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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOSHUA WOLFE, VERONICA TOPETE,
individually, and on behalf of other members
of the general public similarly situated and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiffs,

vs.

SOUTH COAST BAKING, LLC, a
California limited liability company; SOUTH
COAST BAKING COMPANY, an unknown
business entity; RISE BAKING COMPANY,
an unknown business entity; RISE BAKING
COMPANY, LLC, a Delaware Limited
Liability Company; RISE BAKING
ARTISAN BREAD, LLC, a Delaware
Limited Liability Company; RISE BAKING
SWEET GOODS, LLC, a Delaware Limited
Liability Company; BRILL, INC., a
Delaware Limited Liability Company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVSB2224856

Honorable Jessica Morgan
Department S26

CLASS ACTION

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

[Declarations of Proposed Class Counsel
(Arman Marukyan and Michael W.
Jones); Declarations of Proposed Class
Representatives (Joshua Wolfe and
Veronica Topete); and [Proposed] Order
filed concurrently herewith]

Date: October 22, 2024
Time: 8:30 a.m.
Department: S26

Complaint Filed: October 27, 2022
FAC Filed: April 17, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 22, 2024 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Jessica Morgan in Department S26 of the Superior Court of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, California 92415, Plaintiffs Joshua Wolfe (“Plaintiff Wolfe”) and Veronica Topete (“Plaintiff Topete” and together with Plaintiff Wolfe, “Plaintiffs” or “Class Representatives”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) attached as “**EXHIBIT 1**” to the Declaration of Arman Marukyan, 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, Plaintiffs’ Counsel Award to Class Counsel, Enhancement Payments to Plaintiffs, and Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Joshua Wolfe and Veronica Topete as Class Representatives;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Arman Marukyan of Lawyers for Justice, PC, and Zachary M. Crosner, Jamie K. Serb, and Michael W. Jones of Crosner Legal, PC as Class Counsel;
- Approving the proposed Notice of Class and Representative Action Settlement (“Notice Packet”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice Packet to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;

- Approving Phoenix Settlement Administrators, as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Plaintiffs' Counsel Award to Class Counsel, Enhancement Payments for Plaintiffs, and Administration Costs to Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Arman Marukyan and Michael W. Jones) and Proposed Class Representatives (Joshua Wolfe and Veronica Topete) 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: July 30, 2024

LAWYERS for JUSTICE, PC

By:



Arman Marukyan
Attorneys for Plaintiff Joshua Wolfe

Dated: July 30, 2024

CROSNER LEGAL, PC

By:



Zachary M. Crosner
Jamie K. Serb
Michael W. Jones
Attorneys for Plaintiff Veronica Topete

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Joshua Wolfe (“Plaintiff Wolfe”) and Veronica Topete (“Plaintiff Topete” and together with Plaintiff Wolfe, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants South Coast Baking, LLC; Rise Baking Company, LLC; Rise Baking Artisan Bread, LLC; Rise Baking Sweet Goods, LLC; and Brill, Inc. (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payments of Ten Thousand Dollars and Zero Cents (\$10,000.00) each to Plaintiffs Joshua Wolfe and Veronica Topete (for a total of \$20,000.00)³; (3) the Plaintiffs’ Counsel Award, consisting of attorneys’ fees in the amount of one-third (1/3) of the Gross Settlement Amount, or Four Hundred Thousand Dollars and Zero Cents (\$400,000.00), and reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00)⁴; (4) the Administration Costs to the Settlement Administrator in the amount not to exceed Eleven Thousand Dollars and Zero Cents (\$11,000.00)⁵; and (5) the PAGA Settlement Amount 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) (“PAGA Payment”) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$12,500.00) (“Employees’ PAGA Amount”) will be distributed to all current and former hourly-paid or non-exempt employees

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Arman Marukyan (“Marukyan Decl.”), § I.N.

² *Id.*, § I.O.

³ *Id.*, § III.O.b.4.

⁴ *Id.*, § III.O.b.5.

⁵ *Id.*, § III.O.b.7.

who worked for Defendants within the State of California at any time during the PAGA Period (“PAGA Employees”) on a *pro rata* basis (i.e., PAGA Settlement Award).⁶

Plaintiffs also seek to provisionally certify the following Class for settlement purposes, which Defendants do not oppose:

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

Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Payment(s)”) on a *pro rata* basis based upon the number of weeks that a Class Member worked for Defendants as an hourly-paid or non-exempt employee in California during the Class Period (based on the number of Compensable Workweeks in the Class Data that Defendants provide to the Settlement Administrator) (“Compensable Workweeks”).⁸

PAGA Employees will receive a share of the Employees’ PAGA Amount on a *pro rata* basis, based on the number of Compensable Pay Periods during the PAGA Period (“PAGA Settlement Award”).⁹

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Class Released Claims of Plaintiffs and Settlement Class Members, and the PAGA Released Claims of Plaintiffs, PAGA Employees, and the State of California, against the Released Parties.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants manufacture baked goods such as cookies, breads, and cakes. Plaintiffs Joshua Wolfe and Veronica Topete allege that they are former employees of Defendants.

⁶ Settlement Agreement, § III.O.b.1. “PAGA Period,” means the period from January 8, 2022 through February 12, 2024. *See id.*, § I.V.

⁷ *Id.*, § I.C. “Class Period” is defined as the period from October 27, 2018 through February 12, 2024. *See id.*, § I.E.

⁸ *Id.*, §§ I.O, I.JJ and I.I.

⁹ *Id.*, § I.X.

¹⁰ *See d.* at § I.F., for the full scope of the “Class Released Claims;” *id.* at § I.W., for the full scope of the “PAGA Released Claims;” and *id.* at § I.EE., for the definition of the “Released Parties.”

On October 27, 2022, Plaintiff Wolfe filed his Class Action Complaint for Damages in the San Bernardino County Superior Court, thereby commencing the action entitled *Joshua Wolfe v. South Coast Baking, LLC, et al.*, Case No. CIVSB2224856 (“Wolfe Class Action” or “Action”).

On January 4, 2023, Plaintiff Topete submitted written notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendants of her intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq (“PAGA”).

On March 14, 2023, Plaintiff Topete filed a representative action in Orange County Superior Court seeking civil penalties under PAGA, thereby commencing the action entitled *Veronica Topete v. South Coast Baking, LLC, et al.*, Case No. 30-2023-01312362-CU-OE-CXC (“Topete PAGA Action”).

On September 14, 2023, Plaintiff Wolfe submitted written notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendants of his intent to pursue civil penalties under PAGA.

On April 17, 2024, Plaintiffs consolidated the *Wolfe* Class Action and *Topete* PAGA Action by filing a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) in the *Wolfe* Class Action, which: (1) adds Rise Baking Company, LLC; Rise Artisan Bread, LLC; Rise Baking Sweet Goods, LLC; and Brill, Inc. as defendants; (2) adds Plaintiff Topete as a named plaintiff; and (3) adds Plaintiff Topete’s and Plaintiff Wolfe’s PAGA claims.

Plaintiffs’ core allegations are that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and PAGA Employees, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California

Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

Through substantial informal discovery, Defendants provided Plaintiffs' Counsel with, *inter alia*, relevant written policies, data including the total number of Class Members and PAGA Employees, the number of former Class Members and PAGA Employees, the number of workweeks that the Class Members worked during the Class Period and the number of pay periods that the PAGA Employees worked during the PAGA Period, and the Class Members' average hourly rate of pay.

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

The Parties have actively litigated the Action since October 27, 2022. On December 12, 2023, the Parties participated in a formal, full-day mediation conducted by Lynn Frank, 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, Defendants will pay a Gross Settlement Amount to resolve the Class Released Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Members) and the PAGA Released Claims of Plaintiffs, PAGA Employees, and the State of California, with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed 1/3 of the Gross Settlement

¹¹ Settlement Agreement, §§ I.F. and I.W.

Amount (i.e., \$400,000.00 if the Gross Settlement remains \$1,200,000.00) and reimbursement of costs and expenses in an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) to Class Counsel (“Plaintiffs’ Counsel Award”); (2) administration costs, which are currently estimated not to exceed Eleven Thousand Dollars and Zero Cents (\$11,000.00) to the Settlement Administrator (“Administration Costs”); (3) payment of Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to penalties under PAGA (“PAGA Settlement Amount”), of which 75% will be distributed to the LWDA (i.e., \$37,500.00) (“PAGA Payment”) and the remaining 25% (i.e., \$12,500.00) will be distributed to PAGA Employees (“Employees’ PAGA Amount”); and (4) payments in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) each to Plaintiffs Joshua Wolfe and Veronica Topete (“Enhancement Payments”).¹² The Parties have agreed to retain Phoenix Settlement Administrators (“Settlement Administrator”) to handle the notice and settlement administration process.

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

Using the Class Data, the Settlement Administrator will calculate the total Compensable Workweeks for all Settlement Class Members by adding the number of Compensable Workweeks for each Settlement Class Member during the Class Period. The respective Compensable Workweeks for each Settlement Class Member will be divided by the total Compensable Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member. Each Settlement Class Member’s Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member’s estimated Individual Settlement Payments.¹³

Each PAGA Employee’s PAGA Settlement Award will be determined by dividing his or her total Compensable Pay Periods during the PAGA Period by the total Compensable Pay Periods worked by all PAGA Employees during the PAGA Period. That fraction will then be multiplied by the 25% portion of the PAGA Settlement Amount to arrive at the PAGA Employee’s PAGA Settlement Award.¹⁴

¹² Settlement Agreement, §§ I.P., III.O.b.1., III.O.b.4., III.O.b.5., III.O.b.6., and III.O.b.7.

¹³ *Id.*, § III.O.a.

¹⁴ *Id.*, § III.O.b.1.

Each Settlement Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages (the "Wage Portion"), which will be reported on an IRS Form W-2 to be issued by the Settlement Administrator; forty percent (40%) as interest on the unpaid wages, which will be reported on an IRS Form 1099 to be issued by the Settlement Administrator; and (iii) forty percent (40%) as statutory penalties, which shall be reported on an IRS Form 1099 to be issued by the Settlement Administrator.¹⁵ Any payment for a PAGA Employee's PAGA Settlement Award will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, to be issued by the Settlement Administrator.¹⁶ The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payments, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Payments net of these taxes and withholdings).¹⁷ The employer's share of payroll taxes and contributions on the wages portion of the Individual Settlement Payments (i.e., the Employer Taxes) will be paid by Defendants in addition to and not as a deduction from the Gross Settlement Amount.¹⁸

Any checks issued by the Settlement Administrator to Settlement Class Members and PAGA Employees will be valid and negotiable for one hundred and eighty (180) days after issuance.¹⁹ If a Settlement Class Member or PAGA Employee does not cash his or her settlement check within 180 days, the uncashed funds, subject to Court approval, shall be transmitted to the State Controller's Unclaimed Property Fund.²⁰

Class Members who wish to be excluded from the Settlement (i.e., opt-out) must send the Settlement Administrator a signed, written statement requesting exclusion from the Settlement postmarked no later than forty-five (45) calendar days from the initial mailing of the Notice of Class and Representative Action Settlement ("Notice Packet") by the Settlement

¹⁵ Settlement Agreement, § III.O.b.

¹⁶ *Id.*, § III.O.b.1.

¹⁷ *Id.*, §§ III.K. and III.O.b.

¹⁸ *Id.*, § III.A.

¹⁹ *Id.*, § III.O.b.3.

²⁰ *Ibid.*

Administrator (“Response Deadline”).²¹ The Request for Exclusion must: (a) be signed by the Class Member requesting exclusion; and (b) contain the Class Member’s name, address and telephone number.²² Any Class Member who timely and validly submits a Request for Exclusion will not be entitled to an Individual Settlement Payment, will not be bound by the Settlement, and will not have any right to object, appeal, or comment thereon.²³ All PAGA Employees shall receive their PAGA Settlement Award and shall be bound to the PAGA Released Claims regardless of their decision to participate in the Settlement.²⁴

Only Class Members who do not submit a Request for Exclusion (i.e., Settlement Class Members) may object to the Class Settlement.²⁵ To object to the Class Settlement, a Settlement Class Member may send a written objection (i.e., Notice of Objection) to the Settlement Administrator or appear at the Final Approval Hearing with or without submitting a written objection to the Class Settlement.²⁶ The Settlement Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court.²⁷

Settlement Class Members and PAGA Employees will have the opportunity, should they disagree with Defendants’ records regarding the Compensable Workweeks or the Compensable Pay Periods stated on the Notice Packet, to provide documentation and/or an explanation to show contrary Compensable Workweeks or Compensable Pay Periods.²⁸ If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted.²⁹ The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments or PAGA Settlement Award under the terms of the Settlement Agreement.³⁰ The Settlement Administrator’s determination of the eligibility for an

²¹ Settlement Agreement, §§ I.FF, I.GG, and III.L.7.

²² *Id.*, §§ I.FF.

²³ *Id.*, § III.L.7.

²⁴ *Ibid.*

²⁵ *Id.*, § III.M.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Id.*, § III.L.5.

²⁹ *Ibid.*

³⁰ *Ibid.*

amount of any Individual Settlement Payment or PAGA Settlement Award shall be binding upon the Settlement Class Member, the PAGA Employee, and the Parties.³¹

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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

³¹ Settlement Agreement, § III.L.5.

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

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

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

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

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

3 The Parties actively litigated the Action since October 27, 2022. Both sides used the
4 pre-mediation time period to investigate the veracity, strength, and scope of the claims, and
5 Class Counsel was actively preparing for class certification and trial.³²

6 Prior to settlement, Class Counsel conducted significant investigation and informal
7 discovery regarding the facts of the cases, including and not limited to, the exchange, review,
8 and analysis of a large volume of documents and data obtained from Defendants, Plaintiffs, and
9 other sources.³³ The volume of data and documents that Class Counsel reviewed and analyzed
10 included and was not limited to: employment records of Plaintiffs, Class Members’ time and
11 pay data, Defendants’ Employee Handbooks, job descriptions, timesheets, earning statements,
12 company policies and procedures (including but not limited to, Emergency Sick Leave Policy—
13 COVID-19, and Safety Shoe Policies), forms (including but not limited to, Meal Period Waiver
14 Form, Missed or Late Meal Break Period Form, Second Meal Period Waiver, and Cell Phone
15 Program Authorization Form), among other information and documents.³⁴ Class Counsel had
16 the opportunity to interview Plaintiffs and other Class Members to gather facts and to identify
17 potential witnesses.³⁵ Counsel for the Parties also met and conferred on numerous occasions,
18 e.g., to discuss issues relating to the pleadings, and the production of documents and data prior
19 to the mediation.³⁶ Class Counsel also drafted Plaintiffs’ mediation brief and prepared for and
20 attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁷

21 The Parties engaged in extensive settlement negotiations and participated in a formal,
22 full-day mediation conducted by Lynn Frank, Esq., a well-respected mediator experienced in
23 mediating complex labor and employment matters.³⁸ Prior to and during the mediation and
24 settlement discussions, the Parties exchanged class information and engaged in an intensive

25

³² Marukyan Decl., ¶ 17.

26 ³³ *Ibid.*

27 ³⁴ *Ibid.*

28 ³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Id.*, ¶ 16.

discussion regarding their evaluations of the case 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, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴¹ After conducting investigations, significant informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴²

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

³⁹ Marukyan Decl., ¶ 16

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶ 23

⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶¶ 17, 18, and 23.

Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁶

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

The Settlement, which provides for a Gross Settlement Amount of One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁷ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴⁸ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the Action at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁰

Assuming that the Plaintiffs' Counsel Award, Enhancement Payments, PAGA Settlement Amount, and Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Six Hundred Eighty-Four Thousand Dollars and Zero Cents (\$684,000.00).⁵¹ Additionally, the Employees' PAGA Amount, which is \$12,500.00 out of \$50,000.00, will be distributed to PAGA Employees. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Payment will be calculated based on his or her Compensable Workweeks during the Class Period and the amount of each PAGA Employee's PAGA Settlement Award will be based on his or her Compensable Pay Periods during the PAGA Period.⁵² There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary

⁴⁶ Marukyan Decl., ¶¶ 2-7; Declaration of Michael Jones in Support of Motion for Preliminary Approval of Class Action Settlement ("Jones Decl."), ¶ 11.

⁴⁷ Marukyan Decl., ¶¶ 19 and 26.

⁴⁸ *Id.*, ¶¶ 16-17.

⁴⁹ *Id.*, ¶ 22.

⁵⁰ *Id.*, ¶ 26.

⁵¹ *Id.*, ¶ 19.

⁵² Settlement Agreement, §§ III.O.a. and III.O.b.1.

1 approval. Even at the final approval stage, “[a]n allocation formula need only have a reasonable,
2 rational basis [to warrant approval], particularly if recommended by experienced and competent
3 class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y.
4 2001) 127 F.Supp.2d 418, 429-30.

5 In light of the foregoing considerations, Class Counsel believe that the Settlement as a
6 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA
7 Employees, and the State of California.⁵³ Although the recommendations of Class Counsel are
8 not conclusive, the Court can properly take the recommendations into account, particularly if
9 Class Counsel appears to be competent, and has experience with this type of litigation, and
10 investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court
11 should grant preliminary approval of the Settlement.

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

13 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
14 conducted significant informal discovery and exchanged a large volume of documents, data, and
15 information prior to mediation.⁵⁴ The discovery and information that Class Counsel obtained
16 from Defendants, Plaintiffs, and other sources allowed Class Counsel to develop valuation
17 models in order to evaluate the potential value and merit of the claims, and perform a complete
18 evaluation of Defendants’ defenses thereto.⁵⁵ As outlined in the Declaration of Arman
19 Marukyan, Class Counsel performed an extensive analysis of each and every claim pursuant to
20 *Kullar* prior to entering into the Settlement.⁵⁶

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

22 For settlement purposes, the requisites for establishing class certification are met, and
23 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁷
24 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
25 one of a common or general interest, of many persons, or when the Parties are numerous, and it

26 ⁵³ Marukyan Decl., ¶¶ 16, 18, and 26; Jones Decl., ¶ 14.

27 ⁵⁴ Marukyan Decl., ¶¶ 17 and 23.

28 ⁵⁵ *Id.*, ¶ 23.

⁵⁶ *Id.*, ¶¶ 17-18.

⁵⁷ Settlement Agreement, § III.F.

1 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
2 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
3 “both [1] an ascertainable class and [2] a well-defined community of interest among class
4 members.” *Id.*

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

13 **A. The Class Is Ascertainable and Sufficiently Numerous.**

14 “Ascertainability is required in order to give notice to putative class members as to whom
15 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
16 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
17 by describing a set of common characteristics sufficient to allow a member of that group to
18 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
19 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
20 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

21 This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d
22 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement
23 as joinder is not practical at that point). Further, all Class Members can and will be identified by
24 Defendants to the Settlement Administrator through a review of Defendants’ employment
25 records regarding hourly-paid and non-exempt employees in California during the Class Period.
26 As such, the Class is ascertainable and sufficiently numerous.

27 ///

28 ///

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 that*
6 *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 Action. Based on the documents and information obtained through informal
18 discovery and exchange of information in this Action, Plaintiffs contend that Class Members
19 were subject to the same or similar job duties and uniform operations and employment practices,
20 policies, and procedures during the time period at issue.⁵⁸ Plaintiffs’ claims arise from
21 Defendants’ alleged uniform policy and systematic scheme, with respect to Plaintiffs 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 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
26 necessary business-related expenses.⁵⁹

27
28 ⁵⁸ Marukyan Decl., ¶ 21.

⁵⁹ *Ibid.*

1 Plaintiffs also contend that Defendants' payroll and recordkeeping practices with respect
2 to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁰
3 As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all
4 compensation due to them from Defendants during the time period at issue.⁶¹

5 Plaintiffs maintain that the outcome of this litigation would be determined by
6 Defendants' alleged uniform operations and employment policies and procedures that applied
7 across its hourly-paid and non-exempt employees who worked in California during the Class
8 Period. Accordingly, the Court should certify the Class for settlement purposes only.

9 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
10 **PLAINTIFFS' COUNSEL AWARD**

11 Class Counsel have litigated the Action for over a year, and were actively preparing for
12 class certification and trial.⁶² The ongoing work has been extensive, demanding, and ultimately
13 successful in achieving a substantial settlement resolution. Class Counsel conducted extensive
14 investigations into the facts of the cases and informal discovery. Class Counsel reviewed a large
15 volume of documents and data⁶³ and also interviewed and obtained information from Plaintiffs
16 and other sources, researched applicable law, undertook damages/valuation calculations, and
17 met and conferred with Defendants' counsel regarding the pleadings and the production of
18 documents and data prior to mediation.⁶⁴ Counsel for the Parties also undertook extensive
19 settlement discussions, which included participating in a formal, full-day mediation.⁶⁵

20 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
21 experience to obtain a great result for the Class.⁶⁶

22 The Settlement establishes a Gross Settlement Amount of One Million Two Hundred
23 Thousand Dollars and Zero Cents (\$1,200,000.00), and provides for Class Counsel to apply to
24 the Court for Plaintiffs' Counsel Award, consisting of attorneys' fees in an amount not to exceed

25 ⁶⁰ Marukyan Decl., ¶ 21.

26 ⁶¹ *Ibid.*

27 ⁶² *Id.*, ¶ 16.

28 ⁶³ *Id.*, ¶¶ 16-17.

⁶⁴ *Ibid.*

⁶⁵ *Id.*, ¶ 16.

⁶⁶ *Id.*, ¶¶ 2-7.

one-third (1/3) of the Gross Settlement Amount (i.e., \$400,000.00 if the Gross Settlement Amount remains \$1,200,000.00) and an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) for costs and expenses.⁶⁷ The attorneys' fees provided for by the Settlement is 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, 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 Notice Packet provides Class Members with information about the amount allocated toward the Plaintiffs' Counsel Award, and that an award of the Plaintiffs' Counsel Award will be sought, as provided for by the Settlement.⁶⁸

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

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement

⁶⁷ Settlement Agreement, § III.O.b.5.

⁶⁸ *Id.*, Exh. A.

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).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁹

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs’ motion for final approval of the Settlement and application for the Plaintiffs’ Counsel Award 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 NOTICE PACKET 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

⁶⁹ Marukyan Decl., ¶ 24.

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 Notice Packet⁷⁰ describes the Settlement, the deadlines and procedures to mail an objection to the Class Settlement, Request for Exclusion from the Class Settlement, and/or Workweeks Disputes, and the date and time set for the Final Approval Hearing.⁷¹

The proposed Notice Packet 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 Notice Packet summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷² The proposed Notice Packet recognizes that the Court has not yet granted final approval of the settlement.⁷³ The proposed Notice Packet also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment is calculated and the number of Compensable Workweeks credited to them.⁷⁴

The proposed Notice Packet 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 Notice Packet.

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⁷⁰ Settlement Agreement, Exh. A.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

IX. **APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS, AS THE
SETTLEMENT ADMINISTRATOR**

The Parties have selected Phoenix Settlement Administrators, to administer the Settlement.

The Settlement Administrator will mail the Notice Packet to all identified Class Members by First-Class U.S. mail.⁷⁵ If a Notice Packet is returned as undeliverable before the Response Deadline, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address.⁷⁶ If the Settlement Administrator is successful in locating an updated address, it will re-mail the Notice Packet to the Class Member.⁷⁷ Further, any Notice Packets returned with a forwarding address to the Settlement Administrator before the Response Deadline, shall be re-mailed to the forwarding address affixed thereto.⁷⁸ Class Members will be given forty-five (45) calendar days after the Notice Packet is initially mailed to the Class Members, to submit Workweeks Disputes, Requests for Exclusion, and/or Notices of Objection (i.e., Response Deadline).⁷⁹ With respect to any Notice Packet that is re-mailed, the Response Deadline for the Class Member whose Notice Packet is re-mailed will be extended an additional fifteen (15) calendar days from the original Response Deadline.⁸⁰

The Settlement Administrator's duties will include: a) calculating, processing and mailing the Enhancement Payments and payments to Plaintiffs' Counsel, Plaintiffs, the LWDA, Settlement Class Members, and PAGA Employees; (b) printing and mailing the Notice Packets to the Class Members and PAGA Employees as directed by the Court; (c) receiving and reporting the objections and requests for exclusion; (d) distributing tax forms to the Settlement Class Members and PAGA Employees; (e) providing declaration(s), as necessary, in support of preliminary and/or final approval of this Settlement; and (f) other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.⁸¹ The Settlement

⁷⁵ Settlement Agreement, § III.L.3.

⁷⁶ *Id.*, § III.L.4.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Id.*, § I.G.

⁸⁰ *Id.*, § III.L.4.

⁸¹ *Id.*, § III.K

1 Administrator shall keep the Parties timely apprised of the performance of all Settlement
2 Administrator responsibilities.⁸² The Administration Costs are currently estimated to be Eleven
3 Thousand Dollars (\$11,000.00) and will be paid out of the Gross Settlement Amount, subject to
4 approval by the Court.⁸³

5 Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Settlement
6 Administrators as the Settlement Administrator and direct the mailing of the Notice Packet to
7 the Class Members and PAGA Employees in the manner outlined and based on the proposed
8 deadlines as described herein and set forth in the Settlement Agreement.

9 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

10 At this preliminary approval stage, Plaintiffs seek approval of the proposed deadlines for
11 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails
12 mailing of the Notice Packet, in the form approved by the Court, to all known and reasonably
13 ascertainable Class Members based on Defendants' records.⁸⁴

14 As soon as practicable following Preliminary Approval of the Settlement, but no later
15 than ten (10) business days after Preliminary Approval, Defendants will provide to the
16 Settlement Administrator with a complete list of all Class Members which will include:
17 employee identification number, full name, last known mailing address, Social Security number,
18 the number of weeks each Class Member worked during the Class Period and PAGA Period,
19 and last known telephone number.⁸⁵

20 The Settlement Administrator shall run all the addresses provided through the United
21 States Postal Service National Change of Address ("NCOA") database (which provides updated
22 addresses for any individual who has moved in the previous four years who has notified the U.S.
23 Postal Service of a forwarding address) to obtain current address information, and shall mail the
24 Notice Packet to the Class Members via first-class U.S. Mail using the most current mailing
25 address information available.⁸⁶ If a Notice Packet is returned as undeliverable before the

26 ⁸² Settlement Agreement, § III.K

27 ⁸³ *Id.*, § III.O.b.7.

28 ⁸⁴ *Id.*, § III.L.2.

⁸⁵ *Id.*, §§ I.D. and III.L.1.

⁸⁶ *Id.*, § III.L.3.

Response Deadline, the Settlement Administrator will promptly perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator is successful in locating an updated address, it will re-mail the Notice Packet to the Class Member as soon as possible.⁸⁷ Further, any Notice Packets returned with a forwarding address to the Settlement Administrator before the Response Deadline, shall be re-mailed to the forwarding address affixed thereto.⁸⁸ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, Workweeks Dispute, and/or a Notice of Objection.⁸⁹ Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days from the original Response Deadline.⁹⁰

Within ten (10) calendar days following the Effective Date, Defendants will fund the Gross Settlement Amount.⁹¹ The Settlement Administrator shall distribute the Court-approved Plaintiffs' Counsel Award to Class Counsel, Court-approved Enhancement Payments to Plaintiffs, Court-approved Administration Costs to the Settlement Administrator, PAGA Payment to the LWDA, Individual Settlement Payments to Settlement Class Members, and the PAGA Settlement Awards to PAGA Employees within fourteen (14) calendar days following the full funding of the Settlement.⁹²

Any checks issued by the Settlement Administrator to Settlement Class Members and PAGA Employees will be valid and negotiable for one hundred and eighty (180) days after issuance.⁹³ If a Settlement Class Member or PAGA Employee does not cash his or her settlement check within 180 days, the uncashed funds, subject to Court approval, shall be transmitted to the State Controller's Unclaimed Property Fund.⁹⁴

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⁸⁷ Settlement Agreement, § III.L.4.

⁸⁸ *Ibid.*

⁸⁹ *Id.*, § I.GG.

⁹⁰ *Id.*, § III.L.4.

⁹¹ *Id.*, § III.N.

⁹² *Id.*, §§ III.O.b.2, III.O.b.4, III.O.b.5, III.O.b.6, III.O.b.7.

⁹³ *Id.*, § III.O.b.3.

⁹⁴ *Ibid.*

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

Plaintiffs Joshua Wolfe and Veronica Topete respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Payments in an amount up to Ten Thousand Five Hundred Dollars (\$10,000.00) each to Plaintiffs Joshua Wolfe and Veronica Topete, for a combined amount of \$20,000.00.⁹⁵ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payments are fair and appropriate. Plaintiffs spent 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.⁹⁶ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁹⁷ Accordingly, it is appropriate and just for Plaintiffs to receive Enhancement Payments for their services on behalf of the Class, PAGA Employees, and the State of California, in addition to their individual settlement payments.

XII. CONCLUSION

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

⁹⁵ Settlement Agreement, § III.O.b.4.

⁹⁶ Marukyan Decl., ¶ 19; Jones Decl., ¶ 12; Declaration of Joshua Wolfe in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Wolfe Decl."), ¶ 4; Declaration of Veronica Topete in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Topete Decl."), ¶ 7.

⁹⁷ Marukyan Decl., ¶ 19; Jones Decl., ¶ 12; Wolfe Decl., ¶¶ 3-6; Topete Decl., ¶ 7.

1 appoint and designate Lawyers *for* Justice, PC and Crosner Legal, PC as Class Counsel;
2 preliminary appoint and designate Plaintiffs Joshua Wolfe and Veronica Topete as Class
3 Representatives; appoint Phoenix Settlement Administrators as Settlement Administrator;
4 preliminarily approve the allocations for Plaintiffs' Counsel Award, Enhancement Payments,
5 PAGA Settlement Amount, and Administration Costs; approve the proposed Notice Packet;
6 direct the Settlement Administrator to undertake the notice and settlement administration
7 process in conformity with the deadlines and procedures provided by the Settlement Agreement;
8 and schedule a Final Approval Hearing to take place in approximately six (6) months.

9
10 Dated: July 30, 2024

LAWYERS *for* JUSTICE, PC

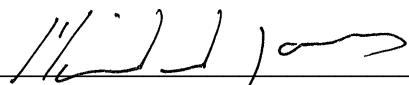
11
12 By: _____


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