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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

KELVIN BENN, individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

ADVANCED GROUND SYSTEMS ENGINEERING LLC, a California limited liability corporation; WESTMONT INDUSTRIES, an unknown business entity; WESTMONT INDUSTRIES GROUP, an unknown business entity; WESTMONT GROUP, an unknown business entity; HYDRAULIC CRANES LLC, a California limited liability corporation; OTTO SYSTEMS LP, a California limited partnership; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 22STCV38314

Honorable David S. Cunningham III
Department 11

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date:	November 10, 2026
Time:	10:00 a.m.
Department:	11
Complaint Filed:	December 8, 2022
FAC Filed:	April 13, 2026
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on November 10, 2026 at 10 a.m., or as soon thereafter as the matter may be heard before the Honorable David S. Cunningham III in Department 11 of the Superior Court of the State of California, for the County of Los Angeles, 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Kelvin Benn ("Plaintiff") 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 parties' Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Charles T. Sweeny in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Kelvin Benn as Class Representative;
- Appointing Sweeny Law, PC and Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, and directing the mailing thereof in accordance with the Settlement Agreement;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- Scheduling a hearing to consider final approval of the Settlement.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which require approval by the Court of the settlement of a putative class action, and Rule 3.1113(e), which 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 (Charles T. Sweeny and Brian J. St. John) and Proposed Class Representative (Kelvin Benn) in support thereof; as well as 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 6, 2026

SWEENY LAW, PC

By: ______________________________

Charles T. Sweeny
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Kelvin Benn ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("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 Defendants Advanced Ground Systems Engineering LLC ("AGSE"), Westmont Industries LLC (sued as Westmont Industries, Westmont Industries Group, and Westmont Group), Hydraulic Cranes, LLC, and Otto Systems L.P. (collectively, "Defendants"), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (together, the "Parties") have agreed to settle the lawsuit for a Total Settlement Amount of $365,000.00.[1]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendants do not oppose: All current or former non-exempt, non-unionized employees employed by any of the Defendants in California at any time during the Class Period ("Class" or "Class Members").[2] Any Class Member who does not submit a timely and valid Request for Exclusion from the Class Settlement ("Settlement Class Member") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"). The net payment of each Settlement Class Member's Individual Settlement Share ("Individual Settlement Payment") will be distributed to Settlement Class Members on a *pro rata* basis based upon the number of weeks within which each Class Member worked for any Defendants as a non-exempt, non-unionized employee in California during the Class Period ("Workweeks").[3]

The Settlement, upon final approval by the Court and funding of the Total Settlement Amount, will operate to resolve the Released Class Claims of Plaintiff and Settlement Class

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[1] Settlement Agreement, attached as Exhibit 1 to Declaration of Charles T. Sweeny ("Sweeny Decl."), ¶ 16. Defendants represented that there were 26,000 Workweeks during the period from December 8, 2018 to February 13, 2024. Should the Workweeks during the Class Period increase by more than 10% of the represented 26,000 (i.e., exceeds 28,600 Workweeks), Defendants at their sole discretion, have the option of either: (1) agreeing to increase the Total Settlement Amount on a *pro rata* basis according to the number of additional Workweeks over the 10% cap, or (2) agreeing to close the Class Period just before the date the Workweeks exceed this 10% cap. Settlement Agreement, ¶ 42.

[2] Settlement Agreement, ¶ 9(d).; "Class Period" is defined as the time period from December 8, 2018 through May 1, 2024, subject to Paragraph 42 of the Settlement Agreement. *See id.*, ¶ 9(f).

[3] Settlement Agreement, ¶ 18.

Members and the Released PAGA Claims of the State of California.[4]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants specialize in the design, manufacturing, installation, and/or renting of major machine parts for large, industrial machinery, including cranes and aircraft systems.[5] Plaintiff alleges that he is one of Defendants'[6] former employees who worked as an hourly-paid Hydraulics Installer.[7]

On December 8, 2022, Plaintiff filed a Class Action Complaint for Damages in the Superior Court for the County for the County of Los Angeles, thereby commencing the above-entitled lawsuit (the "Class Action Complaint").[8] Plaintiff's core allegations of the Class Action Complaint, prior to any later amendments, were that Defendants had violated California wage and hour law, including but not limited to laws set forth in the California Labor Code, by engaging in a uniform practice and procedure, with respect to Plaintiff and Class Members of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, 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*. Plaintiff contends that he and the Class Members are entitled to, *inter alia*, unpaid wages, penalties, and attorneys' fees and costs.[9]

On January 4, 2023, the Court issued a Court Order Re: Newly Filed Class Action, which, *inter alia*, stayed the Case until further order and set an Initial Status Conference for February 6, 2023, which was continued at the request of the Parties to March 3, 2023.[10] At the continued Initial Status Conference, Defendants indicated their interest in challenging the pleadings based on, from

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[4] *See* Settlement Agreement, at ¶¶ 9(dd), 9(ee), & 34, for the full scope of the "Released Class Claims;" *See id*., at ¶¶ 9(dd), 9(gg), & 35, for the full scope of the "Released PAGA Claims" and *id*. at ¶ 9(gg) for the full scope of the "Released Parties."
[5] Sweeny Decl., ¶ 2.
[6] As is discussed below, Defendants disputed that Plaintiff would be able to purse claims against all named defendants on a joint employer theory of liability.
[7] Sweeny Decl., ¶ 2.
[8] Sweeny Decl., ¶ 3.
[9] Sweeny Decl., ¶ 3.
[10] Sweeny Decl., ¶ 4.

their perspective, Plaintiff improperly naming certain Defendants.[11] From Plaintiff's perspective, all Defendants were properly included as part of a joint employer theory of liability, and thus Plaintiff further requested that the stay at least be lifted to engage in joint employer discovery prior to any pleading challenges.[12] As a result, the Court ordered a Pre-Pleading Conference for April 12, 2023.[13] In advance of the Pre-Pleading Conference, the Parties were required to meet and confer and provide a Joint Further Status Conference Statement ("FSC Statement").[14] During the meet and confer process, the Parties were unable to come to an agreement on particular issues relating to the FSC Statement itself and the discovery pertaining to joint employer liability, thereby warranting separate FSC Statements from both Parties.[15]

At the Pre-Pleading Conference on April 12, 2023, the Parties discussed the legal theories surrounding the Westmont Defendants, along with Defendants' intent to file a demurrer.[16] The Court concluded that it would probably overrule any demurrer given the allegations in the Class Action Complaint and thus declined to authorize the filing of a demurrer challenging the joint employer doctrine.[17] To facilitate the resolution of the joint employer issue, Defendants agreed to produce particular documents relating to the joint employer situation, among other things. The Court also lifted the stay for the Parties to engage in precertification discovery.[18]

On May 24, 2023, Plaintiff propounded multiple sets of written discovery requests, including Requests for Production of Documents, (Set One); Special Interrogatories (Sets One & Two), Form Interrogatories—General (Set One), all of which sought information relevant to precertification discovery.[19] On May 11, 2023 and June 7, 2023, Plaintiff also noticed the depositions of Defendants' persons most knowledgeable regarding Defendants' document retention practices, organizational structure, and wage and hour practices (along with requests for production of documents).[20] Defendants objected to all of Plaintiff's discovery requests and, in or

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[11] Sweeny Decl., ¶ 4.
[12] Sweeny Decl., ¶ 4.
[13] Sweeny Decl., ¶ 4.
[14] Sweeny Decl., ¶ 4.
[15] Sweeny Decl., ¶ 4.
[16] Sweeny Decl., ¶ 5.
[17] Sweeny Decl., ¶ 5.
[18] Sweeny Decl., ¶ 5.
[19] Sweeny Decl., ¶ 6.
[20] Sweeny Decl., ¶ 6.

around August 2023, the Parties agreed to stay formal discovery and attempt to resolve the matter through mediation.[21]

Meanwhile, on September 8, 2023, Plaintiff provided written notice to the Labor and Workforce Development Agency ("LWDA") by online submission and to Defendants by certified mail of his intent to seek civil penalties for Defendants' alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, LWDA Case No. LWDA-CM-980575-23 ("PAGA Notice").[22]

Mediation was originally scheduled with the late Jeffrey Krivis, Esq. for January 30, 2024, but, following Mr. Krivis' unfortunate health diagnosis,[23] was re-scheduled to take place with Monique Ngo-Bonnici, Esq. on February 6, 2024.[24]

Prior to mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case.[25] Plaintiff obtained, through informal discovery, including but not limited to, a varied sampling methodologies of Class Members' time and payroll data throughout the Class Period (including a 25% random sampling of time and payroll data), Plaintiff's personnel records, Defendants' Handbook, wage statements, company policy acknowledgements, company policy forms (including but not limited to meal period claim forms, meal period agreement forms, time correction forms, arbitration agreements, cell phone agreements), Defendants' operations and employment practice, policies, and procedures, among other information and documents.[26]

On February 6, 2024, the Parties participated in arm's length mediation but were unable to reach a resolution.[27]

Following mediation, on March 6, 2024, Plaintiff provided an amended written notice to the LWDA by online submission and to Defendants by certified mail of his intent to seek civil penalties for Defendants' alleged violations of the California Labor Code and Industrial Welfare

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[21] Sweeny Decl., ¶ 6.
[22] Sweeny Decl., ¶ 7.
[23] Jeffrey Krivis unfortunately passed away several months later, in August, 2024 and is remembered for, among many other things, pioneering mediation in California. May he rest in peace.
[24] Sweeny Decl., ¶ 8.
[25] Sweeny Decl., ¶ 9.
[26] Sweeny Decl., ¶ 9.
[27] Sweeny Decl., ¶ 10.

Commission Wage Orders.[28]

Although the mediation was originally unsuccessful, the Parties continued to engage in settlement negotiations through the mediator and ultimately signed a detailed, 20-paragraph Mediator's Proposal.[29]

Following the execution of the Mediator's Proposal, the Parties spent several months in continued negotiations over the finer terms of a long-form Settlement Agreement.[30] Sweeny Law, PC associated into the case on September 16, 2024, and continued the negotiations and collaborative drafting, which ultimately resulted in a fully and finally executed Settlement Agreement on April 10, 2025.[31]

To comport with the terms of the Settlement Agreement, Plaintiff submitted a Second Amended PAGA Notice to the LWDA on April 9, 2025, and began drafting the First Amended Complaint consistent therewith.[32] During the drafting process, there were protracted exchanges between the Parties to ensure that the First Amended Complaint was consistent with the release in the Settlement Agreement, and, in turn, the Parties agreed that Plaintiff should further revise the Second Amended PAGA Notice, which he did through a Third Amended PAGA Notice that was submitted on February 19, 2026.[33]

Following these extensive additional negotiations and submissions, Plaintiff sought leave to file a First Amended Complaint, which, among other things, added a PAGA cause of action that is coextensive with the Third Amended PAGA Notice.[34] Pursuant to a stipulation filed by the Parties following submission of the Third Amended PAGA Notice, the Court granted Plaintiff leave to file a proposed First Amended Complaint on March 4, 2026, and Plaintiff filed the First Amended Complaint on April 13, 2026 ("Operative Complaint").[35] Class Counsel did not receive any response from the LWDA pertaining to the Third Amended PAGA Notice within sixty-five

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[28] Sweeny Decl., ¶ 11.
[29] Sweeny Decl., ¶ 12.
[30] Sweeny Decl., ¶ 13.
[31] Sweeny Decl., ¶ 13.
[32] Sweeny Decl., ¶ 14.
[33] Sweeny Decl., ¶ 14.
[34] Sweeny Decl., ¶ 15.
[35] Sweeny Decl., ¶ 15.

(65) calendar days of its submission.[36]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Total Settlement Amount of $365,000.00 to resolve the Action.[37] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed 35% of the Total Settlement Amount (i.e., $127,750.00, if the Total Settlement Amount remains $365,000.00) and all actual litigation costs and expenses[38] subject to proof and court approval ("Attorneys' Fees and Costs") to Class Counsel; (2) Settlement Administration Costs, which are currently estimated not to exceed $6,940.51 to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Amount of $35,000.00 ("PAGA Amount"); and (4) payment in the amount of up to $7,500.00 to Plaintiff ("Enhancement Payment").[39] The Parties have agreed to retain Phoenix Settlement Administrators, ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.[40]

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement on a *pro rata* per Workweek basis, which will be adjusted after Final Approval to reflect the total Workweeks worked by the Settlement Class Members.[41] The Parties have agreed that the Settlement Administrator will determine each PAGA Members' share of the 25% share of the PAGA Amount, in accordance with the Settlement Agreement on a *pro rata* per Workweeks basis.[42]

The Parties agree, for purposes of this Settlement, that Individual Settlement Shares will be allocated 33% to wages subject to withholdings, 33% to penalties, and 34% to interest, fees, and non-wage damages.[43] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and

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[36] Sweeny Decl., ¶ 15.
[37] Settlement Agreement, ¶ 9(mm).
[38] The current estimate of Class Counsel's litigation costs and expenses is $16,053.75.
[39] Settlement Agreement, ¶¶ 14-17.
[40] Settlement Agreement, ¶ 9(jj).
[41] Settlement Agreement, ¶ 18.
[42] Settlement Agreement, ¶ 18.
[43] Settlement Agreement, ¶ 29.

issue checks to Settlement Class Members for their Individual Settlement Payments. Individual PAGA Payments to PAGA Members will be allocated as 100% penalties and will not be subject to withholdings. Defendants will provide the funds for any employer-side taxes related to the Individual Settlement Shares.[44]

Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be canceled.[45] Thereafter, funds from uncashed Individual Settlement Payment and/or Individual PAGA Payment checks shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member and/or PAGA Member to whom the checks were issued.[46]

Any Class Member may request to be excluded from the Class Settlement by mailing a Request for Exclusion postmarked on or before the date that is 60 calendar days from the date of the initial mailing of the Class Notice by the Settlement Administrator ("Response Deadline").[47] PAGA Members shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[48]

Only Class Members who have not submitted a Request for Exclusion (i.e., Settlement Class Members) may object to the Class Settlement by submitting a Notice of Objection to the Settlement Administrator prior to the Response Deadline or by presenting their objection orally at the Final Approval Hearing, regardless of whether they submitted a written objection.[49]

In order to dispute the number of Workweeks attributable to an individual Class Member, that Class Member must submit a written letter to the Settlement Administrator and include copies of any supporting evidence they may have.[50]

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[44] Settlement Agreement, ¶ 29.
[45] Settlement Agreement, ¶ 24.
[46] Settlement Agreement, ¶ 24.
[47] Settlement Agreement, ¶¶ 9(hh), 9(ii), & 25.
[48] Settlement Agreement, ¶¶ 24 & 25.
[49] Settlement Agreement, ¶ 26.
[50] Settlement Agreement, ¶ 23.

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). 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). 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 at the final approval stage. Cal. R. Ct. 3.769(g).

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

The trial court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk*, 48 Cal.App.4th at 1800. 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*, 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*, 91 Cal.App.4th at 245. Furthermore, courts must give "proper deference to the private consensual decision of the parties." *Hanlon*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 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*, 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 commenced on December 8, 2022. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.[51]

Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data from Plaintiff, Defendants, and other sources.[52] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: a varied sampling methodologies of Class Members' time and payroll data throughout the Class Period (including a 25% random sampling of time and payroll data), Plaintiff's personnel records, Defendants' Handbook, wage statements, company policy acknowledgements, company policy forms (including but not limited to meal period claim forms, meal period agreement forms, time correction forms, arbitration agreements, cell phone agreements), Defendants' operations and employment practice, policies, and procedures, among other information and documents.[53] Class Counsel had the opportunity to interview Plaintiff and others to gather facts and to identify potential witnesses. In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[54]

The Parties engaged in extensive settlement negotiations and participated in a full-day

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[51] Sweeny Decl., ¶ 33; St. John Decl., ¶¶ 8 & 10.
[52] Sweeny Decl., ¶¶ 9 & 33; St. John Decl., ¶¶ 10-12.
[53] Sweeny Decl., ¶¶ 9 & 33; St. John Decl., ¶ 12.
[54] Sweeny Decl., ¶¶ 22-26; St. John Decl., ¶¶ 2-7.

mediation, conducted by Monique Ngo-Bonnici, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[55] Prior to and during the mediation and settlement discussions, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, including the risks of proceeding with class certification and/or representative adjudication; the law relating to various off-the-clock theories of liability, non-compliant meal and rest periods, regular rate of pay, wage statements, waiting time penalties, PAGA representative claims, and wage-and-hour enforcement; the evidence produced and analyzed; and the possibility of appeals.[56] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[57] Arriving at a settlement that was acceptable to both Parties was not easy. Both sides felt strongly about their ability to prevail at certification and at trial.[58] After conducting investigations, 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 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[59]

B. <u>The Settlement Is Fair, Reasonable, and Adequate</u>

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[60] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information.[61] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue. Moreover, considering all of the facts and circumstances of the case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[62]

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided

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[55] Sweeny Decl., ¶ 35; St. John Decl., ¶ 13.
[56] Sweeny Decl., ¶ 35; St. John Decl., ¶ 13.
[57] Sweeny Decl., ¶ 35; St. John Decl., ¶ 13.
[58] Sweeny Decl., ¶ 35; St. John Decl., ¶ 13.
[59] Sweeny Decl., ¶ 35; St. John Decl., ¶ 13.
[60] Sweeny Decl., ¶ 41; St. John Decl., ¶ 19.
[61] Sweeny Decl., ¶ 41; St. John Decl., ¶¶ 11-13.
[62] Sweeny Decl., ¶ 41; St. John Decl., ¶ 19.

for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be $171,755.74. Additionally, 25% of the PAGA Amount (i.e., Individual PAGA Payment), which is $8,750.00 out of $35,000.00, will be distributed to the PAGA Members. 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 and each PAGA Members' Individual PAGA Payment will be calculated based on his or her Workweeks during the Class Period and PAGA Period, respectively.[63] "An allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. Here, the allocation is reasonably related to the number of Workweeks actually worked for Defendants during the relevant period and should be approved.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA Members, and the State of California.[64] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg,* §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. <u>The Settlement Is Significantly Valuable</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[65] The information that Class Counsel obtained from Plaintiff, Defendants, and 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

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[63] Settlement Agreement, ¶ 18.
[64] Sweeny Decl., ¶ 41; St. John Decl., ¶ 19.
[65] Sweeny Decl., ¶¶ 9, 39-41.

Defendants' defenses thereto.[66] As outlined in the Declaration of Charles T. Sweeny, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[67]

V. CERTIFICATION OF THE CLASS IS APPROPRIATE

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[68] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the Plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

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; s*ee also 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). The Class here is estimated to be 231 individuals, which is sufficiently numerous.[69] Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding current or former non-exempt, non-unionized employees of Defendants in California at any time during the Class Period. As such, the Class is ascertainable.[70]

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[66] Sweeny Decl., ¶¶ 9, 39-41.
[67] Sweeny Decl., ¶ 39.
[68] Settlement Agreement, ¶ 10.
[69] Sweeny Decl., ¶ 27.
[70] Sweeny Decl., ¶ 27.

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

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

Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through informal discovery and exchange of information in the case, Plaintiff contends that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.[71] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue. Plaintiff maintains that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked in California during the Class Period.

As a member of the Class who was subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.[72] Importantly, Plaintiff has retained law firms well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff and the Class.[73]

[71] Sweeny Decl., ¶ 29.
[72] Sweeny Decl., ¶ 30.
[73] Sweeny Decl., ¶¶ 22-26; St. John Decl., ¶¶ 2-7.

Accordingly, the proposed Class shares a community of interest, and the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over four years and was actively preparing the matter for class certification and trial.[74] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff and other percipient witnesses, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings and the production of documents and data prior to the mediation.[75] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[76] Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[77]

The Settlement establishes a Total Settlement Amount of $365,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount up to 35% of the Total Settlement Amount (i.e., $127,750.00 if the Total Settlement Amount remains $365,000.00), and reimbursement of actual costs and expenses—currently estimated to be $16,053.75—subject to proof.[78] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members that an award of the Attorneys' Fees and Costs

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[74] Sweeny Decl., ¶ 33; St. John Decl., ¶¶ 8-12.
[75] Sweeny Decl., ¶¶ 9 & 33-35; St. John Decl., ¶¶ 8-12.
[76] Sweeny Decl., ¶¶ 33-35; St. John Decl., ¶ 12.
[77] Sweeny Decl., ¶¶ 22-26; St. John Decl., ¶¶ 2-7.
[78] Settlement Agreement, ¶ 14.

will be sought and the amount allocated toward the Attorneys' Fees and Costs by the Settlement.[79]

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*, 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." *Lealao*, 82 Cal.App.4th at 50.

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

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[79] Settlement Agreement, Exh. A.

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.[80] Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's Motion for Final Approval of the Settlement and application for the Attorneys' Fees and Costs at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement are well within the range of reasonableness for preliminary approval.

VII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory authority 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). "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 describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[81] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[82] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[83] The proposed Class Notice also apprises the Class Members and PAGA

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[80] Sweeny Decl., ¶ 18.
[81] Settlement Agreement, Exh. A.
[82] Settlement Agreement, Exh. A.
[83] Settlement Agreement, Exh. A.

Members of, *inter alia*, how their Individual Settlement Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[84] The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg,* at § 8.39.

Thus, 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. Accordingly, the Court should approve the proposed Class Notice.

VIII. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix as the Settlement Administrator. In accordance with the most recent, February 2022 revision of the Los Angeles Superior Court, Complex Civil Department Checklist for Preliminary Approval of Class Action Settlement (the "LACC Checklist"), Phoenix is a qualified and experienced third party settlement administrator with procedures in place to protect the security of class data and adequate insurance in the event of a data breach or defalcation of funds.[85]

The Settlement Agreement contemplates that, within 14 calendar days of receipt of the Class List, the Settlement Administrator will perform an NCOA check and will mail the Class Notice to each Class Member and PAGA Member.[86] The Settlement Administrator will skip-trace returned Class Notices and re-mail the Class Notice to the new addresses within five calendar days.[87] In the case of a re-mailed Class Notice, the Response Deadline will be the later of 60 calendar days after initial mailing or 15 calendar days from re-mailing.[88] The Administrator will receive and process Requests for Exclusion, Notices of Objection, or disputes regarding Workweeks.[89] In addition, the Settlement Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all

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[84] Settlement Agreement, Exh. A.
[85] Declaration of Michael Moore ("Moore Decl."), ¶¶ 1-13.
[86] Settlement Agreement, ¶ 22(a).
[87] Settlement Agreement, ¶ 22(b).
[88] Settlement Agreement, ¶¶ 9(ii) & 22.
[89] Settlement Agreement, ¶¶ 23, 25, & 26.

required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.[90] The Settlement Administrator has agreed not to exceed $6,940.51[91] for the Settlement Administration Costs, which will be paid out of the Total Settlement Amount, subject to approval by the Court.[92]

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

IX. <u>CLASS REPRESENTATIVE ENHANCEMENT PAYMENT</u>

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to $7,500.00.[93] It is within the Court's discretion to award payment to a Class Representative for her efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. 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 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.[94] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[95] Accordingly, it is appropriate and just for Plaintiff to

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[90] Settlement Agreement, ¶ 16.
[91] Moore Decl., ¶¶ 17, Exh. B.
[92] Settlement Agreement, ¶ 67.
[93] Settlement Agreement, ¶ 15.
[94] Declaration of Kelvin Benn in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Benn Decl."), ¶ 4.
[95] Benn Decl., ¶¶ 3-8.

receive an Enhancement Payment for his services on behalf of the Class, PAGA Members, and the State of California, in addition to his Individual Settlement Share and Individual PAGA Payment.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; appoint Sweeny Law, PC and Lawyers *for* Justice, PC as Class Counsel; appoint Plaintiff Kelvin Benn as Class Representative; appoint Phoenix Settlement Administrators , as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and to schedule a Final Approval Hearing to take place in approximately 6 months.

Dated: May 6, 2026

SWEENY LAW, PC

By: ______________________

Charles T. Sweeny
Counsel for Plaintiff