement Amount.[18] Each PAGA Share will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.[19]

Settlement Award and PAGA Share checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance.[20] The Parties agree the Settlement Administrator will send one (1) reminder notice to all Class Members and PAGA Members who have not cashed the Settlement Award or PAGA Share check thirty (30) calendar days prior to the deadline.[21] Upon the deadline to cash the Settlement Award and PAGA Share checks, the checks will automatically be cancelled by the Settlement Administrator if not cashed by the Class Member or the PAGA Member within that time.[22] Any residue from uncashed Settlement Award or PAGA Share checks after the expiration date will be paid within fourteen (14) calendar days after the one hundred twenty (120)-day check cashing period expires pursuant to California Code of Civil Procedure section 384(b)(3) to Koinonia Family Services, a non-profit 501(c)(3) organization with child advocacy programs in the State of California, as the *cy pres* recipient, subject to Court approval.[23]

Class Members who wish to be excluded from the Settlement (i.e., opt out) must submit a written request ("Request for Exclusion") to the Settlement Administrator, by mail, postmarked on or before the date that is forty-five (45) calendar days after the Settlement Administrator mails the Class and PAGA Notice to the Class Members.[24] A Request for Exclusion must: (a) state the individual's full name, address, date of birth, and dates he/she worked as a Class Member for Defendant in California, and (b) state that he/she has received

[17] Settlement Agreement, ¶ 15.c.iii.
[18] *Ib.,* ¶ 15.c.
[19] *Id.*, ¶ 15.c.iii.
[20] *Id.*, ¶ 21.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] *Id.*, ¶ 22.

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the Class and PAGA Notice, he/she has decided not to participate in the Settlement, and words to the effect that he/she desires to be excluded from the Settlement.[25] Any individual who submits a Request for Exclusion will not be allowed to object to the terms of the Settlement.[26] PAGA Members cannot opt out as a PAGA Member and release all Released PAGA Claims during the PAGA Period.[27]

To object to the Settlement, Class Members who have not opted out of the Settlement must submit a written objection to the Settlement to the Settlement Administrator, by mail, on or before the date that is forty-five (45) calendar days after the Settlement Administrator mails the Class and PAGA Notice or directly presenting his or her objection orally to the Court at the Final Approval Hearing with or without submitting a written objection.[28] To object, the individual must file a written objection and a notice of intention to appear at the Final Approval hearing with the Clerk of the San Diego County Superior Court of the State of California and send copies to the Settlement Administrator, Class Counsel, and counsel for Defendant.[29] The objection must: (a) state his/her full name, address, date of birth, and dates he/she worked as a Class Member in California for Defendant, and (b) state each specific reason in support of the objection and any legal support for each objection.[30]

Class Members and PAGA Members will have an opportunity to dispute the number of workweeks and/or pay periods to which they have been credited, as reflected in their respective Class and PAGA Notices.[31] Defendant will provide time clock data to the Settlement Administrator for resolution of any workweek and/or pay period disputes by a particular Class Member and/or PAGA Member.[32] All workweek and/or pay period disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all workweek and/or pay period disputes will be final and non-appealable.[33]

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[25] Settlement Agreement, ¶ 22.
[26] Ibid.
[27] Ibid.
[28] *Id.*, ¶ 23.
[29] Ibid.
[30] Ibid.
[31] *Id.*, ¶¶ 15.c.i & 15.c.ii.
[32] Ibid.
[33] Ibid.

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IV. <u>LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS</u>

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).

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

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F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg,* § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

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

The Parties actively litigated the Action since it was commenced on August 21, 2023.

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Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.[34]

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the matter, including and not limited to, the exchange, review, and analysis of a large volume of pages of documents and data obtained from Defendants, Plaintiffs, and other sources.[35] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a random sampling of Class Member's time data and pay records, internal memoranda, company policy acknowledgments (including but not limited to COVID 19 Update and Acknowledgment), forms (including but not limited to California Meal Break Waiver Form and Hepatitis B Vaccination Acceptance/Declination Form), and procedures and policies (including but not limited to Drug and Alcohol Testing Policy, Policy and Agreement on Mandatory Arbitration of Disputes, Telephone Quality Assurance Monitoring and Recording Program, Sexual and Other Workplace Harassment, California Meal and Rest Break Policy, and Code of Ethics and Standards of Business Conduct), among other information and documents.[36] Class Counsel had the opportunity to interview Plaintiff and other class members to gather information regarding the facts and circumstances surrounding Plaintiff's 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, and the production of documents and data prior to the mediation.[38] Class Counsel 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 mediation conducted by Russ J. Wunderli, Esq., a well-respected mediator experienced in mediating

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[34] Matavosian Decl., ¶¶ 12-14.
[35] *Id.*, ¶ 13.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] *Id.*, ¶ 13.

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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 cases and various aspects of the cases, 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, arbitration agreements, 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 both Parties was not easy. Defendant and their 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 investigations, informal discovery, exchange of information, 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.[44]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification, trial, and/or upon appeal.[45] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[46] Counsel for the Parties have also reviewed documents and information relating to Plaintiff's, the Class Members', and PAGA 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, arbitration agreements, wage-and-hour law and enforcement, Plaintiff's claims and damages, and Defendant's defenses

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

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thereto, as well as facts discovered.[47] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[48]

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

The Settlement, which provides for a Maximum Settlement Amount of Eight Hundred Thousand Dollars and No Cents ($800,000.00), represents a fair, adequate, and reasonable resolution of the matter.[49] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.[50] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[51] Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Settlement Class, the PAGA Members, and the State of California.[52]

Assuming that the attorneys' fees and litigation expenses, Enhancement Award, PAGA penalties allocation, and settlement administration expenses are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Three Hundred Ninety-Seven Thousand Five Hundred Dollars and No Cents ($397,500.00).[53] Additionally, seventy-five percent (75%) of the PAGA penalties allocation, which is $60,000.00 out of $80,000.00, will be distributed to the LWDA and twenty-five percent (25%) of the PAGA penalties allocation, 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 and the PAGA penalties allocation will be fully paid out to the LWDA and PAGA Members, in

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[47] Matavosian Decl., ¶¶ 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] *Id.,* ¶ 15.
[54] *Id.*, ¶ 15.

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accordance with the Settlement Agreement. The amount of each Class Member's Settlement Award will be calculated based on his or her workweeks during the Class Period, and the amount of each PAGA Member's PAGA Share will be calculated based on his or her pay periods 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 PAGA Members, and the State of California.[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 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 Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.[58] As outlined in the Declaration of Selena Matavosian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[59]

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[55] Settlement Agreement, ¶¶ 15.c.i. & 15.c.ii.
[56] Matavosian Decl., ¶¶ 12, 14, & 22.
[57] *Id.*, ¶¶ 12-14, & 19.
[58] *Id.*, ¶ 19.
[59] *Id.*, ¶¶ 12-14 & 17-19.

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VI. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

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

A. The Settlement 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.

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[60] Settlement Agreement, ¶¶ 19 & 20.

Based on information provided by Defendant on June 25, 2024, this matter involves a class of approximately three hundred fifty-seven (357) individuals.[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 non-exempt employees in California during the Class Period. As such, the Settlement Class is ascertainable and sufficiently numerous.

B. <u>The Class Members Share a Well-Defined Community of Interest.</u>

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 informal discovery and exchange of information in this matter, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment

[61] Matavosian Decl., ¶ 9.

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practices, policies, and procedures during the time period at issue.[62] Plaintiff's claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[63]

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.[64] 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.[65]

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

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

Class Counsel has litigated the matter for almost one (1) year and was actively preparing the matter 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 cases and informal discovery. Class Counsel reviewed a large volume of documents and data[67] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the

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

pleadings, discovery, 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 mediation.[69]

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

The Settlement establishes a Maximum Settlement Amount of Eight Hundred Thousand Dollars and No Cents ($800,000.00), and provides for Class Counsel to apply to the Court for attorneys' fees and litigation expenses, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., $280,000.00 if the Maximum Settlement Amount remains $800,000.00) and an amount not to exceed Twenty-Five Thousand Dollars and No Cents ($25,000.00) for costs and expenses.[71] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (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, PAGA Members, and the State of California, 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 and PAGA Notice provides Class Members with information about the amount allocated toward the attorneys' fees and litigation expenses, and that an award of the attorneys' fees and litigation expenses 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] Matavosian Decl., ¶ 13.
[69] *Id.*, ¶ 11.
[70] *Id.*, ¶¶ 2-7.
[71] Settlement Agreement, ¶ 17.
[72] *Id.*, Exh. 1.

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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 Plaintiff's motion for final approval of the Settlement and application for the attorneys' fees and litigation expenses 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 AND PAGA NOTICE IS ADEQUATE

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

The proposed Class and PAGA Notice[74] describes the Settlement, the deadlines and procedures to submit an objection to the Settlement, submit a Request for Exclusion from the Settlement, and/or disputes regarding workweeks and/or pay periods, and the date and time set for the Final Approval Hearing.[75]

The proposed Class and PAGA 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 and PAGA Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[76] The proposed Class and PAGA Notice recognizes that the Court has not yet granted final approval of the settlement.[77] The proposed Class and PAGA Notice also apprises the Class Members and PAGA Members of, *inter alia*, how their Settlement

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[73] Matavosian Decl., ¶ 20.
[74] Settlement Agreement, Exh. 1.
[75] Ibid.
[76] Ibid.
[77] Ibid.

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Awards and PAGA Shares are calculated and the number of workweeks and pay periods credited to them.[78]

The proposed Class and PAGA 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 and PAGA Notice.

IX. APPOINTMENT OF PHOENIX AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix Settlement Administrator ("Phoenix") to administer the Settlement.

After receiving the Class Member and PAGA Member Information from Defendant, the Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List ("NCOA").[79] Within forty-five (45) calendar days of preliminary approval of this Settlement, the Settlement Administrator will mail the Class and PAGA Notice to Class Members and PAGA Members.[80] Class and PAGA Notices returned to the Settlement Administrator as non-delivered shall be resent to the forwarding address, if any, on the returned envelope.[81] If there is no forwarding address, the Settlement Administrator will do an NCOA check and will skip-trace return mail and re-mail within three (3) business days of receipt using the Class Member's Social Security Number; this search will be performed only once per Class Member by the Settlement Administrator.[82] Class Members and PAGA Members will have a maximum of fifteen (15) calendar days from the date of the re-mailing due to an undeliverable notice to cure the deficiency, or until the end of the opt

[78] Settlement Agreement, Exh. 1.
[79] *Id.*, ¶ 19.a.
[80] Ibid.
[81] *Id.*, ¶ 19.b.
[82] Ibid.

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out deadline, whichever is later.[83] The Settlement Administrator will receive and process dispute regarding workweeks and/or pay periods, Requests for Exclusion, and objections.[84]

The Settlement Administrator's duties will include, calculating the amounts of the Settlement Awards and PAGA Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Settlement Awards; mail the Settlement Award checks to Class Members and PAGA Share checks to PAGA Members; issue W-2 and 1099 forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations; calculate and disburse the attorneys' fees and costs, Enhancement Award, and payment to the LWDA; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[85] The settlement administration expenses are currently estimated not to exceed Ten Thousand Dollars and No Cents ($10,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.[86]

Accordingly, Plaintiff respectfully requests that the Court appoint Phoenix as the Settlement Administrator and direct the mailing of the Class and PAGA Notice to the Class Members and PAGA 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 and PAGA Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members and PAGA Members based on Defendants' records.[87]

Within thirty (30) calendar days of preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member and PAGA Member: (1) full name; (2) last known addresses; (3) last known telephone

[83] Settlement Agreement, ¶ 19.b.
[84] *Id.*, ¶¶ 15.c.i, 15.c.ii, 22, & 23.
[85] Settlement Agreement, ¶ 16; Matavosian Decl., ¶ 16.
[86] Settlement Agreement, ¶¶ 15.c.vii & 16.
[87] *Id.*, ¶ 19.b.

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number; (4) Social Security Number; (5) number of workweeks during the Class Period; and (6) number of pay periods during the PAGA Period (collectively, "Class Member and PAGA Member Information").[88]

Within forty-five (45) calendar days of preliminary approval of this Settlement, the Settlement Administrator will mail the Class and PAGA Notice to Class Members and PAGA Members.[89] Class and PAGA Notices returned to the Settlement Administrator as non-delivered shall be resent to the forwarding address, if any, on the returned envelope.[90] If there is no forwarding address, the Settlement Administrator will do an NCOA check and will skip-trace return mail and re-mail within three (3) business days of receipt using the Class Member's Social Security Number; this search will be performed only once per Class Member by the Settlement Administrator.[91] Class Members will have until the applicable deadline to mail a dispute regarding workweeks and/or pay periods, Request for Exclusion, and/or a objection.[92] Class Members and PAGA Members will have a maximum of fifteen (15) calendar days from the date of the re-mailing due to an undeliverable notice to cure the deficiency, or until the end of the opt out deadline, whichever is later.[93]

Defendant, on behalf of the Released Parties, will pay the entirety of the Maximum Settlement Amount (e.g., $800,000.00) to the Settlement Administrator within thirty (30) calendar days following the Court's final approval order, and after the Settlement becomes effective as defined in Paragraph 15.b of the Settlement Agreement (if final approval occurs without objectors, or after the 60-day appeal period has expired without appeals or challenge if any objections are not withdrawn on the record at final approval).[94]

The Settlement Awards to Class Members, PAGA Shares to PAGA Members, Enhancement Award to Plaintiff, PAGA penalty payment to the LWDA, settlement administration expenses to the Settlement Administrator, and attorneys' fees and litigation costs

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[88] Settlement Agreement, ¶ 19.a.
[89] Ibid.
[90] *Id.*, ¶ 19.b.
[91] Ibid.
[92] *Id.*, ¶¶ 15.c.i, 15.c.ii, 22, & 23.
[93] *Id.*, ¶ 19.b.
[94] *Id.*, ¶ 21.

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to Class Counsel will be mailed or wire transferred by the Settlement Administrator within thirty-five (35) calendar days after the Settlement becomes effective.[95]

Settlement Award and PAGA Share checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance; the Parties agree the Settlement Administrator will send one (1) reminder notice to all Class Members and PAGA Members who have not cashed the Settlement Award or PAGA Share check thirty (30) calendar days prior to the deadline.[96] Upon the deadline to cash the Settlement Award and PAGA Share checks, the checks will automatically be cancelled by the Settlement Administrator if not cashed by the Class Member or the PAGA Member within that time.[97] Any residue from uncashed Settlement Award or PAGA Share checks after the expiration date will be paid within fourteen (14) calendar days after the one hundred twenty (120)-day check cashing period expires pursuant to California Code of Civil Procedure section 384(b)(3) to Koinonia Family Services, a non-profit 501(c)(3) organization with child advocacy programs in the State of California, as the *cy pres* recipient, subject to Court approval.[98]

XI. <u>APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT AWARD.</u>

Plaintiff Amanda Sira respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Award in an amount up to Seven Thousand Five Hundred Dollars and No Cents ($7,500.00) to Plaintiff.[99] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class

[95] Settlement Agreement, ¶ 21.
[96] Ibid.
[97] Ibid.
[98] Ibid.
[99] *Id.*, ¶ 15.c.vi.

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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 Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[100] Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[101] Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for her services on behalf of the Settlement Class, PAGA Members, and the State of California, in addition to her individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Settlement Class for settlement purposes; preliminary appoint and designate Joanna Ghosh and Selena Matavosian of Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Amanda Sira as the Class Representative; appoint Phoenix as the Settlement Administrator; preliminarily approve the allocations for attorneys' fees and costs, Enhancement Award, PAGA penalties allocation, and settlement administration expenses; approve the proposed Class and PAGA 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 28, 2024

LAWYERS *for* JUSTICE, PC

By: Selena

Selena Matavosian
Attorneys for Plaintiff

[100] Matavosian Decl., ¶ 21; Declaration of Amanda Sira in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Sira Decl."), ¶¶ 3-5.
[101] Matavosian Decl., ¶ 21; Sira Decl., ¶¶ 3-6.

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