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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

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

Plaintiff,

vs.

PACIFIC PLASTICS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 30-2021-01214613-CU-OE-CXC

Honorable Randall J. Sherman
Department CX-105

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Helene Mayer); Declaration of Proposed
Class Representative (Kevin Flores) and
[Proposed] Order filed concurrently
herewith]

Reservation: 74346040
Date: December 6, 2024
Time: 10:00 a.m.
Department: CX-105

Complaint Filed: August 4, 2021
FAC Filed: July 15, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that on December 6, 2024 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Randall J. Sherman in Department CX-105 of the Superior Court of California for the County of Orange, Civil Complex Center, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Kevin Flores (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation for Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT A**” to the Declaration of Helene Mayer, 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, Attorneys’ Fees and Costs to Class Counsel, enhancement award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Kevin Flores as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice Packet, consisting of the Notice of Class Action Settlement (“Class Notice”) attached as “**Exhibit 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, Opt-Out Form attached as Settlement Agreement as “**Exhibit 2**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, and Objection Form attached to the Settlement Agreement as “**Exhibit 3**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice Packet to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;

- Approving Simpluris, Inc. 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 Attorneys' Fees and Costs to Class Counsel, enhancement award for Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

This Motion is made pursuant to Rule 3.769, Rule 3.764, and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit 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 (Helene Mayer) and Proposed Class Representative (Kevin Flores) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: July 24, 2024

LAWYERS for JUSTICE, PC

By: Helene Mayer
Helene Mayer
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Kevin Flores (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation for Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Pacific Plastics, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the enhancement award of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff³; (3) the Class Counsel Attorneys’ Fees and Costs, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$612,500.00, and reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Eleven Thousand Five Hundred Dollars and Zero Cents (\$11,500.00);⁵ and (5) the amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$187,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$62,500.00) will be distributed to Plaintiff and

¹ Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Helene Mayer (“Mayer Decl.”), § 2.13. The Settlement is based on the representation that the Settlement Class Members worked a total of 29,065 Workweeks during the Class Period. The Parties agree that if the number of Workweeks for the Settlement Class is over 7.5% above 29,065, the Gross Settlement Amount shall be increased by the percentage that reflects the actual number of Workweeks in the Settlement Class Period that is above this 7.5% threshold. For example, if the number of Workweeks that the Class worked in the Settlement Class Period increases by 8.5%, then the Gross Settlement Amount will be increased by 1%. See *id.*, § 5.2.

² *Id.*, § 2.15.

³ *Id.*, § 5.1.2.

⁴ *Id.*, §§ 2.3 & 5.1.3.

⁵ *Id.*, §§ 2.20 & 5.1.7.

all Settlement Class Members who were employed by Pacific Plastics, Inc. in California as a non-exempt employee at any time during the PAGA Period (“Aggrieved Employees”).⁶

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

All persons who were employed by Defendant in California as a non-exempt employee at any time during the Settlement Class Period. (“Class,” or “Settlement Class”).⁷

Based on information provided by Defendant, the Class is estimated to consist of approximately four hundred and fifty (450) individuals and the Aggrieved Employees are estimated to consist of approximately one hundred forty-nine (149) individuals.⁸

Class Members who have not submitted a valid and timely Opt-Out Form (“Participating Class Members”) will receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based upon the number of workweeks a Settlement Class Member worked while actively employed by Defendant during the Settlement Class Period (“Workweeks”).⁹

The Settlement resolves the Class Released Claims of Plaintiff and Participating Class Members and the PAGA Released Claims of the State of California and Aggrieved Employees, against the Released Parties.¹⁰

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiff also moves 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

Defendant manufactures PVC pipes and is headquartered in Orange, California. Plaintiff Kevin Flores is a former employee of Defendant.

⁶ Settlement Agreement, §§ 2.2 & 2.23. “PAGA Period” is defined as the period from September 6, 2022 through February 15, 2024. *See id.*, § 2.25.

⁷ *Id.*, § 2.4. “Class Period” is defined as the time period from August 4, 2017 through February 15, 2024. *See id.*, § 2.7. Any member of the Settlement Class is referred to as a “Class Member” or “Settlement Class Member.” *See id.*, § 2.6.

⁸ Mayer Decl., ¶ 9.

⁹ Settlement Agreement, §§ 2.15, 2.27, & 2.35.

¹⁰ *Id.*, § 8.1. *See id.* at § 2.8, for the full scope of the “Class Released Claims,” *id.* at § 2.26, for the full scope of the PAGA Released Claims, and *id.* at § 2.30, for the definition of the “Released Parties.”

1 On August 4, 2021, Plaintiff filed a Class Action Complaint for Damages (“Original
2 Complaint”) in the Orange County Superior Court (“Court”), Case No. 30-2021-01214613-CU-
3 OE-CXC, thereby commencing the above-captioned lawsuit (the “Litigation”).

4 On October 5, 2021, Defendant filed an Answer to the Original Complaint.

5 On September 6, 2023, Plaintiff provided written notice by online submission to the
6 LWDA and by certified mail to Defendant of the specific provisions of the California Labor
7 Code that were alleged to be violated (“PAGA Letter”).

8 On July 15, 2024, Plaintiff filed a First Amended Class Action Complaint for Damages
9 and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq.
10 (“Operative Complaint”), which among other things, added a cause of action under the Private
11 Attorneys General Act, California Labor Code section 2698, et seq. (“PAGA”).

12 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
13 engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and
14 Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, failing to
15 provide compliant meal and rest periods and associated premium pay, failing to timely pay
16 wages during employment and upon termination of employment, failing to provide compliant
17 wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary
18 business expenses, and thereby engaged in unfair business practices in violation of California
19 Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties
20 pursuant to PAGA. Plaintiff contends that he, the Class Members, and Aggrieved Employees
21 are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties
22 pursuant to PAGA), and attorneys’ fees.

23 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
24 associated with any of the allegations in the Litigation, and further denies that the Litigation is
25 appropriate for class treatment or representative adjudication for any purpose other than for
26 settlement purposes only.

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On March 1, 2022, Plaintiff propounded multiple sets of formal written discovery requests on Defendant including Requests for Production of Documents, (Set One); Special Interrogatories, (Sets One, Two & Three); and Form Interrogatories, (Set One).

The Parties have actively litigated the Litigation since it was commenced on August 4, 2021. On September 18, 2023, the Parties participated in a formal, full-day mediation conducted by Hon. Jeffery K. Winikow (Ret.), (the “Mediator”), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the Mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Class Released Claims of Plaintiff and the Participating Class Members and the PAGA Released Claims of Plaintiff, Aggrieved Employees, and the State of California with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys’ fees in an amount not to exceed Six Hundred Twelve Thousand Five Hundred Dollars and Zero Cents (\$612,500.00) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs, which are currently estimated to be up to Eleven Thousand Five Hundred Dollars and Zero Cents (\$11,500.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) PAGA Amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00), of which seventy-five percent (75%) (i.e., \$187,500.00 out of \$250,000.00) will be paid to the LWDA (“LWDA Payment”) and twenty-five percent (25%) (i.e., \$62,500.00 out of \$250,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis; and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars

¹¹ Settlement Agreement, § 8.

1 and Zero Cents (\$7,500.00) to Plaintiff Kevin Flores as an enhancement award.¹² The Parties
2 have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the
3 notice and settlement administration process.

4 The Parties have agreed that the Settlement Administrator will determine each
5 Participating Class Member’s *pro rata* share of the Net Settlement Amount (i.e., Individual
6 Settlement Share), in accordance with the Settlement Agreement and as follows: (1) each
7 Participating Class Member shall be awarded credit for each workweek he or she worked while
8 actively employed by Defendant as a Settlement Class Member during the Settlement Class
9 Period (i.e., Workweeks); (2) Workweeks will be calculated by the Settlement Administrator by
10 determining the number of weeks between each Participating Class Member’s start and end
11 dates of employment during the Settlement Class Period (less any workweeks that the employee
12 did not work) and dividing by 7; (3) each Participating Class Member’s Individual Settlement
13 Share shall be calculated by multiplying the Net Settlement Amount by a fraction, the numerator
14 of which is the Participating Class Member’s total number of credited Workweeks, and the
15 denominator of which is the total of all Workweeks credited to all Participating Class Members
16 during the Settlement Class Period.¹³

17 The Parties have agreed that the Settlement Administrator will determine each
18 Aggrieved Employee’s *pro rata* share of the PAGA Payment (“Individual PAGA Share”), in
19 accordance with the Settlement Agreement and as follows: (1) each Aggrieved Employee shall
20 be awarded credit for each Workweek he or she worked while actively employed by Defendant
21 during the PAGA Period; (2) each Aggrieved Employee’s Individual PAGA Share shall be
22 calculated by multiplying the Employee PAGA Amount by a fraction, the numerator of which
23 is the Aggrieved Employee’s total number of credited Workweeks, and the denominator of
24 which is the total of all Workweeks credited to all Aggrieved Employees during the PAGA
25 Period.¹⁴

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27 ¹² Settlement Agreement, §§ 5.1.2, 5.1.3, 5.1.5, & 5.1.7.

28 ¹³ *Id.*, §§ 5.1.1.1 & 5.1.1.2.

¹⁴ *Id.*, §§ 5.1.6.1 & 5.1.6.2.

Each Participating Class Member's Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages ("Wages Portion"), which will be reported on an IRS Form W-2; and eighty percent (80%) as interest and penalties, which will be reported on an IRS Form 1099.¹⁵ The Individual PAGA Share will be considered one hundred percent (100%) civil penalties, and will be reported as such to each Aggrieved Employees on an IRS Form 1099, if applicable.¹⁶ Prior to mailing Individual Settlement Shares to Participating Class Members, the Settlement Administrator will calculate, withhold from the Individual Settlement Share, and remit to applicable governmental agencies sufficient amounts as may be owed by Participating Class Members for employee's and employer's share of state and federal payroll taxes, withholdings, and contributions.¹⁷ Defendant's share of the payroll taxes associated with the Wages Portion of the Individual Settlement Shares will be paid separately and in addition to the Gross Settlement Amount.¹⁸

Checks for the Individual Settlement Shares and the Individual PAGA Shares will become void and no longer available if not cashed within one hundred eighty (180) calendar days after mailing.¹⁹ The funds from voided checks will be transferred to Community Legal Aid SoCal, or to another recipient to the extent the Court orders so.²⁰

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must notify the Settlement Administrator by submitting an Opt-Out Form, attached as "Exhibit 2" to the Settlement Agreement, or written opt-out request (together, "Opt-Out Requests"), by mail, postmarked on or before the expiration of the time period commencing on the date the initially mails the Notice Packets to Class Members and ending sixty (60) days thereafter ("Response Deadline").²¹ To be valid, the Opt-Out Request shall contain a statement that clearly conveys the Class Member's request to be excluded from the Settlement, his/her full name and the last four digits of the Class Member's Social Security Number on record with Defendant, it must be

¹⁵ Settlement Agreement, § 5.1.9.

¹⁶ *Id.*, § 5.1.9.

¹⁷ *Ibid.*

¹⁸ *Id.*, §§ 2.13.

¹⁹ *Id.*, § 5.1.11.

²⁰ *Id.*, § 5.1.12.

²¹ *Id.*, §§ 2.22, 2.31, & 7.7.1.

signed and dated by the Settlement Class Member, and it must be returned so that it is postmarked on or before the expiration of the Response Deadline.²² A Class Member who submits a timely and valid Opt-Out Request is not eligible to recover a pro rata share of the Net Settlement Amount (i.e., Individual Settlement Share) and will be bound by the release of the Released Class Claims.²³ All Aggrieved Employees will be bound to the settlement and release of the PAGA Released Claims based on claims asserted in the PAGA Letter and will receive their Individual PAGA Payment irrespective of whether they submit an Opt-Out Request.²⁴

To object to the Settlement, Class Members who have not submitted an Opt-Out Request (i.e., Participating Class Members) may either present their objection at the Final Approval Hearing or submit to the Settlement Administrator a timely and valid Objection Form, attached as “Exhibit 3” to the Settlement Agreement, or written brief or statement of objection (together, “Objection”) before the Response Deadline.²⁵ The Objection must: (1) state the full name of the Participating Class Member; (2) be signed by the Participating Class Member; (3) state the grounds for the objection; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the address specified on the Notice.²⁶ Participating Class Members who have not objected in writing may still appear and be heard at the Final Approval Hearing.²⁷

Class Members may dispute the number of Workweeks allocated to the Class Member by submitting a written dispute sent via U.S. Mail to the Settlement Administrator postmarked no later than the Response Deadline.²⁸ In order to dispute the number of Workweeks credited to him or her, the Class Member must provide documentation and/or an explanation postmarked or to be received by the Settlement Administrator by the Response Deadline in support of his or her claim of a different number of Workweeks.²⁹

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²² Settlement Agreement., § 7.7.1.

²³ *Id.*, §§ 2.22 & 7.7.1.

²⁴ *Id.*, § 7.7.1.

²⁵ *Id.*, §§ 2.21, 2.31, & 7.8.

²⁶ *Id.*, § 7.8.

²⁷ *Ibid.*

²⁸ *Id.*, §§ 2.31 & 7.2.

²⁹ *Id.*, § 7.2.

1 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
2 **SETTLEMENTS**

3 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
4 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
5 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
6 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
7 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.*
8 (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and
9 reasonable, whether certification of the class was proper, and whether the attorney fee award
10 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
11 decision to approve a class action settlement may be reversed only upon a strong showing of
12 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
13 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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

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

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

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

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

3 Class Counsel has actively litigated the Litigation since the Class Action was
4 commenced on August 4, 2021. Both sides used the pre-mediation time period to investigate
5 the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the
6 case for class certification and trial.³⁰

7 Prior to engaging in mediation, Class Counsel conducted significant investigation and
8 informal discovery regarding the facts of the case, including and not limited to, the exchange,
9 review, and analysis of a large volume of documents and data obtained from Defendant,
10 Plaintiff, and other sources.³¹ The volume of data and documents that Class Counsel reviewed
11 and analyzed included and was not limited to: Plaintiff's employment records, a detailed
12 sampling of Plaintiff's and other Class Member's time data and pay records, Defendant's
13 Employee Handbook, new employee checklists, Defendant’s organizational chart, company
14 policy acknowledgments (including but not limited to Handbook Acknowledgement Form),
15 forms, procedures, and policies (including but not limited to Harassment Free Workplace Policy,
16 Whistleblower Policy, Open Door Policy, Sick Leave Policy, Leaves of Absence Policies, Time
17 Keeping Policy, Overtime Policy, Milage Reimbursement and Travel Expenses Policy,
18 Employee Conduct Policies), among other information and documents.³² Class Counsel had the
19 opportunity to interview Plaintiff and other class members to gather information regarding the
20 facts and circumstances surrounding Plaintiff’s and putative class members’ employment and to
21 identify potential witnesses.³³ Counsel for the Parties also met and conferred on numerous
22 occasions, e.g., to discuss issues relating to the pleadings, and the production of documents and
23 data prior to the mediation.³⁴ Class Counsel also drafted pleadings and the mediation brief and
24 prepared for and attended court proceedings, mediation, and settlement negotiations, among
25

26 ³⁰ Mayer Decl., ¶¶ 11-13.

27 ³¹ *Id.*, ¶ 12.

28 ³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

1 other tasks.³⁵

2 The Parties engaged in extensive settlement negotiations and participated in a formal,
3 full-day mediation conducted by Hon. Jeffery K. Winikow (Ret.) (the “Mediator”), a well-
4 respected mediator experienced in mediating complex labor and employment matters.³⁶ Prior
5 to and during the mediation and settlement discussions, the Parties exchanged class information
6 and engaged in extensive discussions regarding their evaluations of the case and various aspects
7 of the case, including but not limited to, the risks and delays of further litigation, the risks to the
8 Parties of proceeding with class certification and/or representative adjudication, the law relating
9 to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour
10 law and enforcement, as well as the evidence produced and analyzed, and the possibility of
11 appeals, among other things.³⁷ During all settlement discussions, the Parties conducted their
12 negotiations at arm’s length in an adversarial position.³⁸ Arriving at a settlement that was
13 acceptable to all Parties was not easy. Defendant and its counsel felt strongly about their ability
14 to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they
15 would be able to obtain class certification and prevail at trial.³⁹ After conducting extensive
16 investigations, formal and informal discovery, exchange of information, and extensive
17 settlement negotiations, and with the aid of the Mediator’s evaluation, the Parties have agreed
18 that the matter is well-suited for settlement given the legal issues relating to Plaintiff’s principal
19 claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁰

20 The Settlement takes into account the strengths and weaknesses of each side’s position
21 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.⁴¹
22 The Parties have had the opportunity to interview and obtain information from their respective
23 witnesses.⁴² Counsel for the Parties have also reviewed documents and information relating to
24

25 ³⁵ Mayer Decl., ¶ 12.

26 ³⁶ *Id.*, ¶ 11.

27 ³⁷ *Id.*, ¶ 11.

28 ³⁸ *Ibid.*

³⁹ *Id.*, ¶¶ 11, 12, 16-18.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

Plaintiff's and the Class Members' employment with Defendant 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, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴³ The Settlement was based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁴

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

The Settlement, which provides for a Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁵ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁶ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁷ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, Aggrieved Employees, and the State of California.⁴⁸

Assuming that the Attorneys' Fees and Costs, enhancement award, PAGA Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Eight Hundred Forty-Three Thousand Five Hundred Dollars and Zero Cents (\$843,500.00).⁴⁹ Additionally, 75% of the PAGA Amount (i.e., the LWDA Payment), which is \$187,500.00 out of \$250,000.00, will be distributed to the LWDA and 25% of the PAGA Amount, which is \$62,500.00 out of \$250,000.00, will be distributed to Aggrieved

⁴³ Mayer Decl., ¶¶ 11-13 & 16-18.

⁴⁴ *Id.*, ¶¶ 2-7.

⁴⁵ *Id.*, ¶¶ 11, 13, 14, & 21.

⁴⁶ *Id.*, ¶¶ 11-13.

⁴⁷ *Id.*, ¶¶ 16-18.

⁴⁸ *Id.*, ¶¶ 11, 13, & 21.

⁴⁹ *Id.*, ¶ 14.

Employees on a *pro rata* basis.⁵⁰ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members and the PAGA Amount will be fully paid out to the LWDA and Aggrieved Employees, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Share will be calculated based on his or her Workweeks, and the amount of each Aggrieved Employees' Individual PAGA Share will be calculated based on his or her Workweeks during the PAGA Period.⁵¹ 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, the State of California, and Aggrieved Employees.⁵² Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵³ The discovery and information that Class Counsel obtained from Defendant 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 Defendant's defenses thereto.⁵⁴ As outlined in the Declaration of Helene

⁵⁰ Mayer Decl., ¶ 14.

⁵¹ Settlement Agreement, §§ 5.1.1 & 5.1.6.

⁵² Mayer Decl., ¶¶ 11, 13, & 21.

⁵³ *Id.*, ¶¶ 11-13 & 21.

⁵⁴ *Id.*, ¶ 18.

1 Mayer, Class Counsel performed an extensive analysis of every claim pursuant to *Kullar* prior
2 to entering into the Settlement.⁵⁵

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

4 For settlement purposes, the requisites for establishing class certification are met, and
5 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁶
6 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
7 one of a common or general interest, of many persons, or when the Parties are numerous, and it
8 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
9 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
10 “both [1] an ascertainable class and [2] a well-defined community of interest among class
11 members.” *Id.*

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

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

21 “Ascertainability is required in order to give notice to putative class members as to whom
22 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
23 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
24 by describing a set of common characteristics sufficient to allow a member of that group to
25 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
26

27
28 ⁵⁵ Mayer Decl., ¶¶ 11-13 & 16-18.

⁵⁶ Settlement Agreement, § 4.1.

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

3 This action involves a class of approximately four hundred and fifty (450) individuals.⁵⁷
4 This class is sufficiently numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
5 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as
6 joinder is not practical at that point). Further, all Class Members can and will be identified by
7 Defendant to the Settlement Administrator through a review of Defendant's employment
8 records regarding hourly-paid or non-exempt employees in California during the Class Period.
9 As such, the Class is ascertainable and sufficiently numerous.

10 **B. The Class Members Share a Well-Defined Community of Interest.**

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

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

25 Here, common issues of fact and law predominate as to each of the claims alleged and
26 asserted in the Litigation. Based on the documents and information obtained through formal
27 and informal discovery and exchange of information in this case, Plaintiff contends that Class
28

⁵⁷ Mayer Decl., ¶ 9.

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.⁵⁸ Plaintiff's claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff 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 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁵⁹

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁰ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶¹

Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees employed by Defendant in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over two (2) years and was actively preparing for class certification and trial.⁶² 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 formal and informal discovery. Class Counsel reviewed a large volume of documents and data⁶³ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook

⁵⁸ Mayer Decl., ¶ 16.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² *Id.*, ¶¶ 11-13.

⁶³ *Id.*, ¶ 12.

1 damages/valuation calculations, and met and conferred with Defendant’s counsel regarding the
2 pleadings and the production of documents and data prior to mediation.⁶⁴ Counsel for the Parties
3 also undertook extensive settlement discussions, which included participating in a formal, full-
4 day mediation.⁶⁵

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

7 The Settlement establishes a Gross Settlement Amount of One Million Seven Hundred
8 Fifty Thousand Dollars and Zero Cents (\$1,750,000.00), and provides for Class Counsel to apply
9 to the Court for Attorneys’ Fees and Costs, consisting of attorneys’ fees in an amount not to
10 exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$612,500.00) and an
11 amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) for costs and
12 expenses.⁶⁷ The attorneys’ fees provided for by the Settlement is commensurate with: (1) the
13 risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and
14 expense that Class Counsel dedicated to the case, (3) the skill and determination that Class
15 Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5)
16 the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the
17 other cases that Class Counsel had to turn down in order to devote its time and efforts to this
18 matter. The proposed Class Notice provides Class Members with information about the amount
19 allocated toward the Attorneys’ Fees and Costs, and that an award of the Attorneys’ Fees and
20 Costs will be sought, as provided for by the Settlement.⁶⁸

21 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
22 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
23 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the “experienced
24 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
25 *v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should

26 ⁶⁴ Mayer Decl., ¶ 12.

27 ⁶⁵ *Id.*, ¶ 11.

28 ⁶⁶ *Id.*, ¶¶ 2-7.

⁶⁷ Settlement Agreement, § 5.1.3.

⁶⁸ *Id.*, Exh. 1.

1 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
2 incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82
3 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can
4 be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee
5 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
6 litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund and
7 the settlement agreement provides that the defendant agrees to paying the attorneys a percentage
8 of the same, use of that percentage method is appropriate. *Id.* at 32.

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

16 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
17 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
18 *Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the
19 \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y.
20 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees).
21 California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-
22 third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court
23 found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions);
24 *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No.
25 BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court
26 Case No. BC263646 (Sept. 2006) (wage and hour).

27 ///

28 ///

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

3 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
4 and further argument at the time of filing Plaintiff's motion for final approval of the Settlement
5 and application for the Attorneys' Fees and Costs and at the Final Approval Hearing.
6 Considering the work performed and the risks incurred, the attorneys' fees provided for by the
7 Settlement and to be requested by Class Counsel are well within the range of reasonableness.

8 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

14 The proposed Notice Packet⁷⁰ describes the Settlement, the deadlines and procedures to
15 submit an Objection to the Class Settlement, Opt-Out Request, and/or Workweek dispute, and
16 the date and time set for the Final Approval Hearing.⁷¹

17 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
18 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class
19 members to make an informed decision about their participation." *Manual for Complex*
20 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
21 proceedings to date and the terms and conditions of the Settlement in an informative and
22 coherent manner.⁷² The proposed Class Notice recognizes that the Court has not yet granted
23 final approval of the settlement.⁷³ The proposed Class Notice also apprises the Class Members
24 and Aggrieved Employees of, *inter alia*, how their Individual Settlement Share and Individual

25
26 ⁶⁹ Mayer Decl., ¶ 19.

27 ⁷⁰ Settlement Agreement, Exh. 1-3.

28 ⁷¹ Ibid.

⁷² *Id.*, Exh. 1.

⁷³ Ibid.

PAGA Share is calculated and the number of Workweeks credited to them.⁷⁴

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.

IX. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris, Inc. to administer the Settlement. The Settlement Administrator will mail the Notice Packet to each Class Member and Aggrieved Employee by First-Class U.S. mail in English and Spanish.⁷⁵ Prior to mailing the Notice Packet, the Settlement Administrator shall process the Class List against the National Change of Address (“NCOA”) Database maintained by the United States Postal Service (“USPS”).⁷⁶ The Settlement Administrator will re-mail any Class Notice returned by the United States Postal Service with a forwarding address on or before the expiration of the Notice Period.⁷⁷ The Settlement Administrator will receive and process Objections to the Settlement, Opt-Out Requests, and Workweek Disputes.⁷⁸

The Settlement Administrator’s duties will include, among other things: (i) translating the Notice Packet to English and Spanish; (ii) mailing the Notice Packet to Class Members; (iii) tracking returned Opt-Out Forms and Objection Forms; (iv) notifying the Parties of determinations regarding contested Objection Forms and Opt-Out Forms consistent with this Agreement; (v) issuing payments; and, (vi) completing any required tax paperwork.⁷⁹ The Settlement Administration Costs are currently estimated not to exceed Eleven Thousand Five

⁷⁴ Settlement Agreement, Exh 1.

⁷⁵ *Id.*, § 6.2.

⁷⁶ *Id.*, § 6.4.

⁷⁷ *Id.*, § 6.5.

⁷⁸ *Id.*, § 2.33.

⁷⁹ *Id.*, § 2.33.

1 Hundred Dollars and Zero Cents (\$11,500.00) and will be paid out of the Gross Settlement
2 Amount, subject to approval by the Court.⁸⁰

3 Accordingly, Plaintiff respectfully request that the Court appoint Simpluris, Inc. as the
4 Settlement Administrator and direct the mailing of the Notice Packet to the Class Members and
5 Aggrieved Employees in the manner outlined and based on the proposed deadlines as described
6 herein and set forth in the Settlement Agreement.

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

8 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
9 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
10 entails mailing of the Notice Packet, in the form approved by the Court, to all known and
11 reasonably ascertainable Class Members based on Defendant's records.⁸¹

12 Within thirty (30) calendar days after entry of the Preliminary Approval Order,
13 Defendant will provide the Class List to the Settlement Administrator, which shall include each
14 Class Members' (1) full name; (2) last known mailing address; (3) last known telephone number;
15 (4) Social Security Number; (5) dates of employment in a non-exempt position; (6) the
16 applicable number of Workweeks of each Settlement Class Member during the Settlement Class
17 Period in order to calculate each Settlement Class Member's respective Individual Settlement
18 Share; and (7) the applicable number of Workweeks of each Aggrieved Employee during the
19 PAGA Period in order to calculate each Aggrieved Employee's respective Individual PAGA
20 Share (collectively, "Class List").⁸²

21 Within fifteen (15) calendar days after receipt of the Class List from Defendant, the
22 Settlement Administrator will send the Notice Packet to each Class Member via First Class U.S.
23 Mail.⁸³ Prior to mailing the Notice Packet, the Settlement Administrator shall process the Class
24 List against the National Change of Address ("NCOA") Database maintained by the United
25 States Postal Service ("USPS").⁸⁴ It shall be conclusively presumed that if the Notice Packet is

26 ⁸⁰ Settlement Agreement, § 5.1.7.

27 ⁸¹ *Id.*, §§ 6.1 & 6.2.

28 ⁸² *Id.*, § 6.1.

⁸³ *Id.*, § 6.3.

⁸⁴ *Id.*, § 6.4.

not returned as “undeliverable,” the Settlement Class Member received the Notice Packet.⁸⁵

With respect to Notice Packets that are returned as undeliverable, if a forwarding address is provided by the USPS, the Settlement Administrator shall re-mail the Notice Packet within three (3) business days.⁸⁶ If a Notice Packet is “undeliverable” and no forwarding address is provided, the Settlement Administrator shall employ standard skip-tracing to obtain updated address information and shall re-mail the Notice Packet to those Class Members.⁸⁷ All re-mailings to skip-traced Class Members shall be promptly performed during the notice and opt-out period and must be completed no later than ten (10) days prior to the Response Deadline.⁸⁸

Class Members will have until the date sixty (60) calendar days after the Settlement Administrator initially mails the Notice Packets to Class Members (“Response Deadline”) submit an Opt-Out Form, Objection Form, and/or Workweeks dispute.⁸⁹ Settlement Class Members who receive re-mailed Notice Packets will have fifteen (15) additional days to submit an Opt-Out Form, Objection Form, and/or Workweeks dispute (i.e., 75 calendar days from first mailing) irrespective of when the first mailing was returned as undeliverable as long as the return mailing is received within the initial sixty (60) day Response Period.⁹⁰

Defendant will provide the Settlement Administrator with the Gross Settlement Amount by bank wire within twenty-one (21) calendar days of the Settlement Effective Date.⁹¹ Within ten (10) calendar days from receipt of the funds, the Settlement Administrator shall then disburse the funds under the Settlement, as approved by the Court.⁹²

Each Individual Settlement Share and Individual PAGA Share check will become void and no longer available if not cashed within one hundred eighty (180) calendar days after mailing.⁹³ The funds from voided checks will be transferred Community Legal Aid SoCal, or

⁸⁵ Settlement Agreement, § 6.4.

⁸⁶ *Id.*, § 6.5.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Id.*, § 2.31.

⁹⁰ *Ibid.*

⁹¹ *Id.*, § 7.4.

⁹² *Ibid.*

⁹³ *Id.*, § 5.1.11.

to another recipient to the extent the Court orders so.⁹⁴

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR
ENHANCEMENT AWARD**

Plaintiff Kevin Flores respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the enhancement award in an amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00).⁹⁵ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The enhancement award is fair and appropriate. Plaintiff spent time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁶ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹⁷ Accordingly, it is appropriate and just for Plaintiff to receive an enhancement award for his services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to his individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and

⁹⁴ Settlement Agreement., § 5.1.12.

⁹⁵ *Id.*, § 5.1.2.

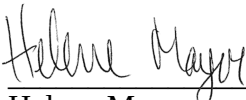
⁹⁶ Mayer Decl., ¶ 20; Declaration of Kevin Flores in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Flores Decl."), ¶¶ 4.

⁹⁷ Mayer Decl., ¶ 20; Flores Decl., ¶ 3-6.

1 designate Plaintiff Kevin Flores as Class Representative; appoint Simpluris, Inc. as the
2 Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs,
3 enhancement award, PAGA Amount, and Settlement Administration Costs; approve the
4 proposed Notice Packet; direct the Settlement Administrator to undertake the notice and
5 settlement administration process in conformity with the deadlines and procedures provided by
6 the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately
7 five (5) months; and permit the filing of a memorandum that exceeds the page limit.

8
9 Dated: July 24, 2024

LAWYERS for JUSTICE, PC

10
11 By: 
12 Helene Mayer
13 Attorneys for Plaintiff
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