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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

ANGELICA CURIEL, individually, and on behalf of other members of the general public similarly situated; TERESA AVILA, 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; KIRA CHAMBERS, 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; CHRISTINA ROMAY, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

vs.

BASS MEDICAL GROUP, a corporation; and DOES 1 through 100, inclusive; BASS PRIVIA MANAGEMENT COMPANY OF CALIFORNIA f/k/a. BASS MANAGEMENT SERVICES ORGANIZATION, LLC, a California Limited Liability Company; PRIVIA HEALTH GROUP, INC., a Delaware Corporation;

Defendants.

Case No.: MSC21-01668
(Consolidated Case No.: C22-01058)

Honorable Edward G. Weil
Department 39

CLASS ACTION

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

[Declarations of Proposed Class Counsel (Brian J. St. John, Shani O. Zakay, and Jean-Claude Lapuyade); Declarations of Proposed Class Representatives (Angelica Curiel, Teresa Avila, Kira Chambers, and Christina Romay); and [Proposed] Order filed concurrently herewith]

Date:	
Time:	
Department:	39
Complaint Filed:	August 4, 2021
FAC Filed:	April 15, 2024
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on a date and time to be determined by the Honorable Edward G. Weil in Department 39 of the Superior Court of California for the County of Contra Costa, located at 725 Court Street, Martinez, California 94553, Plaintiffs Angelica Curiel, Teresa Avila, Kira Chambers, and Christina Romay (collectively, "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 First Amended Joint Stipulation of Class Action and PAGA Settlement and Release of Claims ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 2**" to the Declaration of Brian J. St. John, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Enhancement Payments to Plaintiffs, and Settlement Administrator Payment to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Angelica Curiel, Teresa Avila, Kira Chambers, and Christina Romay as Class Representatives;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Brian J. St. John of Lawyers *for* Justice, PC; Shani O. Zakay, Jackland K. Horn, and Julieann Alvarado, of Zakay Law Group, APLC; and Jean-Claude Lapuyade, Eduardo Garcia, and Sydney Castillo-Johnson of JCL Law Firm, APC 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 Settlement;
- Directing the mailing of the Class Notice to the Class Members;

- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Enhancement Payments to Plaintiffs, and Settlement Administrator Payment to the Settlement Administrator.

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

This Motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Brian J. St. John, Shani O. Zakay, and Jean-Claude Lapuyade) and Proposed Class Representatives (Angelica Curiel, Teresa Avila, Kira Chambers, and Christina Romay) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: May 16, 2025 **LAWYERS *for* JUSTICE. PC**

By: ______________________________

Brian J. St. John
Attorneys for Plaintiffs Angelica Curiel and Teresa Avila

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Angelica Curiel, Teresa Avila, Kira Chambers, and Christina Romay (collectively, "Plaintiffs" or "Class Representative") seek preliminary approval of the First Amended Joint Stipulation of Class Action and PAGA Settlement and Release of Claims ("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 Defendants Bass Medical Group ("BMG"), Bass Privia Management Company of California ("BPMCC"), and Privia Health Group, Inc. ("PHG") (collectively, "Defendants"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the "Parties") have agreed to settle the instant action for a Maximum Settlement Amount of Five Million, One Hundred Thousand Dollars and Zero Cents ($5,100,000.00).[1] The Maximum Settlement Amount includes the following: (1) Settlement Shares to Participating Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Class Representative Enhancement Payments to Plaintiffs of Twelve Thousand, Five Hundred Dollars and Zero Cents ($12,500.00) each (combined total of Fifty Thousand Dollars and Zero Cents ($50,000.00))[3]; (3) the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, consisting of attorneys' fees in the amount of thirty-eight percent (38%) of the Maximum Settlement Amount, or One Million, Nine Hundred and Thirty-Eight Thousand Dollars and Zero Cents ($1,938,000.00), and reimbursement of litigation costs and expenses not to exceed Seventy-Five Thousand Dollars and Zero Cents ($75,000.00)[4]; (4) the Settlement Administrator Payment to the Settlement Administrator in an amount not to exceed Thirty Thousand Dollars and Zero Cents

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[1] Settlement Agreement, attached as "**EXHIBIT 2**" to Declaration of Brian J. St. John ("St. John Decl."), ¶ 21. If the actual number of Workweeks encompassed within the Class Period exceeds 171,602 by 5% or more (i.e., exceeds 180,183 Workweeks), then Defendants shall have the option of either (i) increasing the Net Settlement Amount by an amount determined by the following formula: ([Actual Number of Workweeks – 180,183] ÷ 180,183) x Net Settlement Amount; or (ii) changing the end date of the Class Period to a date for which there are no more than 180,183 workweeks. *See ibid.*

[2] *Id.*, ¶ 36.

[3] *Id.*, ¶¶ 8 & 77(a).

[4] *Id.*, ¶¶ 4, 5, & 77(b).

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($30,000.00)[5]; and (5) the PAGA Penalty Amount of Six Hundred and Fifty Thousand Dollars and Zero Cents ($650,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., Four Hundred and Eighty-Seven Thousand, Five Hundred Dollars and Zero Cents ($487,500.00)) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., One Hundred and Sixty-Two Thousand, Five Hundred Dollars and Zero Cents ($162,500.00)) will be distributed to all current and former non-exempt employees of BMG in California during the PAGA Period and all individuals who worked for Defendants as an independent contractor in California during the PAGA Period ("PAGA Group Members").[6]

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

> All current and former hourly-paid or non-exempt employees of BMG in California during the Class Period and all individuals who worked for Defendants as independent contractors in California during the Class Period ("Class" or "Class Members").[7]

Based on information provided by Defendants, the Class is estimated to consist of approximately Three Thousand Three Hundred Ten (3,310) individuals.[8]

Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement ("Participating Class Members") will receive a share of the Net Settlement Amount ("Settlement Share") on a *pro rata* basis based upon the number of workweeks each Class Member actually performed paid work as an hourly-paid or non-exempt employee of BMG or as an independent contractor for BMG, BPMCC, and/or PHG ("Workweeks").[9]

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[5] Settlement Agreement, ¶¶ 35, 56, & 77(d).

[6] *Id.*, ¶¶ 20, 24, 25, 27, & 77(c). "PAGA Period" is defined as the period of time from May 25, 2021, through December 17, 2022. *See id.*, ¶ 27; ; "Non-Exempt PAGA Group Member(s)" means all current and former hourly-paid or non-exempt employees of BMG in California during the PAGA Period and "IC PAGA Group Member(s)" means all individuals who worked for Defendants as independent contractors during the PAGA Period. *See id.*, ¶ 24.

[7] *Id.*, ¶ 2. "Class Period" is defined as the period of time from August 4, 2017, through December 17, 2022. *See id.*, ¶ 7; "Non-Exempt Class Member(s)" means all current and former hourly-paid or non-exempt employees of BMG in California during the Class Period and "IC Class Member(s)" means all individuals who worked for Defendants as independent contractors during the Class Period. *See id.*, ¶ 7.

[8] St. John Decl., ¶ 10.

[9] Settlement Agreement, ¶¶ 30, 36, & 38. "Non-Exempt Workweek(s)" means Workweek(s) where a Non-Exempt Class Member worked as an hourly-paid or non-exempt employee of BMG and "IC Workweek(s)" means Workweek(s) during which an IC Class Member worked as an independent contractor for BMG, BPMCC, and/or PHG. *See id.*, ¶ 38.

All PAGA Group Members will receive a *pro rata* share of the twenty-five percent (25%) portion of the PAGA Penalty Amount ("PAGA Payment Share") based on the number of pay periods during the PAGA Period each PAGA Group Member actually received payment from BMG, BPMCC, and/or PHG as a non-exempt employee, exempt employee, and/or independent contractors ("Pay Periods").[10]

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Class Released Claims of the Participating Class Members, the PAGA Released Claims of the PAGA Group Members, and Curiel's Released Claims, Avila's Released Claims, Chambers' Released Claims, and Romay's Released Claims against the Released Parties.[11]

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

BMG is a multi-specialty medical group offering comprehensive healthcare services. BPMCC and PHG provide management and other healthcare delivery services. Plaintiffs Angelica Curiel, Teresa Avila, Kira Chambers, and Christina Romay are former employees and/or independent contractors of Defendants.

On August 4, 2021, Plaintiff Angelica Curiel ("Plaintiff Curiel") filed a Class Action Complaint for Damages against alleging causes of action against BMG for (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods or Pay Meal Period Premiums; (4) Failure to Provide Rest Breaks or Pay Rest Break Premiums; (5) Failure to Provide Accurate Itemized Wage Statements and Maintain Payroll Records; (6) Failure to Timely Pay Final Wages; (7) Failure to Timely Pay Wages During Employment; (8)

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[10] Settlement Agreement, ¶¶ 26 & 31; "Non-Exempt Pay Period(s)" means Pay Period(s) where a PAGA Group Member worked as an hourly-paid or non-exempt employee of Defendants. "IC Pay Period(s)" means Pay Period(s) during which a PAGA Group Member worked as an independent contractor for BMG, BPMCC, and/or PHG. *See id.*, ¶ 31.

[11] *Id.*, ¶¶ 86 & 87. See *id.* at ¶ 86 for the full scope of the "Class Released Claims," *id.* at ¶ 87 for the full scope of the "PAGA Released Claims," and *id.* at ¶ 33 for the definition of the "Released Parties."

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Failure to Reimburse Necessary Business Expenses; and (9) Unlawful and Unfair Business Practices, in the Contra Costa County Superior Court ("Court"), thereby commencing the above-captioned lawsuit (the "Curiel Action").

On March 15, 2022, Plaintiff Kira Chambers ("Plaintiff Chambers"), gave written notice to the LWDA and BMG of the sections of the California Labor Code and applicable Industrial Welfare Commission Wage Orders that BMG is alleged to have violated ("Chambers LWDA Exhaustion Letter").

On May 25, 2022, Plaintiff Chambers filed a Class Action Complaint against Defendants for (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200 *et seq*.; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Required Meal Periods; (5) Failure to Provide Required Rest Periods; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Reimburse Employees for Required Expenses; (8) Failure to Provide Wages When Due; and (9) Violation of the Private Attorneys General Act in the Contra Costa County Superior Court, Case No. C22-01058 ("Chambers Action").

On August 2, 2022, Plaintiff Chambers, filed an amended notice with the LWDA, and gave written notice to Defendants, identifying BPMCC and PHG as the entities designated as DOES 1 and 2, respectively (the "Chambers Amended LWDA Exhaustion Letter").

On October 6, 2022, Plaintiff Teresa Avila ("Plaintiff Avila") gave written notice to the LWDA and BMG of the sections of the Labor Code and applicable Industrial Welfare Commission Wage Orders that BMG is alleged to have violated ("Avila LWDA Exhaustion Letter").

On November 29, 2022, the Court consolidated the Curiel Action and the Chambers Action (together, the "Actions").

On April 15, 2024, Plaintiffs filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Actions, thereby adding Plaintiff Avila and Plaintiff Christina Romay ("Plaintiff Romay") and a cause of action for civil penalties pursuant to PAGA ("First Amended Complaint" or "Operative Complaint").

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Plaintiffs' core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to penalties pursuant to PAGA. 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.

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

Prior to reaching Settlement, the Parties conducted significant investigation into the facts of the case and engaged in informal discovery. The Parties have actively litigated the Actions since the Curiel Action was commenced on August 4, 2021, and the Chambers Action was commenced on May 25, 2022. On October 11, 2022, the Parties participated in a formal, full-day mediation conducted by Lynn Frank, Esq. (the "Mediator"), a well-regarded mediator experienced in mediating complex labor and employment matters. Although the matter did not settle at mediation, ultimately, with the aid of the Mediator's evaluation, the Parties reached the Settlement described herein to resolve the Actions in their entirety.

On June 7, 2024, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement ("Original Motion for Preliminary Approval") and supporting documents seeking preliminary approval of the Settlement reached by the Parties. On August 22, 2024 the Court issued a ruling wherein the Court raised points of inquiry regarding the Original Motion for Preliminary Approval and denied the motion without prejudice ("August 22, 2024 Order"). A

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true and correct copy of the August 22, 2024 Order is attached hereto as "Exhibit 1" to the Declaration of Brian J. St. John.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, BMG will pay a Maximum Settlement Amount of Five Million, One Hundred Thousand Dollars and Zero Cents ($5,100,000.00) to resolve the Class Released Claims of the Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement (i.e., Participating Class Members), the PAGA Released Claims of the PAGA Group Members, Curiel's Released Claims, Avila's Released Claims, Chambers' Released Claims, and Romay's Released Claims with respect to the Released Parties.[12] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Maximum Settlement Amount (currently estimated to be One Million, Nine Hundred and Thirty-Eight Thousand Dollars and Zero Cents ($1,938,000.00)) and reimbursement of costs and expenses in an amount not to exceed Seventy-Five Thousand Dollars and Zero Cents ($75,000.00) to Class Counsel ("Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment"); (2) settlement administration costs, which are currently estimated not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00) to the Settlement Administrator ("Settlement Administrator Payment"); (3) Six Hundred and Fifty Thousand Dollars and Zero Cents ($650,000.00) allocated to penalties under PAGA ("PAGA Penalty Amount"); and (4) payments to Plaintiffs in the amount of up to Twelve Thousand Five Hundred Dollars and Zero Cents ($12,500.00) each (combined total of Fifty Thousand Dollars and Zero Cents ($50,000.00)) ("Class Representative Enhancement Payments").[13] The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.[14]

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[12] Settlement Agreement, ¶ 21.
[13] *Id.*, ¶ 22.
[14] *Id.*, ¶ 34.

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

a. For each Class Member, the Settlement Administrator will multiply the Class Member's Individual IC Workweeks by three (3) ("Individual Weighted IC Workweeks") and add to the number of the Class Member's Individual Non-Exempt Workweeks, resulting in the Class Member's "Individual Weighted Workweeks."[15]

b. The Settlement Administrator shall determine the estimated value of a Weighted Workweek ("Preliminary Weighted Workweek Value") by taking the Net Settlement Amount and dividing it by the sum of all Class Members' Individual Weighted Workweeks. After the Effective Date, the Settlement Administrator shall determine the final value of a Weighted Workweek ("Final Weighted Workweek Value") by taking the Net Settlement Amount and dividing it by the sum of all Participating Class Members' Individual Weighted Workweeks.[16]

c. For the estimated calculations to be included in the Class Notice, the Settlement Administrator shall assign to each Class Member a Settlement Share which shall be equal to the Preliminary Weighted Workweek Value multiplied by each Class Member's Individual Weighted Workweeks. After the Effective Date, the Settlement Administrator shall assign to each Participating Class Member a Settlement Share which shall be equal to the Final Weighted Workweek Value multiplied by each Participating Class Member's Individual Weighted Workweeks.[17]

The Parties have agreed that the Settlement Administrator will determine each PAGA Group Member's *pro rata* share of the twenty-five percent (25%) portion of the PAGA Penalty Amount (i.e., PAGA Payment Share) in accordance with the Settlement Agreement and as follows:

a. For each PAGA Group Member, the Settlement Administrator will multiply the PAGA Group Member's Individual IC Pay Periods by twenty-seven (27) ("Individual Weighted IC Pay Periods") and add to the number of the PAGA Group Member's Individual Non-Exempt Pay Periods, resulting in the PAGA Group Member's "Individual Weighted Pay Periods."[18]

b. The Settlement Administrator shall determine the value of a Weighted Pay Period ("Weighted Pay Period Value") by taking the PAGA Payment amount and dividing it by the sum of all PAGA Group Members' Individual Weighted Pay Periods.[19]

c. Both prior to the mailing of the Class Notice and after the Effective Date, the Settlement Administrator shall assign to each PAGA Group Member a PAGA Payment Share which shall be equal to the Weighted Pay Period

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[15] Settlement Agreement, ¶ 72(b); *see* St. John Decl., ¶ 29.
[16] *Id.*, ¶ 72(c).
[17] *Id.*, ¶ 72(d).
[18] *Id.*, ¶ 73(b); *see* St. John Decl., ¶ 29.
[19] *Id.*, ¶ 73(c).

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Value multiplied by each PAGA Group Member's Individual Weighted Pay Periods.[20]

Each Participating Class Member's Settlement Share will be allocated as follows: twenty percent (20%) shall be reported as wages on IRS Form W-2 and its state and local equivalents, and eighty percent (80%) shall be reported as interest, penalties, and non-wage damages on IRS Form 1099 and its state and local equivalents.[21] BMG will pay Defendants' share of payroll taxes and contributions with respect to the Wage Portion of Settlement Shares in addition to the Maximum Settlement Amount.[22] Each PAGA Payment Share will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.[23]

The Settlement Share and PAGA Payment Share checks will be negotiable for one hundred eighty (180) calendar days after the date of mailing, and thereafter, will be canceled.[24] The funds associated with such canceled checks will be transmitted by the Settlement Administrator to the Controller of the State of California to be held pursuant to Civil Code Section 1500, *et seq*., in the names of those Participating Class Members and/or PAGA Group Members whose checks were cancelled until such time as they claim their property.[25]

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit a written request ("Request for Exclusion") to the Settlement Administrator on or before the date that is forty-five (45) calendar days after the Settlement Administrator mails the Class Notice to Class Members and PAGA Group Members ("Response Deadline").[26] A Request for Exclusion must (1) contain the Class Member's full name, address, last four digits of Social Security number, and signature; (2) include the following statement or a similar statement: "I wish to exclude myself from the class settlement reached in the matter of *Curiel, et al. v. Bass Medical Group, et al.* I understand that by excluding myself, I will not receive any money from the class settlement reached in this matter,"; and (3) be submitted by mail to the Settlement

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[20] Settlement Agreement, ¶ 73(d).
[21] *Id.*, ¶ 74.
[22] Ibid.
[23] *Id.*, ¶ 75.
[24] *Id.*, ¶ 69.
[25] Ibid.
[26] *Id.*, ¶ 58(b).

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Administrator at the specified address, postmarked on or before the Response Deadline.[27] Any Class Member who opts out of the Class Settlement will not be bound by the terms of the Class Settlement, will not receive a Settlement Share, and will not have the right to object to the Class Settlement.[28] However, Class Members who are also PAGA Group Members will receive a PAGA Payment Share, release the PAGA Released Claims and be bound by the PAGA Settlement, regardless of whether they submit a valid and timely Request for Exclusion.[29]

To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Participating Class Members) may submit a timely and complete written objection to the Class Settlement to the Settlement Administrator.[30] The written objection must (1) contain the Participating Class Member's full name, address, and last four digits of Social Security number; (2) contain the dates of the Participating Class Member's employment and/or independent contractor relationship with BMG, BPMCC and/or PHG; (3) contain the basis for each objection in clear and concise terms; (4) contain the full name, address, and telephone number of any legal representative of the Participating Class Member; (5) state whether the Participating Class Member intends to appear at the Final Approval Hearing; and (6) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[31] As an alternative to or in addition to submitting a written objection, Participating Class Members may appear in Court to present verbal objections at the Final Approval Hearing.[32]

A Class Member and/or PAGA Group Member who wishes to dispute the number of his, her, or their Individual Non-Exempt Workweeks, Individual IC Workweeks, Individual Non-Exempt Pay Periods, or Individual IC Pay Periods as stated in the Class Notice ("Workweeks or Pay Periods Dispute"), as reflected in may do so by submitting a written letter to the Settlement Administrator (the "Workweeks or Pay Periods Dispute").[33] The Workweeks

[27] Settlement Agreement, ¶ 58(b).
[28] *Id*. ¶ 58(c).
[29] Ibid.
[30] *Id*., ¶ 58(d).
[31] Ibid.
[32] Ibid.
[33] *Id*., ¶ 60.

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or Pay Periods Dispute must (1) contain the full name and address of the disputing Class Member or PAGA Group Member; (2) contain a statement of the number of Workweeks and/or Pay Periods that he, she, or they contends were worked; (3) attach any documentation the Class Member and/or PAGA Group Member has to support their contention; and (4) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[34]

V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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[34] Settlement Agreement, ¶ 60.

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

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 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.

VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, *supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the

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settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk*, *supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

The Parties have actively litigated the Actions since the Curiel Action was commenced on August 4, 2021, and the Chambers Action was commenced on May 25, 2022. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.[35]

Prior to, during, and after engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of information, documents, and data obtained from Defendants, Plaintiffs, and other sources.[36] The volume of information, 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, and Defendants' employment practices, procedures, and policies, among other information and documents.[37] Class Counsel had the opportunity to interview Plaintiffs and other Class Members to gather information regarding the facts and circumstances surrounding Plaintiffs' and the putative class members' employment and to identify potential witnesses.[38] Counsel for the Parties met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, the production of documents and data in the course of litigation and in connection with mediation and settlement negotiations.[39] Class Counsel drafted Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and

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[35] St. John Decl., ¶¶ 13-15.
[36] *Id.*, ¶ 14.
[37] Ibid.
[38] Ibid.
[39] Ibid.

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the mediation, among other tasks.[40]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Lynn Frank, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[41] Prior to and in during the mediation and settlement discussions, the Parties exchanged class information and engaged in intensive discussion regarding their evaluations of the cases and various aspects of the cases, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[42] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[43] Arriving at a settlement that was acceptable to all Parties was not easy. Defendants and their respective counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[44] After conducting investigations, informal discovery, exchange of information, and settlement negotiations, and with the aid of the Mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.[45]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the Actions might have concluded at certification and trial.[46] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[47] Counsel for the Parties have also reviewed documents and information relating to

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[40] St. John Decl., ¶ 14.
[41] *Id.*, ¶ 13.
[42] Ibid.
[43] Ibid.
[44] *Id.*, ¶¶ 13, 18-20.
[45] Ibid.
[46] Ibid.
[47] Ibid.

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Plaintiffs' and the Class Members' and PAGA Group Members' employment and/or independent contractor relationship with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.[48] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[49]

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

The Settlement, which provides for a Maximum Settlement Amount of Five Million, One Hundred Thousand Dollars and Zero Cents ($5,100,000.00), represents a fair, adequate, and reasonable resolution of the matter.[50] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.[51] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[52] Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[53]

Assuming that the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Enhancement Payments, PAGA Penalty Amount, and Settlement Administrator Payment are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Two Million, Three Hundred and Fifty-Seven Thousand Dollars and Zero Cents ($2,357,000.00).[54] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members and twenty-five percent (25%) of the

[48] St. John Decl., ¶¶ 14-16 & 19-20.
[49] *Id.*, ¶ 6.
[50] *Id.*, ¶¶ 13, 15, 16 & 30.
[51] *Id.*, ¶¶ 15-15.
[52] *Id.*, ¶¶ 18-20.
[53] *Id.*, ¶¶ 13, 15, & 30.
[54] *Id.*, ¶ 16.

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PAGA Penalty Amount will be paid out to PAGA Group Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Settlement Share will be calculated based on his, her, or their Non-Exempt Workweeks and IC Workweeks during the Class Period, and the amount of each PAGA Group Members' PAGA Payment Share will be calculated based on his, her, or their Non-Exempt Pay Periods and IC Pay Periods during the PAGA Period.[55] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.[56] 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 significant informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[57] The discovery and information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.[58] As outlined in the Declaration of Brian J. St. John

[55] Settlement Agreement, ¶¶ 72 & 73.
[56] St. John Decl., ¶¶ 13, 15, & 30.
[57] *Id.*, ¶¶ 13-15 & 20.
[58] *Id.*, ¶ 20.

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and Declaration of Jean-Claude Lapuyade, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[59]

VII. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[60] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

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

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v.*

[59] St. John Decl., ¶¶ 13-15 & 18-26; Lapuyade Decl., ¶¶ 4-21.
[60] Settlement Agreement, ¶ 52.

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Glendale Federal Bank (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

This matter involves a class of approximately Three Thousand, Three Hundred and Ten (3,310) individuals.[61] This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding hourly-paid or non-exempt employees and independent contractors in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." *Capitol People, supra*, 155 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the "reasonableness" of the defendant's labor policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Complaints. Based on the documents and information obtained through informal

[61] St. John Decl., ¶ 10.

discovery and exchange of information in the cases, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.[62] Plaintiffs' claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[63]

Plaintiffs also contend that Defendants' payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.[64] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.[65]

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

VIII. <u>APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT</u>

Class Counsel have litigated the Actions for over two (2) years, and were actively preparing the Actions for class certification and trial.[66] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery.

[62] St. John Decl., ¶ 17.
[63] Ibid.
[64] Ibid.
[65] Ibid.
[66] *Id.*, ¶¶ 13-15.

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Class Counsel reviewed a large volume of documents and data[67] and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[68] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[69]

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

The Settlement establishes a Maximum Settlement Amount of Five Million, One Hundred Thousand Dollars and Zero Cents ($5,100,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Maximum Settlement Amount (currently estimated to be One Million, Nine Hundred and Thirty-Eight Thousand Dollars and Zero Cents ($1,938,000.00)) and an amount not to exceed Seventy-Five Thousand Dollars and Zero Cents ($75,000.00) for litigation costs and expenses.[71] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel have 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, PAGA Group Members, 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 provides Class Members with information about the amount allocated toward Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and that an award of the Class

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[67] St. John Decl., ¶ 14.
[68] *Id.*, ¶ 14.
[69] *Id.*, ¶ 13.
[70] *Id.*, ¶¶ 2-7; Zakay Decl., ¶ 3 & Exh. 1; Lapuyade Decl., ¶ 3 & Exh. 1.
[71] Settlement Agreement, ¶¶ 4 & 5.

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Counsel Fees Payment and Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.[72]

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

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys'

[72] Settlement Agreement, Exh. A.

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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.[73]

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 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

IX. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice[74] describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or submit Workweeks or Pay Periods Disputes, and the date and time set for the Final Approval Hearing.[75]

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class

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[73] St. John Decl., ¶ 27.
[74] Settlement Agreement, Exh. A.
[75] Ibid.

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members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[76] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[77] The proposed Class Notice also apprises the Class Members and PAGA Group Members of, *inter alia*, how their Settlement Share and, if applicable, PAGA Payment Share is calculated and the number of their Individual Non-Exempt Workweeks and Individual IC Workweeks and, if applicable, Individual Non-Exempt Pay Periods and Individual IC Pay Periods.[78]

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

X. APPOINTMENT OF PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR

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

The Settlement Administrator will mail the Class Notice to each Class Member and PAGA Group Member by First-Class United States Postal Service ("USPS") mail in English and Spanish.[79] No later than five (5) calendar days after the Settlement Administrator's receipt of any Class Notice returned by the USPS as undelivered on or before the Response Deadline, the Settlement Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[80] If the USPS does not provide a forwarding address, the Settlement

[76] Settlement Agreement, Exh. A.
[77] Ibid.
[78] Ibid.
[79] *Id.*, ¶ 57.
[80] *Id.*, ¶ 57(c).

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Administrator shall conduct a Class Member Address Search[81], and re-mail the Class Notice to the most current address obtained.[82] For all Class Members whose Class Notice is re-mailed, the deadlines for Class Members' written objections to the Class Settlement, disputes regarding Workweeks, and Requests for Exclusion will be extended an additional fifteen (15) calendar days from the original Response Deadline provided in the Class Notice.[83] The Settlement Administrator will receive and process Requests for Exclusions, Objections, and any Workweeks or Pay Periods Disputes.[84]

The Settlement Administrator will calculate the amounts of the Settlement Shares and PAGA Payment Shares; deduct and transmit applicable state and/or federal taxes in connection with the Wage Portion of Settlement Shares; mail the Settlement Share checks to Participating Class Members and the PAGA Payment Share checks to PAGA Group Members; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Enhancement Payments, and PAGA Penalty Amount; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[85] The Settlement Administrator Payment is currently estimated to be Thirty Thousand Dollars and Zero Cents ($30,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.[86]

Accordingly, Plaintiffs 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 Group Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process

[81] Settlement Agreement, ¶ 57(c).
[82] Ibid.
[83] Ibid.
[84] *Id.*, ¶¶ 58 & 60.
[85] *Id.*, ¶ 56; St. John Decl., ¶ 17.
[86] Settlement Agreement, ¶¶ 35 & 56.

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entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members and PAGA Group Members based on Defendants' records.[87]

Within twenty-one (21) calendar days after the Court grants preliminary approval of the Settlement, Defendants will deliver a list to the Settlement Administrator, in an electronically usable format, for the Settlement Administrator containing for each Class Member, to the extent Defendants has such information, the following: (i) first and last name, (ii) last known mailing address, (iii) Social Security number or Tax ID, (iv) total number of Individual Non-Exempt Workweeks and Individual IC Workweeks, and (v) if the Class Member is also a PAGA Group Member, the total number of Individual Non-Exempt Pay Periods and Individual IC Pay Periods ("Class Members' Data").[88]

Within seven (7) calendar days after receipt of the Class Members' Data, the Settlement Administrator will conduct a search of the U.S. Postal Service National Change of Address ("NCOA") database for any updates to the mailing addresses included in the Class Members' Data and mail the Class Notice to the Class Members via First-Class U.S. Mail.[89] Not later than five (5) calendar days after the Settlement Administrator's receipt of any Class Notice returned, on or before the Response Deadline, by the USPS as undelivered, the Settlement Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[90] If the USPS does not provide a forwarding address, the Settlement Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.[91] The Settlement Administrator has no obligation to make further attempts to locate or send the Class Notice to Class Members whose Class Notice is returned by the USPS a second time.[92] Class Members will have until the applicable Response Deadline to submit a Request for Exclusion from the Class Settlement, challenge to Workweeks, and/or objection to the Class

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[87] Settlement Agreement, ¶ 57.
[88] *Id.*, ¶ 57(a).
[89] *Id.*, ¶ 57(b).
[90] *Id.*, ¶ 57(c).
[91] Ibid.
[92] Ibid.

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Settlement.[93]

Within ten (10) court days after the Effective Date, the Settlement Administrator shall establish a settlement account ("Settlement Account") and notify the Parties when the Settlement Account has been established.[94] The Settlement Administrator shall also provide Defendants with an itemized statement for the total amount to be deposited into the Settlement Account, which shall not exceed the Maximum Settlement Amount ("Settlement Account Deposit").[95] Within ten (10) calendar days after receiving notification of the Settlement Account and statement for the Settlement Account Deposit, BMG shall pay into the Settlement Account an amount equal to the Settlement Account Deposit.[96]

Within fourteen (14) calendar days of the Settlement Administrators receipt of the Settlement Account Deposit from BMG, the Settlement Administrator shall distribute the following payments: Settlement Shares to Participating Class Members, PAGA Payment Shares to PAGA Group Members, Class Representative Enhancement Payments to Class Representatives, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, LWDA PAGA Payment to the LWDA, and Settlement Administrator Payment to itself, all in the Court-approved amounts.[97]

Settlement Share and PAGA Payment Share checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their mailing.[98] Checks that are not negotiated within the 180-day period will be canceled.[99] The funds associated with such canceled checks will be transmitted by the Settlement Administrator to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member and/or PAGA Group Member.[100]

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[93] Settlement Agreement, ¶¶ 5 & 60.
[94] *Id.*, ¶ 65.
[95] Ibid.
[96] Ibid.
[97] *Id.*, ¶¶ 66, 67, & 77.
[98] *Id.*, ¶ 68.
[99] *Id.*, ¶ 69.
[100] Ibid.

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XII. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS

Plaintiffs Curiel, Avila, Chambers, and Romay respectfully request that the Court appoint them as Class Representatives and preliminarily approve the Class Representative Enhancement Payments in an amount up to Twelve Thousand Five Hundred Dollars and Zero Cents ($12,500.00) per Plaintiff (for a combined total of Fifty Thousand Dollars and Zero Cents ($50,000.00)).[101] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Class Representative Enhancement Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[102] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.[103] Accordingly, it is appropriate and just for Plaintiffs to each receive a Class Representative Enhancement Payment for their services on behalf of the Class, the PAGA Group Members, and the State of California.

XIII. 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

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[101] Settlement Agreement, ¶ 8.
[102] St. John Decl., ¶ 28.
[103] Ibid.

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appoint and designate Arby Aiwazian, Joanna Ghosh, and Brian J. St. John of Lawyers *for* Justice, PC, Shani O. Zakay, Jackland K. Horn, and Julieann Alvarado, of Zakay Law Group, APLC; and Jean-Claude Lapuyade, Eduardo Garcia, and Sydney Castillo-Johnson of JCL Law Firm, APC, as Class Counsel; preliminary appoint and designate Plaintiffs Angelica Curiel, Teresa Avila, Kira Chambers, and Christina Romay as Class Representatives; appoint Phoenix Settlement Administrators as the Settlement Administrator; preliminarily approve the allocations for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Enhancement Payments, PAGA Penalty Amount, and Settlement Administrator Payment; 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; schedule a Final Approval Hearing for no earlier than one hundred and eighty (180) days from the date of preliminary approval; and permit the filing of a memorandum that exceeds the page limit.

Dated: May 16, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________________
Brian J. St. John
Attorneys for Plaintiffs Angelica Curiel
and Teresa Avila

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