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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

KEITH GILMORE, 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.

UNITED SITE SERVICES OF CALIFORNIA, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 24CV009938

Honorable Lauri A. Damrell
Department 21

CLASS ACTION

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

Date:	August 22, 2025
Time:	9:00 a.m.
Department:	21
Complaint Filed:	June 4, 2025
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on August 22, 2025, at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Lauri A. Damrell in Department 21 of the Superior Court of California for the County of Sacramento, located at 720 9th Street, Sacramento, California 95814, Plaintiffs Keith Gilmore and Noel C. Pellerin (together, "Plaintiffs" or "Class Representatives") will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declarations of Elizabeth Parker-Fawley and David D. Bibiyan in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Plaintiffs Keith Gilmore and Noel C. Pellerin as Class Representatives;
- Appointing Arby Aiwazian, Joanna Ghosh, Elizabeth Parker-Fawley, and Ani Menedjian of Lawyers *for* Justice, PC, and David D. Bibiyan and Vedang Patel of Bibiyan Law Group, P.C., as Class Counsel;
- Approving the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval ("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 Class Action Administrators as the 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.

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Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Elizabeth Parker-Fawley and David D. Bibiyan) and Proposed Class Representatives (Keith Gilmore and Noel C. Pellerin) 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: July 31, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________
Ani Menedjian
Attorneys for Plaintiff Keith Gilmore

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Keith Gilmore and Noel C. Pellerin (together, "Plaintiffs" or "Class Representatives") seek preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "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 Defendant United Site Services of California, Inc. ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of $1,462,500.00.[1]

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

> All current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the Class Period ("Class" or "Class Members").[2]

Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Participating Class Member") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"). The net payment of each Participating Class Member's Individual Settlement Share ("Individual Settlement Payment") will be distributed to Participating Class Members on a *pro rata* basis based upon the number of weeks during which a

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Elizabeth Parker-Fawley ("Parker-Fawley Decl."), ¶ 1.24. Based on its records, Defendant estimates that (i) there are approximately 1,302 Class Members from May 15, 2022 to December 31, 2024, and approximately 97,500 Workweeks worked by Class Members during the period from May 15, 2022 through February 6, 2025; and (ii) there were approximately 980 Aggrieved Employees who worked 59,623 PAGA Pay Periods during the period from March 15, 2023 to February 6, 2025. In the event the total number of Workweeks through the date of mediation (i.e., February 6, 2025) exceeds the estimate stated in this Paragraph by more than five percent (5%) due to inaccurate information or a failure to disclose covered Class Members, the Gross Settlement Amount shall be increased by a proportionate additional amount for each additional workweek in excess of five percent (5%). For example, if the number of workweeks from May 15, 2022 through February 6, 2025 exceed this estimate by ten percent (10%), then the Gross Settlement Amount would increase by five percent (5%). *See id.,* ¶ VI.

[2] *Id.,* ¶ 1.5. "Class Period" is defined as the period from May 15, 2022, to April 7, 2025. *See id.,* ¶ 1.12. The start date of the Class Period begins the day after the end date of a prior class action settlement involving an overlapping class of non-exempt employees in the matter of *Ferrer v. United Site Services, Inc., et al.*, Los Angeles Superior Court Case No. 21STCV02635.

Class Member worked for Defendant for at least one day during the Class Period ("Workweeks").[3]

The Settlement, upon final approval by the Court and funding of the Gross Settlement Amount, will operate to resolve the Released Class Claims of Plaintiffs and Participating Class Members and the Released PAGA Claims of the State of California.[4]

II. <u>PROCEDURAL HISTORY AND FACTUAL BACKGROUND</u>

Defendant is the nation's leading site service provider for portable restrooms, hand hygiene solutions, temporary fencing, trailer solutions, roll-off dumpsters, holding tanks, temporary power, and the Hydroflow sanitation system. Plaintiffs are former employees of Defendant.

On March 15, 2024, Plaintiff Keith Gilmore provided written notice by certified mail to the LWDA and Defendant of the specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice").[5]

On May 20, 2024, Plaintiff Keith Gilmore filed the Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* in the Superior Court for the County of Sacramento, thereby commencing the above-captioned lawsuit ("Gilmore Action").[6]

On July 12, 2024, Defendant filed its Answer to Plaintiff Keith Gilmore's PAGA Representative Action Complaint in the Gilmore Action.[7]

On June 21, 2024, Plaintiff Noel C. Pellerin provided notice to the LWDA and Defendant of his intent to pursue civil penalties under PAGA for alleged violations of the California Labor Code. On May 20, 2024, Plaintiff Noel C. Pellerin filed a wage-and-hour Class Action Complaint for Damages in the Superior Court for the County of Sacramento, captioned *Noel C. Pellerin v. United Site Services of California*, *Inc.*, Case No. 24CV009938 ("Pellerin Class

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[3] Settlement Agreement, ¶¶ 1.25, 1.26, and 1.38, and 1.47.
[4] *Id.*, ¶¶ 5.2 and 5.3. *See id.* at ¶ 5.2 for the full scope of the "Released Class Claims," *id.* at ¶ 5.3 for the full scope of the "Released PAGA Claims," and *id.* at ¶ 1.43 for the definition of the "Released Parties."
[5] Parker-Fawley Decl. ¶ 1, Exh. 1.
[6] *Id.*, ¶ 2.
[7] *Id.*, ¶ 3.

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Action"). On August 27, 2024, Plaintiff Noel C. Pellerin filed the Complaint under the Labor Code Private Attorneys' General Act Of 2004 for Civil Penalties under Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 in the Superior Court for the County of Los Angeles, captioned *Noel C. Pellerin v. United Site Services of California, Inc.*, Case No. 24STCV21871 ("Pellerin PAGA Action") (collectively with the Gilmore Action and the Pellerin Class Action, the "Actions"). [8]

On July 16, 2024, Plaintiff Keith Gilmore propounded multiple sets of discovery, including Form Interrogatories – General (Set One), Request for Admission (Set One), Request for Production of Documents (Set One), and Special Interrogatories (Set One and Two), on Defendant in the Gilmore Action. On July 16, 2024, Plaintiff Keith Gilmore served a First Notice of Deposition of Defendant's Person Most Knowledgeable and Requests for Production of Documents in the Gilmore Action.[9]

On June 30, 2025, Plaintiff Gilmore sent an Amended PAGA Notice to Defendant and the LWDA ("Amended PAGA Notice").[10]

On July 30, 2025, Plaintiff Gilmore sought leave to file a First Amended Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698, Et Seq. ("First Amended Complaint" or "Operative Complaint"), adding Plaintiff Pellerin as a named plaintiff in the Gilmore Action. The First Amended Complaint shall be the Operative Complaint for purposes of settlement only. Should the Settlement not be approved, or if the Settlement falls through for any reason, the First Amended Complaint shall be stricken and the original Complaint shall become the operative complaint in the Gilmore Action.[11]

Plaintiffs' core allegations are that Defendant has 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 Plaintiffs, Class Members, and Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay,

[8] Parker-Fawley Decl., ¶ 4.
[9] *Id.,* ¶ 5.
[10] *Id.,* ¶ 6.
[11] *Id.,* ¶ 7.

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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, failing to pay vested vacation wages, 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 giving rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*). 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 and costs.

The Parties have actively litigated the matters since the Gilmore Action was commenced on June 4, 2025. On February 6, 2025, the Plaintiff Gilmore and Defendant participated in arm's-length and informed negotiations with Mediator Tagore Subramaniam, Esq. ("Mediator"), a respected mediator of complex wage and hour actions.[12] With the aid of the mediator, the Parties reached the Settlement described herein to resolve the Actions in their entirety.[13]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of $1,462,500.00 to resolve the Actions.[14] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Class Counsel Fees Payment in an amount not to exceed 1/3 of the Gross Settlement Amount (i.e., $487,500.00 if the Gross Settlement Amount remains $1,462,500.00) and Class Counsel Litigation Expenses Payment in an amount not to exceed $30,000.00 (together, "Attorneys' Fees and Costs") to Class Counsel; (2) Administration Costs, which are currently estimated not to exceed $14,500.00 to the Administrator ("Administration Costs"); (3) PAGA Penalties of $150,000.00 ("PAGA Penalties"); and (4) payments in the amount of up to $10,000.00 each to Plaintiffs (for a combined total of $20,000.00) ("Class Representative Service

[12] Settlement Agreement, ¶ II.6.
[13] Ibid.
[14] *Id.*, ¶¶ I.24. & III.1.

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Payment").[15] The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Administrator") to handle the notice and settlement administration process.[16]

The Parties have agreed that the Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement on a *pro rata* per Workweeks basis, which will be adjusted after Final Approval to reflect the total Workweeks worked by Participating Class Members.[17] The Parties have agreed that the Administrator will determine each Aggrieved Employee's *pro rata* share of the 25% share of the PAGA Penalties, in accordance with the Settlement Agreement on a per PAGA Pay Periods basis.[18]

The Parties agree, for purposes of this Settlement, that Individual Settlement Shares will be allocated 20% to the settlement of wage claims, subject to withholdings, and 80% to interest and penalties.[19] The Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, and issue checks to Participating Class Members for their Individual Settlement Payments. Each Individual PAGA Payment will be allocated as 100% penalties and will not be subjected to withholdings.[20] Defendant will provide the funds for any employer-side taxes related to the Individual Settlement Shares.[21]

Individual Settlement Payment and Individual PAGA Payment checks will be negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be canceled.[22] Uncashed Individual Settlement Payment and/or Individual PAGA Payment checks shall be transmitted to California State Controller's Office Unclaimed Property Fund.[23]

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[15] Settlement Agreement, ¶¶ I.24, III.2.1, III.2.2, 3.2.3, and III.2.7.
[16] *Id.,* ¶ I.2.
[17] *Id.*, ¶ III.2.6.
[18] *Id.,* ¶ III.2.7.1.
[19] *Id.,* ¶ III.2.6.3.
[20] *Id.,* ¶ III.2.7.3.
[21] *Id.,* ¶¶ I.19 & III.1.
[22] *Id.,* ¶ IV.16.1.
[23] *Id.,* ¶ IV.16.3.

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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 Administrator ("Response Deadline").[24] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[25]

Only Class Members who have not submitted a Request for Exclusion (i.e., Participating Class Members) may object to the Class Settlement by submitting an Objection, to the Settlement Administrator prior to the Response Deadline.[26]

In order to dispute the number of Workweeks and/or PAGA Pay Periods attributable to an individual Class Member and/or Aggrieved Employee, that Class Member and/or Aggrieved Employee must submit a written letter to the Administrator, and include copies of any supporting evidence they may have.[27]

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 only 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

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[24] Settlement Agreement, ¶¶ I.44 and I.45.
[25] *Id.*, ¶ IV.7.1.
[26] *Id.*, ¶ IV.10.
[27] *Id.*, ¶ I.48.

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

V. THE COURT SHOULD PRELIMINARY APPROVE THE SETTLEMENT

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 v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Furthermore, courts 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 matter since the Gilmore Action commenced on June 4, 2025. Both sides investigated the veracity, strength, and scope of the claims throughout the cases, and Class Counsel were actively preparing the matter for class certification and trial.[28]

Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data from Plaintiffs, Defendant, and other sources.[29] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs' employment records, a detailed sampling of Plaintiffs' and other Class Members' time data and pay records, Defendants' Employee Handbook, internal memoranda, new hire orientation checklists, job descriptions, company policy acknowledgements (including but not limited to Employee Handbook Acknowledgment, Acknowledgment of Receipt of Policies, Acknowledgment of Receipt of California Meal Period and Rest Break Policy, Employee Acknowledgment of Code of Conduct, Final Pay Acknowledgment, forms (including but not limited to Employee Change of Status, Mutual Dispute Resolution Agreement, Meal Period & Rest Break Premium Authorization Form, Employee Meal Break Waiver Form, Day of Rest Confirmation Form, Corrective Action Form), procedures (including but not limited to Meal Break Waiver Agreements, Employee Warning Report, Training Report, and Employee Termination Checklist), and policies (including but not limited to Meal and Rest Break Policy, Mutual Dispute Resolution Agreement, and Mobile Time Policy), among other information and documents.[30] Class Counsel had the opportunity to interview Plaintiffs and others to gather facts and to identify potential witnesses.[31] In addition, Class Counsel have extensive experience in California wage-and-hour class actions.[32]

Plaintiff Gilmore and Defendant engaged in extensive settlement negotiations and participated in a full-day mediation conducted by Tagore Subramaniam, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[33] Prior to and during the mediation and settlement negotiations, the Parties exchanged extensive information and

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[28] Parker-Fawley Decl., ¶¶ 14-17.
[29] *Id.*, ¶ 25.
[30] Ibid.
[31] Ibid.
[32] *Id.,* ¶ 18 & Declaration of David D. Bibiyan ("Bibiyan Decl.") ¶ 8.
[33] *Id.,* ¶ 24.

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engaged in discussions regarding their evaluations of the cases and various aspects of the cases, including but not limited to, the risks and delays of further litigation, including the risks of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, arbitration agreements, regular rate, meal and rest periods, PAGA representative claims, and wage-and-hour enforcement; the evidence produced and analyzed; and the possibility of appeals.[34] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[35] 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.[36] After conducting investigations, formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matters are 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.[37]

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

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[38] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the formal and informal exchange of information.[39] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[40] Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[41]

Assuming that the Attorneys' Fees and Costs, Class Representative Service Payments, PAGA Penalties, 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

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[34] Parker-Fawley Decl., ¶ 24.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] *Id.,* ¶¶ 24, 26, 28, & 35.
[39] *Id.,* ¶¶ 29-33.
[40] Ibid.
[41] *Id.,* ¶¶ 26 & 35.

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that is currently estimated to be $755,000.00.[42] Additionally, 25% of the PAGA Penalties (i.e., PAGA Employee Amount), which is $37,500.00 out of $150,000.00, will be distributed to the Aggrieved Employees. The entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement.

The amount of each Participating Class Member's Individual Settlement Share and each Aggrieved Employee's Individual PAGA Payment will be calculated based on their Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.[43] "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 and/or PAGA Pay Periods actually worked for Defendant during the relevant period and should be approved.

In light of the foregoing considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, Aggrieved Employees, and the State of California.[44] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. <u>The Settlement Is of Significant Value.</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.[45] The information that Class Counsel obtained from Plaintiffs, Defendant, 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

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[42] Parker-Fawley Decl*.*, ¶ 9.
[43] Settlement Agreement, ¶¶ 1.26 & 1.27.
[44] Parker-Fawley Decl., ¶¶ 24, 28, & 35.
[45] *Id.,* ¶¶ 24-28.

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complete evaluation of Defendant's defenses thereto.[46] As outlined in the Declarations of Elizabeth Parker-Fawley and David D. Bibiyan, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[47]

VI. 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.[48] 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; see 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 approximately 1,444 individuals, which is sufficiently numerous.[49] Further, all Class Members can and will be identified by Defendant to the Administrator through a review of Defendant's employment records hourly-paid and/or non-exempt employees within the State of

[46] Parker-Fawley Decl., ¶ 33.
[47] *Id.*, ¶¶ 24-28 & 28-33.
[48] Settlement Agreement, ¶ II.10.
[49] Parker-Fawley Decl., ¶ 15.

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California at any time during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. <u>The Class Shares 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 Actions. Based on the documents and information obtained through formal and informal discovery and exchange of information in the matter, Plaintiffs contend 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.[50] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue. Plaintiffs maintain that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its hourly-paid and/or non-exempt employees within the State of California at any time during the Class Period.

As members of the Class who were subject to these same policies, practices, and procedures, Plaintiffs' claims are typical of the Class. Moreover, Plaintiffs have no interests adverse to the Class. Plaintiffs have taken steps to initiate and maintain these actions and to ensure that it comes to a fair and reasonable resolution.[51] Importantly, Plaintiffs have retained

[50] Parker-Fawley Decl., ¶ 16.
[51] Declaration of Keith Gilmore ("Gilmore Decl."), ¶ 4.

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law firms well-versed in wage and hour class actions, which have at all times represented the best interests of Plaintiffs and the Class.[52]

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

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

Class Counsel have litigated the matter for over one year and were actively preparing the matter for class certification and trial.[53] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed thousands of pages of documents and data[54] and also interviewed and obtained information from Plaintiffs and other percipient witnesses, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to mediation.[55] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[56]

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[57]

The Settlement establishes a Gross Settlement Amount of $1,462,500.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount not to exceed 1/3 of the Gross Settlement Amount (i.e., $487,500.00 if the Gross Settlement Amount remains $1,462,500.00) and reimbursement of actual costs and expenses in an amount up to $30,000.00.[58] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel have

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[52] Parker-Fawley Decl., ¶¶ 18-22
[53] *Id.,* ¶¶ 24.
[54] *Id.,* ¶ 25 & 28.
[55] Ibid.
[56] *Id.,* ¶ 24.
[57] *Id.,* ¶¶ 18-22; & Bibiyan Decl., ¶ 8.
[58] Settlement Agreement, ¶ III.1. & III.2.2.

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shown, (4) the results that Class Counsel have achieved throughout the litigation, (5) the value of the Settlement that Class Counsel have achieved for the Class Members, Aggrieved Employees, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Class Notice informs Class Members that an award of the Attorneys' Fees and Costs will be sought, and the amount allocated toward the Attorneys' Fees and Costs by the Settlement.[59]

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." *Id.* 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*, *supra*, 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*

[59] Parker-Fawley Decl., Exh. A.

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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 have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[60]

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 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.

VIII. 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 an objection to the Class Settlement, submit a Request for Exclusion from

[60] Parker-Fawley Decl., ¶ 10.

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the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[61] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[62] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[63] The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Settlement Share and if applicable, their Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[64] 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.

IX. APPOINTMENT OF THE ADMINISTRATOR

The Parties have selected Phoenix Settlement Administrators as the Administrator. Within 14 calendar days of receipt of the Class Data, the Administrator will perform an NCOA check and will mail the Class Notice to each Class Member and Aggrieved Employee.[65] The Administrator will skip-trace returned Class Notice and re-mail the Class Notice to the new addresses within five calendar days.[66] In the case of a re-mailed Class Notice, the Response Deadline will be the later of 60 calendar days after initial mailing or 14 calendar days from re-mailing.[67] The Administrator will receive and process Request for Exclusion, Objection, and any challenges to Workweeks and/or PAGA Pay Periods.[68] In addition, the Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the

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[61] Settlement Agreement, Exh. A.
[62] Ibid.
[63] Ibid.
[64] Ibid.
[65] Settlement Agreement, ¶ IV.6.
[66] *Id.,* ¶ IV.6.1.
[67] Ibid.
[68] *Id.,* ¶¶ III.2.3.

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Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all 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.[69] The Administration Costs is currently estimated to be $14,500.00, and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[70] Accordingly, Plaintiffs respectfully request that the Court appoint Phoenix Settlement Administrators as the Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employee in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. CLASS REPRESENTATIVE CLASS REPRESENTATIVE SERVICE PAYMENT

Plaintiffs respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Class Representative Service Payment in an amount up to $10,000.00 each.[71] 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. The factors that courts may consider in determining whether to make an Class Representative Service Payment include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id*.

The Class Representative Service 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.[72] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and

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[69] Settlement Agreement, ¶ III.2.3.
[70] Ibid.
[71] *Id.,* ¶ III.2.1.
[72] Parker-Fawley Decl., ¶ 11; Gilmore Decl., ¶ 4.

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provide information that would facilitate the pursuit of the class and PAGA claims.[73] Accordingly, it is appropriate and just for Plaintiffs to each receive $10,000.00 for their services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to their Individual Settlement Payments.

XI. 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 appoint and designate Lawyers *for* Justice, PC and Bibiyan Law Group, P.C. as Class Counsel; appoint Plaintiffs Keith Gilmore and Noel C. Pellerin as Class Representatives; appoint Phoenix Settlement Administrators as Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Class Representative Service Payment, PAGA Penalties, and Administration Costs; approve the proposed Class Notice; direct the 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: July 31, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________________
Ani Menedjian
Attorneys for Plaintiff Keith Gilmore

[73] Parker-Fawley Decl., ¶ 11; Gilmore Decl., ¶¶ 3-6.

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