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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

LESLEY MUNOZ, GIOVANI ESTRELLA,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiffs,

vs.

UKA BIG SAVER FOODS, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 19STCV24268
Honorable Carolyn Kuhl
Department SSC12

CLASS ACTION

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Proposed Class Counsel
(Brian J. St. John); Declaration of
Proposed Class Representative (Lesley
Munoz); and [Proposed] Order filed
concurrently herewith]

Date: June 5, 2024
Time: 10:30 a.m.
Department: SSC12

Complaint Filed: July 12, 2019
FAC Filed: October 26, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on June 5, 2024 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Carolyn Kuhl in Department SSC12 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Lesley Munoz (“Plaintiff” or “Class Representative”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Brian J. St. John, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Administration Expenses Payment to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Lesley Munoz as Class Representative;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Brian J. St. John of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), attached as “**EXHIBIT B**” 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 Rust Consulting, Inc. as the 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 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Administration Expenses Payment to the Administrator.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which provide for approval by the Court the settlement of a putative class action and 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 Declaration of Proposed Class Counsel (Brian J. St. John) and Proposed Class Representative (Lesley Munoz) 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: May 13, 2024

LAWYERS for JUSTICE, PC

By: _____



Brian J. St. John
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Lesley Munoz (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice (“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 Uka’s Big Saver Foods, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of Four Hundred Forty-Two Thousand Five Hundred Dollars and Zero Cents (\$442,500.00).¹ The Gross Settlement Amount includes the following: (1) Individual Class Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Service Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00)³; (3) the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, consisting of attorneys’ fees in the amount of one-third (1/3) of the Gross Settlement Amount, or \$147,500.00, and reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)⁴; (4) the Administration Expenses Payment to the Administrator in the amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)⁵; and (5) PAGA Penalties of Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$37,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$12,500.00) will be distributed to all hourly-paid or non-exempt employees who

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Brian J. St. John (“St. John Decl.”), ¶ 1.24. If the actual number of Workweeks encompassed within the Class Period exceeds 110,000 by more than 10%, then, the Gross Settlement Amount shall be increased on a proportional basis by the same number of percentage points above 10%. See *id.*, ¶ 4.1.

² *Id.*, ¶ 1.25.

³ *Id.*, ¶¶ 1.14 & 3.2.1.

⁴ *Id.*, ¶¶ 1.7 & 3.2.2; although the Settlement Agreement provides for Attorneys’ Fees up to 35% of the Gross Settlement Amount, Class Counsel only seeks fees equal to one-third of the Gross Settlement Amount.

⁵ *Id.*, ¶¶ 1.3 & 3.2.3.

performed work in California for Defendant at any time during the PAGA Period (“Aggrieved Employees”).⁶

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

All hourly-paid or non-exempt employees who performed work in California for Defendant at any time during the Class Period (“Class” or “Class Members”).⁷

Based on information provided by Defendant, the Class is estimated to consist of approximately two thousand one hundred twenty-nine (2,129) individuals.⁸

Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement (“Participating Class Members”) will receive a share of the Net Settlement Amount (“Individual Class Payment”) on a *pro rata* basis based upon the number of weeks each Class Member worked for Defendant at least one day during the Class Period (“Workweeks”).⁹

All Aggrieved Employees will receive a *pro rata* share of the 25% portion of the PAGA Penalties (“Individual PAGA Payment”) based on the number of pay periods each Aggrieved Employee worked for Defendant at least one day during the during the PAGA Period (“PAGA Pay Periods”).¹⁰

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiff and Participating Class Members and the Released PAGA Claims of Plaintiff and Aggrieved Employees, against the Released Parties.¹¹

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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⁶ Settlement Agreement, ¶¶ 1.4, 1.37, & 3.2.5. “PAGA Period” is defined as the period from July 12, 2015 through the date the Court grants preliminary approval of the settlement. *See id.*, ¶ 1.34.

⁷ *Id.*, ¶ 1.5 “Class Period” is defined as the period from July 12, 2015 through the date the Court grants preliminary approval of the settlement. *See id.*, ¶ 1.12.

⁸ St. John Decl., ¶ 8.

⁹ Settlement Agreement, ¶¶ 1.25, 1.39, & 1.49.

¹⁰ *Id.*, ¶¶ 1.26 & 1.33.

¹¹ *Id.*, at ¶¶ 5.2 & 5.3. *See id.* at ¶ 5.2 for the full scope of the “Released Class Claims,” *id.* at ¶ 5.3 for the full scope of the “Released PAGA Claims,” and *id.* at ¶ 1.45 for the definition of the “Released Parties.”

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

2 Defendant Uka’s Big Saver Foods, Inc. operates 14 full-service supermarket locations
3 in the Los Angeles, Orange County, and Riverside areas with many including delis, tortillerias,
4 and bakeries. Plaintiff Lesley Munoz is a former employee of Defendant.

5 On July 12, 2019, Plaintiff and Giovanni Estrella filed a Class Action Complaint for
6 Damages against alleging causes of action against Defendant for (1) failure to pay overtime; (2)
7 failure to provide meal periods; (3) failure to provide rest periods; (4) failure to pay minimum
8 wages; (5) failure to pay all wages due upon termination; (6) failure to timely pay wages during
9 employment; (7) failure to furnish accurate itemized wage statements; (8) failure to maintain
10 required payroll records; (9) failure to reimburse employees for necessary business expenses
11 incurred in the discharge of their duties; and (10) unfair business practices (“Original
12 Complaint”), in the Los Angeles County Superior Court (“Court”), thereby commencing the
13 above-captioned lawsuit (the “Action”).

14 On October 26, 2020, Plaintiff and Giovanni Estrella filed a First Amended Class Action
15 Complaint for Damages (“First Amended Complaint”) asserting a single cause of action for
16 unfair business practices pursuant to California Business & Professions Code sections 17200, *et*
17 *seq.* based on all of the same facts alleged in the Original Complaint.

18 On July 20, 2023, Plaintiff provided written notice by certified mail to the LWDA and
19 by online submission to Defendant of the specific provisions of the California Labor Code that
20 were allegedly violated by Defendant (“LWDA Notice”).

21 On April 12, 2024, Class Counsel filed a motion to be relieved as Giovanni Estrella’s
22 counsel. On May 6, 2024, the Court entered an order relieving Class Counsel as Giovanni
23 Estrella’s attorneys in the Action.

24 The Parties have agreed that Plaintiff will seek leave to file Plaintiff’s Second Amended
25 Class Action Complaint for Damages and Enforcement Under the Private Attorneys General
26 Act, § 2698 *Et Seq.* (“Second Amended Complaint” or “Operative Complaint”), adding claim
27 for penalties pursuant to PAGA.

28 ///

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

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

Prior to reaching Settlement, the Parties conducted significant investigation into the facts of the case and engaged in formal and informal discovery. On March 10, 2021, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One), on Defendant and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. On May 5, 2021, January 27, 2022, and September 9, 2022, Defendant responded to Plaintiff's discovery requests. On April 12, 2021, June 2, 2022, June 14, 2022, July 14, 2022, and September 7, 2022, Defendant propounded multiple sets of discovery including Requests for Production of Documents, (Set One, Set Two, Set Three, and Set Four) and Special Interrogatories (Set One) on Plaintiff. On May 17, 2021, July 6, 2022, July 11, 2022, July 14, 2022, and September 16, 2022, Plaintiff responded to Defendant's discovery requests.

The Parties have actively litigated the Action since it was commenced on July 12, 2019. On September 3, 2020, the Parties participated in a formal, full-day mediation conducted by Eve

Wagner, Esq. (the “Mediator”), a well-regarded mediator experienced in mediating complex labor and employment matters. The matter did not settle at mediation. Ultimately, with the aid of the Mediator’s evaluation, the Parties reached the Settlement described herein to resolve the Action in its entirety.

III. REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff to file the Second Amended Complaint in order to, *inter alia*, add claim for penalties pursuant to PAGA. As such, Plaintiff respectfully requests leave to file the Second Amended Complaint (i.e., the Operative Complaint), attached “Exhibit A” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, so that the operative complaint in this action formally asserts the causes of action and allegations that have been investigated, litigated, mediated, and ultimately settled, by the Parties, and so that the terms of the Settlement may be effectuated.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount (\$442,500.00) to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement (i.e., Participating Class Members) and the Released PAGA Claims of the Aggrieved Employees with respect to the Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys’ fees in an amount not to exceed one-third of the Gross Settlement Amount¹³ (i.e., \$147,500.00) and reimbursement of costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to Class Counsel (“Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment”); (2) settlement administration costs, which are currently estimated not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to the Administrator (“Administration Expenses Payment”); (3) Fifty Thousand

¹² Settlement Agreement, ¶ 3.1.

¹³ See n.4, *supra*.

Dollars and Zero Cents (\$50,000.00) allocated to penalties under PAGA (“PAGA Penalties”); and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff (“Class Representative Service Payment”).¹⁴ The Parties have agreed to retain Rust Consulting, Inc. (“Rust” or “Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Administrator will determine each Participating Class Member’s *pro rata* share of the available Net Settlement Amount (i.e., Individual Class Payment), in accordance with the Settlement Agreement and as follows: the Administrator will divide the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and will multiply the result by each Participating Class Member’s Workweeks to arrive at his or her Individual Class Payment.¹⁵

The Parties have agreed that the Administrator will determine each Aggrieved Employee’s *pro rata* share of the twenty-five percent (25%) portion of the PAGA Penalties (i.e., Individual PAGA Payment) in accordance with the Settlement Agreement and as follows: The Administrator will divide the twenty-five percent (25%) portion of the PAGA Penalties by the total number of PAGA Pay Periods worked by Aggrieved Employees during the PAGA Period and will multiply the result by each Aggrieved Employee’s PAGA Periods to arrive at his or her Individual PAGA Payment.¹⁶

Each Participating Class Member’s Individual Class Payment will be allocated as follows: 20% shall be reported as wages on IRS Form W-2 and its state and local equivalents, and 80% shall be reported as interest, penalties, and non-wage damages on IRS Form 1099 and its state and local equivalents.¹⁷ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the Wage Portion of Individual Class Payments in addition to the Gross Settlement Amount.¹⁸ Each Individual PAGA Payment will be allocated as one hundred

¹⁴ Settlement Agreement., ¶ 3.2.

¹⁵ *Id.*, ¶ 3.2.4.

¹⁶ *Id.*, ¶ 3.2.5.1.

¹⁷ *Id.*, ¶ 3.2.4.1.

¹⁸ *Id.*, ¶ 3.1.

percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Administrator.¹⁹

The Individual Class Payment and Individual PAGA Payment checks will be negotiable for one hundred eighty (180) calendar days after the date of mailing, and thereafter, will be canceled.²⁰ The funds associated with such canceled checks will be transmitted by the Administrator to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member and/or Aggrieved Employee.²¹

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit a written request signed by the Class Member ("Request for Exclusion") to the Administrator, by mail, postmarked on or before the date that is sixty (60) calendar days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees ("Response Deadline").²² A Request for Exclusion must contain: (1) contain the Class Member's full name, address, telephone number, last four digits of Social Security number, and signature; (2) contain the case name and number of the *Action*; (3) contain a clear statement indicating that he or she wishes to be excluded from the Class Settlement; and (4) be submitted by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.²³ Any Class Member who opts out of the Class Settlement will not be bound by the terms of the Class Settlement, will not receive an Individual Class Payment, and will not have the right to object to the Class Settlement.²⁴ However, Class Members who are considered Aggrieved Employees will still receive an Individual PAGA Payment, release the Released PAGA Claims and will be bound to the PAGA Settlement, regardless of whether they submit a valid and timely Request for Exclusion.²⁵

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

¹⁹ Settlement Agreement, ¶ 3.2.5.2.

²⁰ *Id.*, ¶ 4.4.1.

²¹ *Id.*, ¶ 4.4.3.

²² *Id.*, ¶¶ 1.46 & 1.47.

²³ *Id.*, ¶ 7.4.1.

²⁴ *Id.* ¶ 7.4.4.

²⁵ *Ibid.*

objection to the Class Settlement to the Administrator, by mail, on or before the Response Deadline.²⁶ The written objection must: (1) contain the Participating Class Member's full name, address, telephone number, last four digits of Social Security number, and signature; (2) contain the case name and number of the Action; (3) contain a written statement of all grounds for the objection; (4) state whether the Participating Class Member intends to appear at the Final Approval Hearing; and (6) be submitted by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.²⁷ As an alternative to or in addition to submitting a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.²⁸

A Class Member who wishes to dispute the number of Workweeks or PAGA Pay Periods which have been credited to him or her, as reflected in his or her Class Notice, may do so by submitting a written letter to the Administrator, by mail, on or before the Response Deadline.²⁹ The written challenge must: (1) contain the full name, address, telephone number, last four digits of the Social Security number, and signature of the disputing Class Member; (2) contain the case name and number of the Action; (3) clearly state that the Class Member disputes the number of Workweeks and/or PAGA Pay Periods credited to him or her and states what number(s) of Workweeks he or she contends should be credited to him or her; (4) include information and/or attaches documentation demonstrating that the number of Workweeks and/or PAGA Pay Periods that he or she contends should be credited to him or her are correct; and (5) be submitted by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.³⁰

V. 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

²⁶ Settlement Agreement, ¶ 7.6.1

²⁷ *Id.*, ¶ 7.6.2.

²⁸ *Ibid.*

²⁹ *Id.*, ¶ 7.5.

³⁰ *Ibid.*

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

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

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

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

grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court’s discretion. *Newberg*, § 11.25.

VI. 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 have actively litigated the Action since it was commenced on July 12, 2019. 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.³¹

³¹ St. John Decl., ¶¶ 11-13.

Prior to, during, and after engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of information, documents, and data obtained from Defendant, Plaintiff, and other sources.³² The volume of information, 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 and other Class Members' time data and pay records, Defendant's Employee Handbook, Defendant's operations and employment practices, forms, procedures, and policies (including, and not limited to, Meal and Rest Policy, Overtime Policy, Timekeeping Policy, and Expense Reimbursement Request Form), among other information and documents.³³ 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.³⁴ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto, noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties, and worked with Plaintiff to provide objections and responses to discovery propounded on her by Defendant.³⁵ Counsel for the Parties met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁶ Class Counsel drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Eve Wagner, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁸ Prior to and in during the mediation and

³² St. John Decl., ¶ 12.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ *Id.*, ¶ 11.

1 settlement discussions, the Parties exchanged class information and engaged in intensive
2 discussion regarding their evaluations of the cases and various aspects of the cases, including
3 but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
4 with class certification and/or representative adjudication, the law relating to off-the-clock
5 theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and
6 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals,
7 among other things.³⁹ During all settlement discussions, the Parties conducted their negotiations
8 at arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was acceptable to all
9 Parties was not easy. Defendant and their counsel felt strongly about their ability to prevail on
10 the merits and at certification, and Plaintiff and Class Counsel believed that they would be able
11 to obtain class certification and prevail at trial.⁴¹ After conducting investigations, informal
12 discovery, exchange of information, and settlement negotiations, and with the aid of the
13 Mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given
14 the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides
15 that would attend further litigation.⁴²

16 The Settlement takes into account the strengths and weaknesses of each side's position
17 and the uncertainty of how the cases might have concluded at certification and trial.⁴³ The
18 Parties have had the opportunity to interview and obtain information from their respective
19 witnesses.⁴⁴ Counsel for the Parties have also reviewed documents and information relating to
20 Plaintiff's and the Class Members' and Aggrieved Employees' employment with Defendant and
21 performed significant research into the law concerning class certification, PAGA representative
22 actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement,
23 Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁵ The Parties
24 have reached the Settlement based on this large volume of facts, evidence, and investigation. In

25 ³⁹ St. John Decl., ¶ 11.

26 ⁴⁰ Ibid.

27 ⁴¹ *Id.*, ¶¶ 11, 16-18.

28 ⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ *Id.*, ¶¶ 12-14 & 17-19.

1 addition, Class Counsel have extensive experience in employment class actions, including
2 significant experience in California wage-and-hour litigation.⁴⁶

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

4 The Settlement, which provides for a Gross Settlement Amount of Four Hundred Forty-
5 Two Thousand Five Hundred Dollars and Zero Cents (\$442,500.00), represents a fair, adequate,
6 and reasonable resolution of the matter.⁴⁷ The Settlement was calculated using the information
7 and data uncovered during litigation, case investigation, as well as the formal and informal
8 exchange of information.⁴⁸ The Settlement takes into account the potential risks and rewards
9 inherent in any case and, in particular, in the matter at issue.⁴⁹ Moreover, considering all of the
10 facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and
11 adequate recovery for the Class.⁵⁰

12 Assuming that the Class Counsel Fees Payment and Class Counsel Litigation Expenses
13 Payment, Class Representative Service Payment, PAGA Penalties, and Administration
14 Expenses Payment are approved by the Court and paid in the full amounts provided for by the
15 Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to
16 be One Hundred Eighty-Seven Thousand Five Hundred Dollars and Zero Cents (\$187,500.00).⁵¹
17 As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the
18 Participating Class Members, in accordance with the Settlement Agreement. The amount of
19 each Participating Class Member's Individual Class Payment will be calculated based on his or
20 her Workweeks during the Class Period, and the amount of each Aggrieved Employees'
21 Individual PAGA Payment will be calculated based on his or her PAGA Pay Periods during the
22 PAGA Period.⁵² There is no reason to doubt the fairness of the proposed plan of allocation of
23 the settlement funds for purposes of preliminary approval. Even at the final approval stage,
24 "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval],

25 ⁴⁶ St. John Decl., ¶ 6.

26 ⁴⁷ *Id.*, ¶¶ 11, 13, 14 & 22.

27 ⁴⁸ *Id.*, ¶¶ 11-13.

28 ⁴⁹ *Id.*, ¶¶ 16-18.

⁵⁰ *Id.*, ¶¶ 11, 13, & 22.

⁵¹ *Id.*, ¶ 14.

⁵² Settlement Agreement, ¶¶ 1.25 & 1.26.

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 believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵³ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have 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 formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁴ 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 perform a complete evaluation of Defendant’s defenses thereto.⁵⁵ As outlined in the Declaration of Brian J. St. John, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

VII. 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.⁵⁷ 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*

⁵³ St. John Decl., ¶¶ 11, 13, & 22.

⁵⁴ *Id.*, ¶¶ 11-13 & 18.

⁵⁵ *Id.*, ¶ 18.

⁵⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, ¶ 1.22.

(2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the cases. 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 matter involves a class of approximately one thousand five hundred eighty (1,580) individuals.⁵⁸ 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 Administrator through a review of Defendant’s employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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⁵⁸ St. John Decl., ¶ 8.

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 Complaints. Based on the documents and information obtained through formal
18 and informal discovery and exchange of information in the cases, 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 time period at issue.⁵⁹ Plaintiff’s claims arise from
21 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
22 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
23 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
24 to timely pay wages during employment and upon termination of employment, failing to provide
25 compliant wage statements, failing to keep requisite payroll records, and failing to reimburse
26 necessary business-related expenses.⁶⁰

27
28 ⁵⁹ St. John Decl., ¶ 15.

⁶⁰ *Ibid.*

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.⁶¹ As a result, Plaintiff claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶²

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

VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES
PAYMENT

Class Counsel have litigated the matter for over four (4) years, and were actively preparing the matter for class certification and trial.⁶³ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant, reviewed Defendant's responses and objections thereto, and worked with Plaintiff to provide objections and responses to discovery propounded on her by Defendant. Class Counsel reviewed a large volume of documents and data⁶⁴ 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 pleadings, discovery, and the production of documents and data prior to mediation.⁶⁵ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁶

⁶¹ St. John Decl., ¶ 15.

⁶² Ibid.

⁶³ *Id.*, ¶¶ 11-13.

⁶⁴ *Id.*, ¶ 12.

⁶⁵ Ibid.

⁶⁶ *Id.*, ¶ 11.

1 Class Counsel are well-experienced in wage-and-hour class action litigation and used that
2 experience to obtain a great result for the Class.⁶⁷

3 The Settlement establishes a Gross Settlement Amount of Four Hundred Forty-Two
4 Thousand Five Hundred Dollars and Zero Cents (\$442,500.00), and provides for Class Counsel
5 to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses
6 Payment, consisting of attorneys' fees in an amount not to exceed one-third (1/3) of the Gross
7 Settlement Amount (i.e., \$147,500.00⁶⁸) and an amount not to exceed Twenty-Five Thousand
8 Dollars and Zero Cents (\$25,000.00) for litigation costs and expenses.⁶⁹ The attorneys' fees
9 provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in
10 bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel
11 dedicated to the cases, (3) the skill and determination that Class Counsel have shown, (4) the
12 results that Class Counsel have achieved throughout the litigation, (5) the value of the Settlement
13 that Class Counsel have achieved for the Class Members, Aggrieved Employees, and the State
14 of California, and (6) the other cases that Class Counsel had to turn down in order to devote
15 their time and efforts to this matter. The proposed Class Notice provides Class Members with
16 information about the amount allocated toward Class Counsel Fees Payment and Class Counsel
17 Litigation Expenses Payment, and that an award of the Class Counsel Fees Payment and Class
18 Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.⁷⁰

19 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
20 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
21 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
22 "experienced trial judge is the best judge of the value of professional services rendered in his
23 court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
24 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
25 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
26

27 ⁶⁷ St. John Decl., ¶¶ 5-6.

28 ⁶⁸ See n.4, *supra*.

⁶⁹ Settlement Agreement, ¶ 4.3.

⁷⁰ *Id.*, Exh. A.

1 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
2 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
3 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
4 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
5 settlement fund and the settlement agreement provides that the defendant agrees to paying the
6 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

14 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
15 depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin*
16 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
17 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
18 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
19 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
20 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
21 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
22 actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case
23 No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior
24 Court Case No. BC263646 (Sept. 2006) (wage and hour).

25 Class Counsel have borne all of the risks and costs of litigation and will not receive any
26 compensation until recovery is obtained.⁷¹

27 ///

28 _____
⁷¹ St. John Decl., ¶ 20.

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 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment 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.

IX. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice⁷² describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or submit Workweek Disputes, and the date and time set for the Final Approval Hearing.⁷³

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁴ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁵ The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Class Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks credited to them.⁷⁶

⁷² Settlement Agreement, Exh. A.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

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

X. APPOINTMENT OF RUST CONSULTING, INC. AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Rust Consulting, Inc. to administer the Settlement.

The Administrator will mail the Class Notice to each Class Member and Aggrieved Employee by First-Class United States Postal Service (“USPS”) mail in English and Spanish.⁷⁷ No later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered on or before the Response Deadline, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.⁷⁸ If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search⁷⁹, and re-mail the Class Notice to the most current address obtained.⁸⁰ For all Class Members whose Class Notice is re-mailed, the deadlines for Class Members’ written objections to the Class Settlement, disputes regarding Workweeks, and Requests for Exclusion will be extended an additional ten (10) calendar days from the original Response Deadline provided in the Class Notice.⁸¹ The Administrator will receive and process Requests for Exclusions, Objections, and any Workweek Disputes.⁸²

The Administrator will calculate the amounts of the Individual Class Payment, Individual Class Payments, and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the Wage Portion of Individual Class Payments;

⁷⁷ Settlement Agreement, ¶¶ 1.7 & 7.3.

⁷⁸ *Id.*, ¶ 7.3.2.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Id.*, ¶ 7.3.4.

mail the Individual Class Payment checks to Participating Class Members and Individual PAGA Payments to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and PAGA Penalties; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸³ The Administration Expenses Payment is currently estimated to be Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁴

Accordingly, Plaintiff respectfully requests that the Court appoint Rust Consulting, Inc. as the Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁵

Not later than fourteen (14) calendar days after the Court grants preliminary approval of the Settlement, Defendant will deliver a list to the Administrator, in an electronically usable format, for the Administrator containing for each Class Member, to the extent Defendant has such information, the following: names; last known mailing addresses; Social Security numbers; Workweeks; PAGA Pay Periods; and any other information required to effectuate the Settlement ("Class Data").⁸⁶

No later than fourteen (14) calendar days after receipt of the Class Data, the Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁷ Not later than three (3) business days after the Administrator's receipt of any Class Notice returned,

⁸³ Settlement Agreement, ¶ 7.7; St. John Decl., ¶ 15.

⁸⁴ Settlement Agreement, ¶ 3.2.3.

⁸⁵ *Id.*, ¶ 5.3.

⁸⁶ *Id.*, ¶¶ 1.8 & 4.2.

⁸⁷ *Id.*, ¶ 7.3.1.

on or before the Response Deadline, by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.⁸⁸ If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.⁸⁹ The Administrator has no obligation to make further attempts to locate or send the Class Notice to Class Members whose Class Notice is returned by the USPS a second time.⁹⁰ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion from the Class Settlement, challenge to Workweeks, and/or objection to the Class Settlement.⁹¹

Within twenty (20) calendar days after the Effective Date, Defendant shall transmit the Gross Settlement Amount to the Administrator.⁹²

Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the Administrator shall distribute the following payments: Individual Class Payments to Participating Class Members, Individual PAGA Payments to Aggrieved Employees, Class Representative Service Payment to Class Representative, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, LWDA PAGA Payment to the LWDA, and Administration Expenses Payment to itself, all in the Court-approved amounts.⁹³

Individual Class Payment and Individual PAGA Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their mailing.⁹⁴ Checks that are not negotiated within the 180-day period will be canceled.⁹⁵ The funds associated with such canceled checks will be transmitted by the Administrator to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member and/or Aggrieved Employee.⁹⁶

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⁸⁸ Settlement Agreement, ¶ 7.3.3.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ *Id.*, ¶ 7.3.4.

⁹² *Id.*, ¶ 4.3.

⁹³ Ibid.

⁹⁴ *Id.*, ¶ 4.4.1.

⁹⁵ Ibid.

⁹⁶ *Id.*, ¶ 4.4.3.

**XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION
FOR CLASS REPRESENTATIVE SERVICE PAYMENTS**

Plaintiff Lesley Munoz respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Service Payment in an amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff.⁹⁷ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Class Representative Service 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, including and not limited to, by way of working with Class Counsel to prepare responses to discovery requests that were propounded on her by Defendant.⁹⁸ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹⁹ Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Service Payment for her services on behalf of the Class, the Aggrieved Employees, and the State of California.

XIII. CONCLUSION

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

⁹⁷ Settlement Agreement, ¶ 1.40.

⁹⁸ St. John Decl., ¶ 20; Declaration of Lesley Munoz in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Munoz Decl."), ¶ 4.

⁹⁹ St. John Decl., ¶ 20; Munoz Decl., ¶¶ 3-6.

1 appoint and designate Arby Aiwarzian, Joanna Ghosh, and Brian J. St. John of Lawyers *for*
2 Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Lesley Munoz as Class
3 Representative; appoint Rust Consulting, Inc. as the Administrator; preliminarily approve the
4 allocations for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment,
5 Class Representative Service Payment, PAGA Penalties, and Administration Expenses
6 Payment; approve the proposed Class Notice; direct the Administrator to undertake the notice
7 and settlement administration process in conformity with the deadlines and procedures provided
8 by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately
9 six months; and permit the filing of a memorandum that exceeds the page limit.

10 Dated: May 13, 2024

LAWYERS *for* JUSTICE, PC

11
12 By:



Brian J. St. John
Attorneys for Plaintiff