Cristina Molteni (Bar No. 244715)
cmolteni@moltenilaw.com
MOLTENI EMPLOYMENT LAW
100 Pine Street, Suite 1250
San Francisco, California 94111
Telephone: (415) 762-0270
Facsimile: (415) 762-0271

Attorneys for Plaintiffs and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

FELIX AGUILAR, JOSE MARTINEZ, and JOSE CAZARES, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

ALL SEASONS ROOFING & WATERPROOFING, INC., VLADISLAV N. GORSHTEYN, and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV364524

ASSIGNED FOR ALL PURPOSES TO
Hon. Sunil R. Kulkarni
Department 1

CLASS ACTION

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDERS:

(1) PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT AND PROVISIONALLY CERTIFYING THE PROPOSED SETTLEMENT CLASS;

(2) DIRECTING CLASSWIDE DISTRIBUTION OF SETTLEMENT NOTICE; AND

(3) SETTING A HEARING DATE FOR FINAL APPROVAL

Date: December 2, 2021
Time: 1:30 p.m.

Cases

Statutes

Rules

Treatises

Regulations

I. INTRODUCTION

Plaintiffs Felix Aguilar, Jose Martinez, and Jose Cazares ("Plaintiffs"), and Defendants All Seasons Roofing & Waterproofing, Inc. and Vladislav N. Gorshteyn ("Defendants" or "All Seasons") (collectively, the "Parties"), negotiated a $995,000 non-reversionary settlement of this litigation on behalf of 582 Class Members. Declaration of Cristina Molteni in Support of Motion for Preliminary Approval of Class Settlement ("Molteni Decl."), ¶ 2. Plaintiffs seek preliminary Court approval of this settlement. The average anticipated recovery for each Class Member is approximately $953, if all Class Members participate in the settlement. The proposed Settlement Class consists of all current and former non-exempt hourly construction employees of All Seasons Roofing & Waterproofing, Inc. performing roofing work in the state of California for All Seasons Roofing, Inc. at any time from March 2, 2016 through February 4, 2021. The terms of the proposed settlement are described below and fully set forth in the proposed Joint Stipulation of Settlement ("Settlement"), attached as **Ex. 1** to the Molteni Declaration.

The Settlement is the product of arm's-length negotiations between the Parties and falls well within the range of reasonableness for possible final approval. The Notice to the Class Members ("Notice") provides with the best notice practicable under the circumstances of this case and will allow each Class Member a full and fair opportunity to evaluate the Settlement and decide whether to participate in it. Moreover, the proposed Settlement Class is appropriate for provisional certification because it meets all criteria for class certification under California law. Since the inception of the litigation, Defendants have contested the propriety of class certification in this matter. All Seasons, however, is willing to stipulate to class treatment for settlement purposes so that the litigation may be resolved fully and in the interests of all parties.[1]

Accordingly, Plaintiffs respectfully request the Court to (1) grant preliminary approval of the Settlement and provisionally certify the proposed Settlement Class for settlement purposes only; (2) direct distribution of the proposed notice of the Settlement to the Class; and (3) schedule a final settlement approval hearing.

[1] In doing so, All Seasons does not waive its arguments regarding class certification should the Settlement not become final.

II. FACTUAL AND PROCEDURAL BACKGROUND

Since March 2, 2016 All Seasons has employed approximately 582 hourly, non-exempt construction employees to provide roofing services on multiresidential and commercial construction projects, mostly throughout the San Francisco Greater Bay Area. *See* **Ex. 1** to Joint Stipulation of Settlement Agreement (class list). On March 2, 2020, Plaintiffs filed this proposed class action in Santa Clara County Superior Court on behalf of themselves and others who worked in California for All Seasons Roofing & Waterproofing, Inc. and Vladislav N. Gorshteyn at any time since March 2, 2016. On May 11, 2020, Plaintiffs filed a First Amended Complaint ("FAC" or "Operative Complaint"), adding a single cause of action for penalties under the Private Attorneys' General Act of 2004 ("PAGA"). The Operative Complaint alleges the following Causes of Action: (1) Failure to Pay Minimum Wages (2) Breach of Contract for Failure to Pay for All Hours Worked; (3) Failure to Pay Overtime and Double Time Wages; (4) Failure to Provide Meal Periods and Rest Periods; (5) Failure to Pay Earned Wages Upon Discharge; (6) Failure to Provide Accurate Wage Statements; (7) Private Attorneys General Act ("PAGA") Penalties; (8) Unlawful and/or Unfair Business Practices; (9) Declaratory and Injunctive Relief; and (10) Attorneys' Fees. Molteni Decl., **Ex. 2** (First Amended Class Action Complaint, ¶¶ 10-23.) Plaintiffs alleged that this action is appropriate for class certification because it presents questions of common interest and satisfies the numerosity, commonality, typicality, adequacy, and predominance requirements of Code of Civil Procedure § 382. *Id.*, ¶¶ 29-39.

Throughout this litigation, All Seasons has denied Plaintiffs' claims and has maintained that, in the absence of a settlement, certification of a class of employees who worked in California is inappropriate. Molteni Decl., **Ex. 1**, ¶ 5. In addition, All Seasons has explicitly denied any liability or wrongdoing and indicated that it has complied with all applicable state, federal, and local laws affecting Plaintiffs and the Settlement Class regarding hours worked, unpaid wages, unpaid overtime, unpaid minimum wages, meal and rest periods, record-keeping, wage statements and other claims alleged in the Action. *Id.*

During the course of litigation, the Parties stipulated to an Informal Discovery Agreement

and Defendants produced (1) the class list, identifying class members, their dates of employment and their rates of pay; (2) the personnel file for the named plaintiffs; (3) the list of projects during the covered period, including job site addresses, project dates and superintendent names for each project; (4) time cards and time sheets under the different time record keeping systems kept by All Seasons during the covered period; (5) wage statements during the covered period; (6) certified payroll records during the covered period; and (7) written policies. Molteni Decl., ¶ 5. Plaintiffs' counsel received and reviewed thousands of pages of documents produced by Defendants, interviewed dozens of All Seasons's roofers regarding the allegations in the case, and engaged in public records' research regarding the payment of prevailing wages on public works projects. *Id.* ¶ 6.

After conducting informal discovery production and interviews with Class Members, the Parties and their counsel participated in a full-day mediation session with experienced employment mediator Jeffrey A. Ross, Esq. on February 4, 2021 that extended until late in the evening. Molteni Decl., ¶ 7, **Ex. 3** (Jeffrey A. Ross biography). The discussion at the mediation session was vigorous and conducted at arm's length, and the Parties reached an agreement in principle. Molteni Decl., ¶ 7. Over the next months, the Parties unveiled additional Class Members who were initially not accounted for mediation purposes and negotiated and finalized the detailed terms of the Settlement Agreement, for which Plaintiffs seek preliminary approval here. Molteni Decl., ¶ 7.

III. SUMMARY OF THE SETTLEMENT TERMS

The Settlement provides that All Seasons will pay a total of $995,000 (the "Settlement Fund") to settle this action. A substantial portion of the Settlement Fund (the "Net Settlement Amount") will be distributed to the individual Class Members based on the total number of weeks each Class Member worked for All Seasons during the proposed Class Period (*i.e.*, March 2, 2016 to February 4, 2021). Molteni Decl., **Ex. 1**, ¶ 14.f. The Settlement Fund will also cover all Settlement Administration costs, service payments to the Class Representatives (as approved by the Court), PAGA payment to the LWDA (as approved by the Court) and any award of Plaintiffs' attorneys' fees and costs approved by the Court. *Id.*, ¶ 14.e, g-i, k, pp. 7, 10-12. Class Members will be given notice of the Settlement and will have the opportunity to object to or opt out of the Settlement. *Id.*, ¶

14.j., p. 11. Class Members who do not choose to opt out will remain in the Class and receive a settlement payment in the mail, without needing to submit a claim form. *Id*., ¶ 13, p. 5.

The Net Settlement Amount—that is, the entire amount of the Settlement Sum minus any service payments to Class Representatives, PAGA allocation, attorneys' fees and costs, and administration costs—will be divided among the Class Members as follows:

- All Seasons will provide the proposed Settlement Administrator, Phoenix Class Action Administration Solutions (to be approved by the Court), with Class Members' identifying information, including dates of employment, last known mailing address, phone numbers, and social security numbers. *Id*., ¶ 19, p. 13.
- The Settlement Administrator will use All Seasons' dates of employment for the Class Members to determine each Class Member's total weeks worked as non-exempt construction employees during the Class Period and will calculate out of the Net Settlement Amount the Settlement Payments for Class Members based on the number of workweeks for each. *Id.*, ¶ 15, p. 12.
- The Settlement Administrator will calculate the Individual Settlement Amounts as follows: Each Class Member's Settlement Award will be calculated on a *pro rata* basis, based on the workweeks per Class Member during the Class Period; however, workweeks between April 1, 2020 to February 4, 2021 will be worth 25% of the prior years (*i.e.* apply a negative multiplier of 0.25), to account for recent employment policy changes at All Seasons and presumed lower damages during that time period. *Id.*, ¶ 14. f., pp. 7-9. A Class Member's Settlement Award shall be determined by taking the Class Member's workweeks during the Class Period (which will be multiplied by 0.25 or 1 as described above) and dividing them by the total number of workweeks worked by all Class Members in the Class Period to determine his *pro rata* share of the Net Settlement Amount. *Id.* In other words, the *pro rata* share for Class Members is a fraction with the numerator being the total calculated workweeks for the particular Class Member and the denominator being the total calculated workweeks of all Class Members within the covered period. *Id.*

- The Settlement Administrator will mail the Notice of the Settlement by first class mail to Class Members. The Class Notice will accompany an Information Form that reflects the Class Member's weeks worked during the Class Period and provides an estimate of his individual settlement payment, if the settlement is approved. *Id.*, ¶ 22, p. 14, and **Ex. 4** to Molteni Decl. (Class Notice and Information Form). Class Members do not need to return a claim form to receive a settlement payment—they simply need to choose not to request exclusion from the settlement. **Ex. 1** to Molteni Decl., ¶ 13, p. 5. The Notice will also inform Class Members how to object to or opt out of the Settlement, if they wish to do so. **Ex. 4** to Molteni Decl.

- In addition to the Settlement Fund, All Seasons has agreed to pay the employer's share of the payroll taxes on the amount of the settlement payments that are characterized as unpaid wages. **Ex. 1** to Molteni Decl., ¶ 14. d., p. 7.

- The Settlement Administrator will disburse settlement awards to all Class Members who do not opt out of the settlement. The settlement award checks will remain valid for 90 days from the date they are issued. *Id.*, ¶ 29, pp. 15-16. The Settlement provides that no portion of the Settlement Fund will revert to All Seasons. *See id.*, ¶ 14. l., p. 12. The Parties have agreed that, subject to Court's approval, any settlement checks that remain uncashed after the expiration date has passed will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated. *Id.*, ¶¶ 29 and 32, pp. 15-17.

- The Settlement provides further that, subject to approval by the Court, the following sums will be deducted from the total settlement amount of $995,000: (1) a service payment to each of the Class Representatives not to exceed $10,000 each; (2) the fees of the Settlement Administrator (estimated not to exceed $12,000); (3) PAGA penalties of $49,750, and (4) Plaintiffs' attorneys' fees and costs, not to exceed 33% of the fund in fees (or $328,350) and litigation costs, not to exceed $20,000. *See* **Ex. 1**, ¶ 14.e, g-i, k., pp. 7, 10-12.[2]

[2] Plaintiffs' Counsel, however, do not seek approval of her fees and costs at this time but (assuming the Court grants preliminary approval) will instead fully brief the issue in the context of the motion for final settlement approval and request for fees and costs.

To maximize the settlement value for the Class Members, Plaintiffs' Counsel solicited bids from four experienced class action administrators to perform the duties of Settlement Administrator. Molteni Decl., ¶ 16. The Parties agreed that Phoenix Class Action Administration Solutions ("Phoenix"), a recognized claims administration company, be recommended to the Court that perform the duties of Settlement Administrator. Phoenix's bid for the settlement administration project was reasonable, and Phoenix has extensive experience in the administration of wage and hour class action settlement such as this one. Molteni Decl., ¶ 16, **Ex. 5** (Phoenix's Corporate Resume). These duties include the following: (1) establishing a database with each Class Member's name, last known address, and dates of employment; (2) performing a national change of address search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement, respectively, to each Class Member by first-class mail, postage prepaid; (3) establishing a toll-free bilingual informational telephone support line to assist Class Members with questions they may have; (4) establish a website which shall make available all documents submitted to the Court in connection with the proposed settlement; (5) calculating estimated settlement payments out of the Net Settlement Fund; (6) printing and mailing the Class Notice and Information Form to each Class Member; (7) reviewing any objections and requests to opt out; (8) issuing Settlement payments; (9) calculating and remitting to the IRS all required payroll taxes; and (10) calculating and issuing to Class Members Form W-2s, Form 1099s, and any other required state and federal tax forms. *See* Molteni Decl., ¶ 16, **Ex. 1**, ¶¶ 15-16, p. 12.

If all requested deductions are approved by the Court, the Net Settlement Amount to be distributed on a *pro rata* basis to the 582 Class Members will be $554,900, for an average net payment of $953 per Class Member, if no Class Member opts out. If any Class Member opts out, the average payment per Class Member will increase—because fewer Class Members would be sharing in the Net Settlement Fund.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

A. Legal Standards

The law favors settlement, particularly in class actions where substantial resources can be

conserved by avoiding the time, cost, and rigors of formal litigation. *See, e.g., Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 53. These concerns apply with particular force here, where All Seasons's alleged practices affected 582 current and former All Seasons roofers.

A class action, however, may not be settled without court approval. The decision to approve or reject a proposed settlement is committed to the trial court's sound discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235. In passing on class settlements, trial courts have broad powers to determine whether the proposed settlement is fair under the circumstances of the case. *Id.*; *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. To grant preliminary approval of a class settlement, the Court need find only that the settlement falls within the range of possible final approval and thus whether notice to the class of the settlement's terms and the scheduling of a fairness hearing are worthwhile. *See, e.g., In re Traffic Exec. Ass'n* (2d Cir. 1980) 627 F.2d 631, 633-634; *see also* 4 *Newberg* § 11.25; *Wershba*, 91 Cal. App. 4th at 234-235.

To make this fairness determination, courts consider several relevant factors, including the following:

> the strength of the plaintiffs' 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, [and] the experience and views of counsel . . . .

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *see also In re Microsoft Cases I-V* (2006) 135 Cal.App.4th 706, 723. Furthermore, courts must give "due regard . . . to what is otherwise a private consensual agreement between the parties." The inquiry

> must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1145 citations omitted); *see Microsoft*, 135 Cal.App.4th at 723.

The court, however, has an obligation to "independently satisfy . . . itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar,* 168 Cal.App.4th at 129. The record before the court must contain "information sufficient for the court to intelligently evaluate the adequacy of the settlement." *Id.*; *see also Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801 (citing *Kullar*). The *Kullar* Court stated further that "it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation." *Id.*

The *Manual for Complex Litigation, Fourth* ("Manual") characterizes the preliminary approval stage as a "preliminary evaluation" of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentation from the settling parties. *Manual*, § 21.632; *see also* 4 Newberg, § 11.25. As shown below, the Settlement Agreement offers a beneficial resolution to this litigation, and, in *Kullar's* words, "a reasonable compromise, given the magnitude and apparent merit of the claims being released," thus warranting both the Court's preliminary approval and the opportunity for the Settlement Class Members to consider its terms.

Preliminary approval is warranted if a settlement falls within the "range of reasonableness." *See North County Contractors' Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90. The Settlement here provides substantial monetary relief, totaling $995,000, inclusive of fees and costs. As explained below, such relief is reasonable and adequate, and the Court should grant preliminary approval of this Settlement.

In addition, 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." *Kullar*, 168 Cal.App.4th 128. *See also Chavez v. Netflix, Inc.* (2008) 162

Cal.App.4th 43, 52–53 and *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389-1390.

Here, with the exception of the percentage of objectors (which will not be known until the Class Members are informed of the Settlement), all of these factors are present. The settlement was reached through arm's-length bargaining, using an experienced class action mediator, which took place after vigorous negotiation that extended until the evening of the mediation and after months of negotiation regarding the newly unveiled Class Members. In addition, investigation and discovery have been thorough. Plaintiffs' Counsel, who has decades of experience in similar litigation, determined based on the informal discovery and analysis that the proposed settlement amount is fair and reasonable and that a colorable risk existed of recovering less (or even nothing) if the litigation continued. For the reasons set forth below, all of these factors weigh in favor of preliminary approval.

B. The Settlement Is The Product Of Serious, Informed, Arm's-Length Negotiations Conducted by Experienced Counsel

As noted above, "[a] presumption of fairness in a class action settlement agreement exists where (1) the settlement is reached through arm's length bargaining . . . ." *Dunk,* 48 Cal.App.4th 1802. Arm's-length negotiations conducted by competent counsel constitute *prima facie* evidence of fair settlements. *M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.* (D. Mass. 1987) 671 F.Supp. 819, 822 ("where . . . a proposed class settlement has been reached after meaningful discovery, after arm's-length negotiation by capable counsel, it is presumptively fair"). The Settlement here is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation in general and with the legal and factual issues of this case in particular. *See* Molteni Decl., ¶¶ 9-13. Settlement negotiations in this case started taking place only after Plaintiffs reviewed substantial documents, including the review of thousands of timekeeping and payroll documents, and the receipt of the class list, which allowed Plaintiffs to communicate and interview dozens of Members of the proposed Class. Molteni Decl., ¶ 18.

The settlement negotiations were conducted under the guidance of experienced mediator Jeffrey A. Ross. In addition, Plaintiffs' Counsel is experienced in the litigation, certification, and

settlement of wage-and-hour cases, including class actions in the construction industry similar to this case. *See* Molteni Decl., ¶¶ 9-12. In negotiating the Settlement, Plaintiffs' Counsel had the benefit of years of experience combined with her familiarity with the facts of this case. Plaintiffs' Counsel fully support the resulting settlement as fair and as providing a reasonable and adequate result to the Class Members. *See* Molteni Decl., ¶¶ 12-13 and 38.

C. The Risks of Further, Complex, And Lengthy Litigation Are Substantial and the Settlement Provides for Reasonable Compensation of Class Members' Damages

The Settlement here is fair and in the best interests of the Class. Of particular relevance to the reasonableness of the Settlement is the fact that Plaintiffs anticipate that All Seasons can show solid grounds for defending this action. These defenses, if successful, would have severely, if not completely, reduced the damages recoverable by Class Members. Although Plaintiffs believe they would ultimately prevail if this case were litigated through trial, they realize that further litigation poses substantial risks for them and for the proposed Class.

In addition, All Seasons alleges it has maintained compliant wage and hour policies and has multiple layers of procedures in place to verify the compliance of those policies, such as signing timecards and paychecks. Moreover, All Seasons claims that its business model creates individual issues, meaning that the class will not be certifiable, in the absence of a settlement. *See* Molteni Decl., **Ex. 1**, ¶ 5. In addition, All Seasons has explicitly denied any liability or wrongdoing and indicated that it has complied with all applicable state, federal, and local laws affecting Plaintiffs and the Settlement Class regarding hours worked, unpaid wages, unpaid overtime, unpaid minimum wages, meal and rest periods, record-keeping, wage statements and other claims alleged in the Action. *Id.* Although Plaintiffs are confident that they would prevail on certifying a class of construction workers, Plaintiffs and the proposed Class face a risk on the class certification issue because of the nature of the work performed by Class Members.

Plaintiffs also alleged that All Seasons failed to provide properly itemized wage statements (Labor Code § 226 (a)). This cause of action is primarily derivative of other causes of action alleged in the Operative Complaint—that is, the allegation is that Defendants did not accurately record all the hours worked by the Class Members, including travel time, and consequently, the wage

statements were inaccurate. Molteni Decl., ¶ 27. In addition, Plaintiffs' Counsel are cognizant that waiting time penalties (Labor Code § 203), which they sought in this case, are not guaranteed even if Plaintiffs proved that All Seasons failed to pay all wages due. Waiting time penalties may only be awarded when there is a no "good faith" dispute that wages are owed at the time of termination. *See* Title 8, Cal. Code Regs. § 13520. Even if Plaintiffs succeeded in their claims that All Seasons failed to pay all wages due, it would not necessarily follow that there was no good-faith dispute that these wages were owed. *Id.* As stated before, All Seasons contended throughout the litigation that such a good-faith dispute existed. Plaintiffs' Counsel took into account the risks in proving this claim when assessing its value for settlement purposes. Molteni Decl., ¶ 13.

Plaintiffs further sought the recovery of penalties under Private Attorneys' General Act of 2004 ("PAGA"), Labor Code § 2699 *et seq*. Molteni Decl., **Ex. 2** (Operative Complaint, Relief Sought, p. 26, ¶ K.). The parties attributed a settlement value of forty nine thousand seven hundred and fifty dollars ($49,750) to Plaintiffs' PAGA claims. Several factors were considered in arriving at this settlement value: (1) as stated elsewhere, Defendants deny any liability in this matter (see **Ex. 1**, ¶ 5); (2) Defendants deny any violations of the wage and hour laws which would have entitled Plaintiffs to recover penalties under PAGA, (*id.*); (3) the underlying facts of the case are in dispute, (*id*.); (4) there will be significant investments of time and expense by the Parties to litigate the claims for penalties under PAGA; (5) the resolution of this dispute will be delayed until trial, and, regardless of the outcome, there is a significant risk of further delay due to appeals; (6) the case law interpreting PAGA is still developing and subject to change; and (7) any award of penalties under PAGA is within the discretion of the trial court. *See* Labor Code § 2699 (e)(2). Here, the PAGA allocation represents 5% of the Total Settlement Amount, which is comparable to what many courts have approved as appropriate.[3] Thus, the settlement of the PAGA claims in this case provides a

[3] Similar wage and hour class action settlements had used a lower percentage of the total settlement amount. *See Garcia v. Gordon Trucking, Inc.* (E.D.Cal. Oct. 29, 2012, No. 1:10-CV-0324 AWI SKO) 2012 U.S. Dist. LEXIS 160052, approving PAGA allocation of $10,000 with a $7,500 payment to LWDA of a $3.7 million settlement; *Chu v. Wells Fargo Invs., LLC* (N.D.Cal. Feb. 15, 2011, No. C 05-4526 MHP) 2011 U.S. Dist. LEXIS 15821, approving PAGA allocation of $10,000 with a $7,500 payment to LWDA of a $6.9 million settlement; and *Ruch v. Am Retail Grp., Inc.* (N.D.Cal. Sep. 28, 2016, No. 14-cv-05352-MEJ)

reasonable benefit to the People of the State of California. *See* Molteni Decl., ¶ 38. In addition, at the time of the filing of the moving parties, Plaintiffs have submitted a copy of the Joint Stipulation of Class Settlement (Molteni Decl., **Ex. 1**) to the Labor and Workforce Development Authority ("LWDA") pursuant to Labor Code § 2699 (1)(2). *See* Molteni Decl., ¶ 39.

D. The Settlement Provides Substantial Relief for Class Members

Notwithstanding the challenges Plaintiffs face in certifying through trial of a class of roofing workers and in managing and proving the merits of the Class claims, the Settlement Agreement commits Defendants to pay a total of $995,000 to settle this case. The Settlement allows Class Members to avoid the risks of losing one or more claims at trial. In addition, the Settlement means that the Class Members will avoid the delay of continued litigation and possible appeals and receive payment relatively soon.

The Settlement provides that all Class Members are entitled to receive a settlement payment based on the number of weeks they worked for All Seasons during the Class Period. In addition, this Settlement *does not* permit reversion of any unclaimed settlement funds to the company. All Seasons will pay a total of $995,000 to settle this action, and Defendants will not receive any money back from this settlement fund because the Settlement will be paid on a non-reversionary basis, and the entire Net Settlement Fund will be distributed *pro rata* to participating Class Members. This provision of the Settlement reinforces its fairness because the amount of the total Class recovery does not diminish if fewer than all Class Members participate in the settlement. Plaintiffs estimate that the average net and gross payments per Class Member will be approximately $953 and $1,632.30 respectively, with a minimum net and gross payment of $17.32 and $31.05 for one workweek (minimal payment).[4] These average amounts will increase if any Class Members opt out of the settlement.

2016 U.S. Dist. LEXIS 13383, approving PAGA allocation of $10,000 with a $7,500 payment to LWDA of a $1.15 million settlement.)

[4] $995,000 (Gross Settlement Amount) / 582 Class Members= $1,632.30.
$995,000/32,038 workweeks (Settlement Agreement, ¶ 14. c)= $31.05
$554,900 (Net Settlement Amount) / 582 Class Members = $953.43
$554,900/32,038 workweeks = $17.32

Plaintiffs' investigation of the factual allegations of this case included a comprehensive damage analysis based on review of Defendants' document production and Plaintiffs' own investigation, including timecards and paystubs, policies, project lists, public works public records, interviews with dozens of Class Members, and negotiations with Defendants' counsel regarding the facts of this case and the legal merits of the Class claims. Molteni Decl., ¶¶ 18-28. The damage analysis allocated an estimated recovery on a class-wide basis to the following claims in the Action, if a 100% rate of wage and hour violations is found:

Unpaid Off-the-Clock Time Wages	$6,087,220[5]
Prevailing Wage Underpayment	$96,120[6]
Unpaid Overtime Wages	$1,249,482[7]
Late/Missed Meal Periods	$4,164,940[8]
Missed Rest Periods	$4,164,940[9]
Wage Statement Violations	$1,332,000[10]
Waiting Time Penalties	$2,429,040[11]
Total Possible Estimated Recovery	$18,399,202

The Total Settlement Amount of $995,000 represents a recovery of more than 16% of the value of Plaintiffs' primary claim—the unpaid off-the-clock wages Plaintiffs allege Class Members are owed ($995,000/$6,087,220). Even taking into account the more speculative claims for missed

[5] 3 hours/week x $26 (regular rate for roof work) x 32,038 workweeks = $2,498,964
7 hours/week x $16 (regular rate for travel time/yard work) x 32,038 workweeks = $3,588,256
$2,498,964 + $3,588,256 = $6,087,220.

[6] 32,038 workweeks x 0.15 (15% of All Seasons's public works projects) = 4,805.70 workweeks
4,806 workweeks x $20 ($0.50 of hourly underpayment to workers x 40 hours) = $96,120

[7] 1 hour/week x $39 (overtime rate) x 32,038 workweeks = $1,249,482

[8] 5 late meal periods/week x regular rate ($26) x 32,038 workweeks = $4,164,940.

[9] 5 rest periods/week x regular rate ($26) x 32,038 workweeks = $4,164,940.

[10] Approximately 333 Class Members employed since March 2019 x $4,000 (statutory limit) = $1,332.000.

[11] ($26 average hourly rate x 8 hours/day) + ($16 non-roof hourly wage x 1.5 hours/day) x 30 days of pay = $6,960 x 349 former employees = $2,429,040

meal and rest periods, and wage statement and waiting time penalties, the settlement represents more than 5% of the value of all of these claims if Plaintiffs were able to demonstrate full liability on every claim ($995,000/$18,399,202). Given the risks in managing and proving Plaintiffs' claims through trial as described above in subsection C, and the risks of not being able to recover anything after years in litigation and subsequent potential appeals, an average net settlement recovery of $953 per Class Member is fair, adequate, and reasonable. *See* Molteni Decl., ¶ 38.

PAGA Penalties:

Plaintiffs performed a valuation of the alleged claims and determined the maximum value owed under Labor Code § 2699 for PAGA penalties as follows:

Labor Code § 1197 (failure to pay wages)	$2,033,300[12]
Labor Code § 512 (meal breaks)	$2,033,300[13]
Wage Order 16, § 12 (rest breaks)	$1,016,650[14]
Wage Order 16, § 7 (recordkeeping)	$1,016,650[15]
Labor Code § 203 (waiting time penalties)	$2,033,300[16]
Total Possible Maximum PAGA Recovery	$8,133,200

See Molteni Decl., ¶¶ 29-34.

As provided by Labor Code § 2699 (i), the portion of the PAGA penalties go the LWDA "for enforcement of labor laws […] and for education of employers and employees about their rights and responsibilities under this code." Lab. Code § 2699 (i). In reviewing a settlement that includes a class action and a PAGA claim, the court must evaluate the adequacy of compensation to the class as well as the adequacy of the settlement in view of the purposes and policies of PAGA. *O'Connor v. Uber Techs., Inc.* (N.D. Cal., August 18, 2016) 201 F.Supp.3d 1110, 1134.

[12] $100 for 1st violation and $200 for each subsequent violation: $100 x 333 pay periods + ($200 x x approximately 10,000 pay periods) = $2,033,300
[13] $100 for 1st violation and $200 for each subsequent violation: $100 x 333 employees + ($200 x x approximately 10,000 pay periods) = $2,033,300
[14] $50 x 333 pay periods + ($100 x 10,000 pay periods) = $1,016,650
[15] $50 x 333 pay periods + ($100 x 10,000 pay periods) = $1,016,650
[16] $100 for 1st violation and $200 for each subsequent violation: $100 x 333 pay periods + ($200 x 10,000 pay periods) = $2,033,300

Here, the PAGA claim was subject to the same risks as the underlying Labor Code claims, specially the claims for wage statements, which are derivative in nature, and waiting time violations, which are more speculative. Molteni Decl., ¶ 35. The PAGA allocation of $49,750 represents 2.4% of the value of the PAGA recovery for unpaid wages, Plaintiff's primary claim ($49,750/$2,033,300). *Id.*, ¶ 41. Moreover, in *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, the court affirmed a judgment which only provided for a PAGA penalty of $5 per violation (as opposed to the $100 maximum awardable penalty). Using the *Carrington* threshold, the PAGA penalties for all the violations would be $258,325,[17] representing 19% of the value of the PAGA recovery for all the claims ($49,750/$258,325). Molteni Decl., ¶ 37.

Furthermore, after this case was filed, All Seasons hired counsel and updated written policies were implemented, in accordance with current law. Molteni Decl., ¶ 6. Notwithstanding the difficulty to calculate (or speculate) the worth of these remedies provided to Class Members and future employees, the value added supports PAGA's interest in augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance by the defendant employer and other employers. *O'Connor v. Uber Techs., Inc.* 201 F.Supp.3d at 1134-1135.

E. <u>The Stage Of The Proceedings Supports Preliminary Approval</u>

At the time the Parties mediated the case, investigation and discovery were sufficient to allow counsel to be fully informed about the strengths and weaknesses of Plaintiffs' claims and All Seasons's defenses. This case has been litigated since March 2020. Prior to the final settlement discussions, Plaintiffs' Counsel interviewed dozens of the proposed Class Members, gathering information about the workers' experiences while working for All Seasons, reviewed thousands of documents, including time keeping and payroll records, written policies, and list of projects, calculating off-the-clock work. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1149 (settlement proceeded by "vigorous, aggressive and exhaustive discovery"). Plaintiffs had ample information upon which to make an informed decision about the

[17] $5 x (5 claims x 10,333 pay periods) = $258,325 for all the PAGA violations.

appropriate value upon which to settle this case—and agreed to do so only after a full day of mediation and vigorous negotiations with the assistance of mediator Jeffrey A. Ross.

F. The Experience And Views Of Counsel Support Preliminary Approval

Plaintiffs' Counsel has extensive experience in the litigation, certification, and settlement of class litigation in general and wage-and-hour cases in particular. Molteni Decl., ¶¶ 10-12. In negotiating the Settlement, Plaintiffs' Counsel had the benefit of years of experience in the particular industry along with her familiarity with the facts of this case. Plaintiffs' Counsel fully support the resulting settlement as fair, adequate, and reasonable result for the Class. Molteni Decl., ¶¶ 14 and 38.

G. The Proposed Service Payment To the Class Representatives Is Reasonable

Plaintiffs intend to move the Court for separate service payments of $10,000 to each Class Representative. These requested payments are intended to recognize their willingness to step forward, litigate the case against their former employer, and undertake the risk of liability for attorneys' fees and expenses. They also are intended to acknowledge the time and effort the Class Representatives spent on behalf of the Class assisting Plaintiffs' Counsel with the investigation, discovery, litigation, and mediation of the case. In addition, in order to reach this Settlement Agreement, Plaintiffs were requested to agree waiving all their claims against the Defendants. Defendants would not have agreed to this Settlement if Plaintiffs did not provide such release. Molteni Decl., ¶ 17.

"Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694. Trial courts have considered a number of factors in approving service awards, including the plaintiff's actions in protecting the class, the degree to which the class benefited from such actions, the time and effort expended, and the risk of stepping forward to litigate on behalf of the class. *Stanton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977 (*citing Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (approving a service award of $25,000)).

The Class Representatives participated in many meetings with Counsel—preparing for litigation, gathering and reviewing documents that they had kept during their employment with Defendants, that proved crucial to prove Plaintiffs' and Class Members' claims, and participated in many phone conversations with Plaintiffs' Counsel. Molteni Decl., ¶ 17. The Class Representatives each provided information for the mediation session by phone, and were available throughout the mediation process. *Id*. Moreover, plaintiff Jose Cazares was actually retaliated by another roofing company for his participation on this lawsuit. Declaration of Jose Cazares, ¶ 9, Declaration of Felix Aguilar, ¶ 9, Declaration of Jose Martinez, ¶ 9. They have acted as competent and well-respected class leaders throughout this litigation and have expended significant time and effort to assert the rights of the Class Members. The Plaintiffs' efforts before and after filing the complaint were instrumental in settling the case. *Id.*

At this time, however, Plaintiffs do not seek approval of the service awards but, assuming the Court grants preliminary approval, they will instead fully brief the issue in the context of Plaintiffs' motion for final settlement approval.

V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE

Plaintiffs respectfully request that the Court provisionally certify the proposed Settlement Class. Provisional class certification is appropriate at the preliminary approval stage where, as here, the proposed Class has not previously been certified by the Court, and the Class meets the certification requirements. 4 *Newberg* § 11.22. The purpose of provisional class certification is to facilitate distribution to all Class Members by providing notice of the terms of a proposed settlement and the date and time of the final approval hearing. *See Manual* §§ 21.632-33. It is well established that trial courts should use different standards to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases, in part because the settlement of the case means that a class trial will not need to be conducted. *See Global Minerals & Metals Corp.* v. *Superior Court* (2003) 113 Cal.App.4th 836, 859 (citation omitted).

//

A. The Requirements For Provisional Class Certification Are Met Here

Plaintiffs seek certification of the following Class for settlement purposes: "all hourly, non-exempt, construction employees of All Seasons Roofing & Waterproofing, Inc. performing roofing work in the state of California for All Seasons Roofing & Waterproofing, Inc. at any time from March 2, 2016 and February 4, 2021." All Seasons stipulates to the certification of this Class for settlement purposes only so that the litigation may be fully resolved efficiently and in the interests of all Parties. In doing so, All Seasons does not waive its arguments regarding class certification should the Settlement not become final.

Class certification is appropriate when the class is ascertainable and there is "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." Code Civ. Proc. § 382; *Dunk, supra*, 48 Cal.App.4th at 1806. Civil Procedure Code § 382's requirements effectively mirror those of Federal Rule 23: numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. *See* Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler Group* (9th Cir. 1998) 150 F.3d 1011, 1019. As discussed below, all requirements of certification for settlement purposes are met for the proposed Class.

B. The Proposed Settlement Class is Ascertainable

The proposed Settlement Class is ascertainable because all Class Members are all non-exempt employees who worked for All Seasons Roofing & Waterproofing, Inc., in the state of California. All Seasons's employment records, including the class list that is attached to the Joint Stipulation of Class Settlement, readily identify each of the Class Members. *See* Molteni Decl., ¶ 2, **Ex. 1-1**; *see Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (finding that "class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records").

C. The Proposed Settlement Class Is Sufficiently Numerous

The numerosity requirement is met if the proposed class is so large that joinder of all members would be impracticable. Code Civ. Proc. § 382. Plaintiffs' investigation and All

Seasons's records show that the Class is composed of approximately 582 members. A potential class of this size satisfies the numerosity requirement. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234 (approving certification of a class of 35 farm workers in an action against a farm labor contractor). As such, the numerosity requirement is satisfied.

D. The Commonality Requirement Is Met

The commonality requirement is met if there are questions of law or fact common to the class. *See Sav-On v. Superior Court* (2004) 34 Cal.4th at 326-27. Commonality requires only that common legal or factual questions predominate, not that all issues in the litigation are identical. *Id.* at 328, 332-33. Common questions here include, but are not limited to, the following:

- Whether All Seasons had a policy or practice of failing to pay Plaintiffs and Class Members for all hours worked, including their time spent on the yard and travelling to the jobsites, in violation of Cal. Code Regs., Title 8 § 11160 and California common law;
- Whether All Seasons had a policy or practice of failing to pay Plaintiffs and Class Members overtime and double time pay for all hours worked over 8 hours in a day and 40 in a week;
- Whether All Seasons had a policy or practice of combining both rest periods with a lunch break, in violation of Labor Code § 226.7 and Wage Order 16, § 11 (A);
- Whether All Seasons had a policy or practice of failing to pay Plaintiffs and Class Members all wages due at the time of discharge or voluntary quit, in violation of Labor Code §§ 201-203;
- Whether All Seasons, in violation of Labor Code §§ 226 and 1174, had a systematic policy or practice of failing to keep and provide timely and accurate wage statements of all of the hours worked by Plaintiffs and Class Members and their applicable hourly rates;
- Whether All Seasons engaged in unlawful and/or unfair practices entitling Class Members to restitution pursuant to Business and Professions Code §17200 et seq.

Molteni Decl., **Ex. 2**, ¶ 34. Here, the Class's claims all flow from the same source: the allegations that All Seasons (1) failed to pay its employees for all the hours worked, including overtime rates for work over 8 hours in a day and 40 hours in a week and (2) failed to authorize timely meal and rest periods to its employees. *See id.* ¶¶ 14-23.

Particularly in the settlement context, class resolution is superior to other available methods of adjudication. *See Hanlon*, 150 F.3d at 1023; *Dunk*, 48 Cal.App.4th at 1807, fn. 19. Here, the alternative methods of adjudication are repetitive individual cases relying on the same facts and legal argument, amounting to a waste of judicial resources. *See Sav-On Drug Stores*, 34 Cal.4th at 340; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 745. Use of the class device here will provide class-wide redress for many All Seasons's construction workers who are unwilling or unable to file individual suits, including those whose claims may be too small to warrant an individual suit. For these reasons, a class action settlement is the preferred method of resolution of the Class's claims.

Under these circumstances, the proposed Class satisfies the commonality requirement.

E. <u>The Typicality Requirement is Met</u>

The typicality requirement is met if the claims of the named representatives are similar to those of the Class, though "they need not be substantially identical." *See Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. The claims of the Plaintiffs are typical of the Class because they arise from the same factual bases and are based on the same legal theories. *See J.P. Morgan & Co. Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212; *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 663-64 (typicality equates to membership in the proposed class). Plaintiffs—who worked as non-exempt construction employees for All Seasons in California during the Class Period—allege that All Seasons did not pay them and other Class Members for all hours worked, including overtime rate while working more than 8 hours in a day or 40 hours in a week and did not allow them and other Class Members to take timely meal periods and rest breaks. Molteni Decl., **Ex. 2**, ¶¶ 14-23. Plaintiffs' claims, therefore, arise from the same set of facts and legal theories as the Class claims. As such, the proposed Class Representatives satisfy the typicality requirement.

F. Common Issues Predominate Here

Certification is appropriate when common questions of law and fact predominate over individual questions and when the use of the class device is superior to individual litigation. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. When assessing predominance and superiority, courts may consider whether the class will be certified for settlement purposes only, rendering trial manageability irrelevant. *Amchem Products v. Windsor* (1997) 521 U.S. 591, 620. The test for determining predominance of common issues is whether the proposed class is sufficiently cohesive to warrant adjudication on a class-wide basis. *Hanlon*, 150 F.3d at 1022.

The proposed Class here is sufficiently cohesive because Class Members share a "common nucleus of facts and potential legal remedies." *Id.* Plaintiffs and Class Members seek damages for time that they worked and they were not paid, including proper overtime premium, for receiving late meal periods, and for working during rest breaks. Plaintiffs allege that All Seasons failed to pay overtime premiums, and failed to authorize and permit timely meal and rest periods. Plaintiffs believe that a review of the electronic time keeping systems suggests that All Seasons management edited Class Members' time records with the consequent underpayment of wages, including overtime. Molteni Decl., ¶ 7. Common legal and factual questions about All Seasons's alleged underpayment practices predominate over individual questions. In addition, Plaintiffs' Counsel's interviews with proposed Class Members supported Plaintiffs' allegations that they were not properly paid for all hours worked, including overtime. *Id*., ¶ 18.

Particularly in the settlement context, class resolution is superior to other available methods of adjudication. *See Hanlon*, 150 F.3d at 1023; *Dunk*, 48 Cal.App.4th at 1807, fn. 19. Here, the alternative methods of adjudication are repetitive individual cases relying on the same facts and legal argument, amounting to a waste of judicial resources. *See Sav-On Drug Stores v. Superior Court* (2004) 34 Cal.4th 319, 340; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 745. Use of the class device here will provide class-wide redress for many All Seasons workers who are unwilling or unable to file individual suits, including those whose claims may be too small to

warrant an individual suit. For these reasons, a class action settlement is the preferred method of resolution of the Class's claims.

G. Adequacy Requirement is Met

The class representative, through qualified counsel, must be able to "vigorously and tenaciously" protect class interests. *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846. The adequacy requirement is met here because (1) Plaintiffs are represented by counsel who are qualified to conduct this litigation, and (2) Plaintiffs' interests are co-extensive with, and not antagonistic to, those of the class. *See McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 487.

First, proposed class counsel—Cristina Molteni of Molteni Employment Law—has extensive experience with complex class litigation in general and wage-and-hour class actions in particular. *See* Molteni Decl. ¶¶ 10-12. Proposed Class Counsel is "qualified, experienced and generally able to conduct the proposed litigation." *Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.

Second, the Named Plaintiffs' interests are co-extensive with those of the Class. Given the near identical nature of their claims, Plaintiffs' interests in obtaining the best recovery possible for the Class fully comport with the Class's interests. Plaintiffs filed this action, they have agreed to serve as Class Representatives and have raised no claims inconsistent with the interests of the class. Molteni Decl., ¶ 17; Aguilar Decl., ¶¶ 6-20; Martinez Decl., ¶¶ 6-20; Cazares Decl., ¶¶ 6-20. They have also substantially assisted Plaintiffs' Counsel with the litigation since before its inception and as former long term employees, they were instrumental in reaching this result for the Class. *Id.*

The proposed Class Representatives and their counsel are adequate.

VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE

A. The Method Of Class Notice Satisfies Due Process

California law vests courts with broad discretion in fashioning an appropriate notice program. *See* Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-974. Notice must "have a reasonable chance of reaching a substantial percentage of the class members[.]" *See Cartt*, 50 Cal. App.3d at 974. The notice plan proposed here entails mailing an individual notice

and information form to each Class Member to their last-known home addresses by first class mail. Personal notification is the method preferred by the California Rules of Court. *See* Cal. Rules of Ct. 3.766(f). Molteni Decl., **Ex. 1**, ¶ 22, p. 14.

To ensure the Notice is understood by the Class Members, most of whom speak Spanish as their primary language, the Notice will be translated into Spanish as part of the notice process. Molteni Decl., **Ex. 1**, ¶ 22, p. 14. This process is designed to ensure that as many Class Members as possible are contacted about the Settlement, and that as many of them as possible understand and have the opportunity to participate in, object to, or opt out of the Settlement.

B. The Proposed Class Notice is Accurate and Informative

The proposed Class Notice as well as the Information Form fairly apprises the Class of the Settlement's terms and the options open to Class Members to participate in, object to, or opt out of the Settlement. Molteni Decl., **Ex. 4** (Class Notice and Information Form); *see Wershba*, 91 Cal.App.4th at 251-252. The Notice, subject to Court approval, informs the Class of the class-wide relief the Settlement will provide; the method of calculating settlement awards; the amount of proposed service payments to Class Representatives; the amount of Plaintiffs' Counsel's fee request; and the date and time of the final approval hearing. *See id*. In addition, individual Class Members will be informed of the estimated amount that they will receive if they remain in the Settlement, assuming all Class Members remain in the Settlement. Molteni Decl., **Ex. 4**. Through the Notice, therefore, Class Members will know what it means for them to remain in the Class, to participate in the claims process, and to opt out of the Class. Accordingly, the Notice complies with the standards of completeness and fairness required of a class notice. *See* Cal. Rule of Ct. 3.767(d); 3.769(f); Fed. R. Civ. P. 23(c)(2), 23(e); 4 *Newberg*, §§ 8.21, 8.39.

VII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the formal hearing, at which the Court may hear evidence and argument necessary to evaluate the proposed Settlement. Cal. Rules of Ct. 3.769(e). At that hearing, proponents of the Settlement may explain its terms and offer argument in support of settlement approval; Class Members, or their counsel, may also be heard in support of or

in opposition to the Settlement. The following schedule sets forth a proposed sequence for the relevant dates, assuming the Court grants preliminary approval to the Settlement. This schedule (with blanks inserted for the specific dates) is also included in the proposed Order Preliminarily Approving Class Action Settlement filed herewith.

15 business days after order preliminarily approving settlement	Deadline for Defendants to Provide Settlement Administrator with Database of Class Member Contact Data (*see* Molteni Decl., **Ex. 1**, ¶ 19)
5 calendar days after the provision of the class data	Deadline for Defendants to File a Declaration Attesting the Production of an Accurate Class List (*see id*., **Ex. 1**, ¶ 20)
20 calendar days after order preliminarily approving the settlement	Deadline for Settlement Administrator to Mail the Class Notices and Class Member Information Forms to Class Members (*id*., **Ex. 1**, ¶ 21.)
45 calendar days after Mailing of Class Notices and Information Forms	Deadline for Class Members to Postmark Requests for Exclusion or "Opt Outs" (*id*., **Ex. 1**, ¶ 25.)
45 calendar days after Mailing of Class Notices and Information Forms	Deadline for Class Members to Postmark Objections (*id*., **Ex. 1**, ¶ 25.)
16 court days prior to the Final Fairness and Approval Hearing	Deadline for Class Counsel to File Motion for Final Approval of Settlement, Motion for Attorneys' Fees, Costs, PAGA Payment, Service Payments, and Settlement Administrator Costs
Final Fairness and Approval Hearing	**To Be Scheduled**.

//

//

//

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, approve the form of Class Settlement Notice and Class Member Information Form, set deadlines for opting out of, commenting on, and objecting to the Settlement, and schedule the final approval hearing.

Respectfully Submitted,

Dated: November 5, 2021

MOLTENI EMPLOYMENT LAW

By:_ _____

Cristina Molteni
Attorney for Plaintiffs