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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

NATHAN POOL, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

UTC RESTAURANT VENTURE, LLC, a
California limited liability company; PASEO
RESTAURANT VENTURE, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV07785 (Lead Case)
Consolidated Case No.: 20GDCV00377

Honorable Amy D. Hogue
Department SSC7

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
(Edwin Aiwazian); Declaration of
Proposed Class Representative (Nathan
Pool); and [Proposed] Order filed
concurrently herewith]

Date: September 15, 2021
Time: 11:00 am
Department: SSC7

Complaint Filed: February 27, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on a date and time to be determined by the Court for the matter to be heard before the Honorable Amy D. Hogue in Department SSC7 of the Superior Court of California for the County of Los Angeles, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Nathan Pool (“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 of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, 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 Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Nathan Pool as Class Representative;
- Preliminarily appointing Edwin Aiwarzian, Arby Aiwarzian, and Joanna Ghosh of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement (“Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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- 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 Payment for Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement, allow the Court to preliminarily certify a class for settlement purposes, 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 (Edwin Aiwanian) and Proposed Class Representative (Nathan Pool) 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: June 22, 2021

LAWYERS for JUSTICE, PC

By:

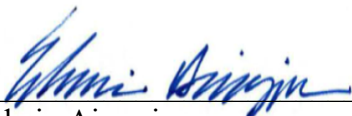

Edwin Aiwanian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Nathan Pool (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant UTC Restaurant Venture, LLC and Paseo Restaurant Venture, LLC (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle the lawsuits for a Total Settlement Amount of two hundred seventy-five thousand dollars (\$275,000.00).¹ The Total Settlement Amount includes the following: (1) Net Settlement Amount to be paid to the Settlement Class Member²; (2) the Enhancement Payment of seven thousand five hundred dollars (\$7,500.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or \$96,250.00, and reimbursement of litigation costs and expenses not to exceed thirty-five thousand dollars (\$35,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator which is currently estimated not to exceed ten thousand dollars (\$10,000.00);⁵ and (5) the amount of fifty thousand dollars (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Penalties”), of which 75% (i.e., \$37,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA Payment”) and 25% (i.e., \$12,500.00) will be distributed to PAGA Members (“Employee PAGA Amount”).⁶

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

///

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwasian (“Aiwasian Decl.”), ¶ 7.kk.

² *Ibid.*

³ *Id.*, ¶ 12.

⁴ *Id.*, ¶ 11.

⁵ *Id.*, ¶ 13.

⁶ *Id.*, ¶ 14.

All current and former hourly-paid, non-exempt employees who worked for Defendants in the State of California at any time during the period from February 27, 2016 through October 20, 2020, who did not sign arbitration agreements (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately five hundred twenty-two (522) individuals and there are approximately two hundred forty-five (245) PAGA Members.⁸

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member worked for Defendants as an hourly-paid, non-exempt employee during the period from February 27, 2016 through October 20, 2020 (“Class Workweeks”).⁹

With respect to PAGA, the Settlement resolves the PAGA Released Claims of all PAGA Members¹⁰; and with respect to the Class Settlement,¹¹ the Settlement resolves the Class Released Claims of Plaintiff and Settlement Class Members, against the Class Released Parties.¹²

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement and provisional certification of the Class for settlement purposes, Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants own and operate a chain of restaurants called Great Maple throughout California. Plaintiff Nathan Pool is a former employee of Defendants.

On January 29, 2020, Nathan Pool provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendants alleging Defendants violated specific provisions of the California Labor Code (“LWDA Letter”).

⁷ Settlement Agreement, ¶ 7.c & 8. “Class Period” is defined as the period of time from February 27, 2016 through October 20, 2020. *See id.*, ¶ 7.d.

⁸ Aiwasian Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 7.i, 7.t, & 7.jj.

¹⁰ *See id.* at ¶ 7.aa for the full scope of the “PAGA Released Claims” or “PAGA Release,” and *id.* At ¶ 7.bb for the definition of “PAGA Released Parties.”

¹¹ The “Class Settlement” is defined as the settlement and resolution of Class Released Claims. *Id.*, ¶ 7.h.

¹² *See id.* at ¶ 7.e, for the full scope of the “Class Released Claims,” and *id.* at 7.f for the definition of the “Class Released Parties.”

On February 27, 2020, Nathan Pool filed a Class Action Complaint for Damages (“Class Complaint”) against Defendants in the Superior Court of California for the County of Los Angeles, Case No. 20STCV07785 (“Class Action”), alleging ten (10) causes of action for violation of California Labor Code and California Business & Professions Code §§ 17200, *et seq.* on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time since February 27, 2016 for failure to pay overtime wages, failure to provide meal periods and premium payments in lieu thereof, failure to provide rest periods and premium payments in lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business expenses.

On April 3, 2020, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“PAGA Complaint”) against Defendants in the Superior Court of California of Los Angeles, Case No. 20GDCV00377 (“PAGA Action”), alleging a single cause of action against Defendants for violation of the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”).

On July 27, 2020, Defendants filed an Answer to Plaintiff’s Class Complaint in the Class Action.

On August 10, 2020, Plaintiff filed an Amendment to Complaint to add Great Maple LLC as a defendant in the Class Action,¹³ to which Defendants filed an Answer on August 17, 2020.

Also on August 17, 2020, Defendants filed an Answer to Plaintiff’s PAGA Complaint in the PAGA Action.

On August 25, 2020, pursuant to stipulation by the Parties, the Court issued an Order consolidating the Class Action and PAGA Action (the “Actions”) and designating the Class Action as the lead case.

¹³ The Settlement contemplates that Plaintiff will dismiss Great Maple LLC as a defendant in the Class Action. Settlement Agreement, ¶ 5.

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

On July 31, 2020, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Sets One & Two); Special Interrogatories, (Sets One, Two, & Three); and Form Interrogatories, (Set One), on Defendants. On October 8 and 9, 2020, Plaintiff took the deposition of Defendants' person most knowledgeable regarding job duties and organizational structure of Defendants.

The Parties have actively litigated the Actions since before the Class Action was commenced on February 27, 2020. On October 20, 2020, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., 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, Defendants will pay a Total Settlement Amount to resolve the PAGA Released Claims of all PAGA Members and the Class Released Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Member) in the Actions.¹⁴ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount up to ninety-six thousand two hundred fifty dollars (\$96,250.00) (i.e., up to 35% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed thirty-five thousand dollars (\$35,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed ten thousand dollars (\$10,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment

¹⁴ Settlement Agreement, ¶ 7.KK.

in the amount of up to seven thousand five hundred dollars (\$7,500.00) to Plaintiff Nathan Pool (“Enhancement Payment”); and (4) the amount of fifty thousand dollars (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Penalties”), of which 75% (i.e., \$37,500.00) will be distributed to the LWDA (“LWDA Payment”) and 25% (i.e., \$12,500.00) will be distributed to PAGA Members (“Employee PAGA Amount”).¹⁵ The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member’s *pro rata* share of the available Net Settlement Amount (“Individual Settlement Share”) based on each Class Member’s Class Workweeks and each PAGA Member’s share of the Employee PAGA Amount (“Individual PAGA Payments”) based on each PAGA Member’s PAGA Workweeks, in accordance with the Settlement Agreement and as follows:

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Class Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiply each Class Member’s individual Class Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.¹⁶
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Class Workweeks of all Settlement Class Member to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Class Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁷
- c. To determine the Individual PAGA Payment for each PAGA Member, the Settlement Administrator will divide the Employee PAGA Amount, i.e., \$12,500, by the total of all PAGA Members’ PAGA Workweeks resulting in the PAGA Workweek Value and then multiplying the PAGA Workweek Value by each PAGA Member’s individual PAGA Workweeks.¹⁸

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: one-third (1/3) as wages (the “wages portion”), which will be reported on an IRS Form

¹⁵ Settlement Agreement, ¶¶ 7.kk & 11-14.

¹⁶ *Id.* ¶ 15.a.

¹⁷ *Id.* ¶ 15.b.

¹⁸ *Id.* ¶ 15.c.

W-2; and two-thirds (2/3) penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁹ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the the employee's share of taxes and withholdings with respect to the wages portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").²⁰ Defendants will pay employer's share of taxes and contributions on the wages portion of Individual Settlement Shares separately and in addition to the Total Settlement Amount.²¹

To the extent that a Settlement Class Member is also a PAGA Member, the Settlement Administrator will issue both Individual Settlement Payments and Individual PAGA Payments by way of a single check.²² Settlement checks will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and be cancelled thereafter.²³ The funds from associated with such cancelled checks will be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Member whose check is cancelled and in the respective amount of the cancelled check.²⁴

Class Members who wishes to be excluded from the Class Settlement must submit a timely letter indicating a request to be excluded from the Class Settlement ("Request for Exclusion") to the Settlement Administrator, by mail, no later than the date that is sixty (60) calendar days from the initial mailing of the Notice by the Settlement Administrator ("Response Deadline") or, in the event that a Notice is re-mailed to a Class Member, the Response Deadline for that Class Member will be the extended by fifteen (15) calendar days.²⁵ The Request for Exclusion must: (a) contain the case name and number of the Class Action, (b) be signed by the Class Member, (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion, (d) clearly state that the Class Member does not wish to be included in the Class Settlement,

¹⁹ Settlement Agreement, ¶ 26.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, ¶ 20.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, ¶¶ 7.ff, 7.gg & 21.

1 and (e) be returned by mail to the Settlement Administrator at the specified address,
2 postmarked on or before the Response Deadline.²⁶ Class Members who submit a valid and
3 timely Request for Exclusion will not be a Settlement Class Member and will not have any
4 right to object, appeal, or comment on the Class Settlement; however, if the Class Member is
5 also a PAGA Member, he or she will still receive an Individual PAGA Payment, and will be
6 bound by the PAGA Released Claims.²⁷

7 Only Class Members who do not exclude themselves from the Class Settlement (i.e.,
8 Settlement Class Members) have standing to object to the Class Settlement.²⁸ Settlement Class
9 Members who wish to object to the Class Settlement submit a valid and timely written objection
10 to the Class Settlement (“Notice of Objection”) to the Settlement Administrator, by mail, on or
11 before the Response Deadline.²⁹ The Notice of Objection must be in writing and include: (a)
12 the case name and number of the Class Action; (b) the objector’s full name, signature, address,
13 and telephone number, and the last four digits of his or her Social Security number, (c) a
14 written statement of all grounds for the objection accompanied by any legal support for such
15 objection, and (d) copies of any papers, briefs, or other documents upon which the objection
16 is based.³⁰

17 Class Members who wish to dispute the number of Class Workweeks credited to them
18 in their Notice must submit a written letter to the Settlement Administrator that: (a) contains
19 the case name and number of the Class Action, (b) is signed by the Class Member, (c) contains
20 the full name, address, telephone number, and the last four digits of the Social Security
21 Number of the disputing Class Member, (d) clearly states that the Class Member disputes the
22 number of Class Workweeks credited to him or her and what he or she contends is the correct
23 number to be credited to him or her, (e) includes information and/or attaches documentation
24 demonstrating that the number of Class Workweeks that he or she contends should be credited
25

26 ²⁶ Settlement Agreement, ¶ 7. ff.

27 ²⁷ *Id.* ¶ 21.

28 ²⁸ *Ibid.*

29 ²⁹ *Id.*, ¶¶ 7.x & 23.

30 ³⁰ *Id.*, ¶ 7.x.

to him or her are correct, and (f) is returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³¹

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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

³¹ Settlement Agreement, ¶ 19.

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

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

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

22 The proponent of the settlement has the burden to show that it is fair and reasonable.
23 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
24 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
26 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
28 1151.

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

3 The Parties actively litigated the Actions since before the Class Action was commenced
4 on February 27, 2020. Both sides used the pre-mediation time period to investigate the veracity,
5 strength, and scope of the claims, and Class Counsel was actively preparing the matter for class
6 certification and trial.³²

7 Prior to engaging in mediation, Class Counsel conducted significant investigation and
8 formal and informal discovery regarding the facts of the cases, including and not limited to, the
9 exchange, review, and analysis of a large volume of documents and data produced by
10 Defendants.³³ The volume of data and documents that Class Counsel reviewed and analyzed
11 included and was not limited to: Plaintiff’s employment records, time and pay data of Plaintiff
12 and other Class Members, various agreements (including, but not limited to, Employee
13 Arbitration Agreement and Waiver of Jury Trial, Slip-Resistant Shoe Agreement, and Cutting
14 Glove Agreement), acknowledgements (including, but not limited to, Employee Handbook
15 Acknowledgement Forms, Final Paycheck Acknowledgement, Policy Acknowledgement, and
16 Receipt of Employee Handbook and Employment-At-Will Statement), waivers (including, but
17 not limited to, signed Meal Period Waivers), internal memoranda, job descriptions, New Hire
18 Packets, trainings (including, but not limited to, Defendant’s Manager Training – Meal and Rest
19 Periods), reports, including, but not limited to Hours Compliance Reports and Employee
20 Schedule Report), Defendants’ operations and employment practices and procedures (including,
21 but not limited to Defendants’ Employee Handbook and Employee Home Book), and policies
22 (including, but not limited to, Defendants’ Time Theft and Eating Policy, Recording Your Time
23 policy, Paycheck Deductions policy, Meal Periods policy, and Rest and Recovery Periods
24 policy), among other information and documents.³⁴ Class Counsel interviewed Plaintiff and
25 other Class Members to gather facts and to identify potential witnesses.³⁵ Class Counsel
26

27 ³² Aiwazian Decl., ¶¶ 11-13.

28 ³³ *Id.*, ¶ 12.

³⁴ *Ibid.*

³⁵ *Ibid.*

propounded multiple sets of formal written discovery requests onto Defendants and prepared for and took the deposition of Defendants' Person Most Knowledgeable designee which spanned over two (2) days.³⁶ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁷ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁸

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁹ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the cases and various aspects of the matter, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴¹ Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴² After conducting investigations, formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to

³⁶ Aiwazian Decl., ¶ 12.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Id.*, ¶ 11.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Id.*, ¶¶ 11, 16-18.

Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴³

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.⁴⁴ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁵ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁶ The Parties have reached the Settlement 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.⁴⁷

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

The Settlement, which provides for a Total Settlement Amount of two hundred seventy-five thousand dollars (\$275,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁸ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.⁵⁰ Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵¹

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

⁴³ Aiwazian Decl., ¶¶ 11, 16-18.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁷ *Id.*, ¶¶ 6-7.

⁴⁸ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁹ *Id.*, ¶¶ 11-13.

⁵⁰ *Id.*, ¶¶ 16-18.

⁵¹ *Id.*, ¶¶ 11, 13, & 21.

provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be seventy-six thousand two hundred fifty dollars (\$76,250.00).⁵² As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Class Workweeks.⁵³ 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.⁵⁴ 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 formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁵ The discovery and information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.⁵⁶ As outlined in the Declaration of Edwin

⁵² Aiwazian Decl., ¶ 14.

⁵³ Settlement Agreement, ¶ 15.

⁵⁴ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁵⁵ *Id.*, ¶¶ 11-13 & 18.

⁵⁶ *Id.*, ¶ 18.

Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁷

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁸ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

⁵⁷ Aiwazian Decl., ¶¶ 11-13 & 16-18.

⁵⁸ Settlement Agreement, ¶¶ 8-9.

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 matter involves a class of approximately five hundred twenty-two (522) individuals
4 and there are approximately two hundred forty-five (245) PAGA Members.⁵⁹ This class is
5 sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35
6 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is
7 not practical at that point). Further, all Class Members can and will be identified by Defendants
8 to the Settlement Administrator through a review of Defendants' employment records regarding
9 hourly-paid, non-exempt employees in California during the Class Period. As such, the Class
10 is ascertainable and sufficiently numerous.

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

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

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

26 Here, common issues of fact and law predominate as to each of the claims alleged and
27 asserted in the Class Complaint. Based on the documents and information obtained through
28

⁵⁹ Aiwazian Decl., ¶ 9.

1 formal and informal discovery and exchange of information in the cases, Plaintiff contends that
2 Class Members were subject to the same or similar job duties and uniform operations and
3 employment practices, policies, and procedures during the time period at issue.⁶⁰ Plaintiff's
4 claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to
5 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
6 wages for all hours worked, failing to provide compliant meal and rest periods and associated
7 premium pay, failing to timely pay wages during employment and upon termination of
8 employment, failing to provide complaint wage statements, failing to keep requisite payroll
9 records, and failing to reimburse necessary business-related expenses.⁶¹

10 Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect
11 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶²
12 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
13 compensation due to them from Defendants during the time period at issue.⁶³

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

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

20 Class Counsel has litigated the matter for over a year, and was actively preparing the
21 matter for class certification and trial.⁶⁴ The ongoing work has been extensive, demanding, and
22 ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted
23 extensive investigations into the facts of the cases and formal and informal discovery, including,
24 and not limited to, propounding multiple formal written discovery requests onto Defendants and
25 preparing for and taking a two-day deposition of Defendants' Person Most Knowledgeable

26 ⁶⁰ Aiwazian Decl., ¶ 16.

27 ⁶¹ *Ibid.*

28 ⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Id.*, ¶¶ 11-13.

1 designee. Class Counsel reviewed a volume of documents and data⁶⁵ and also interviewed and
2 obtained information from Plaintiff, researched applicable law, undertook damages/valuation
3 calculations, and met and conferred with Defendants' counsel regarding the pleadings,
4 discovery, and the production of documents and data prior to mediation.⁶⁶ Counsel for the
5 Parties also undertook extensive settlement discussions, which included participating in a
6 formal, full-day mediation.⁶⁷

7 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
8 experience to obtain a great result for the Class.⁶⁸

9 The Settlement establishes a Total Settlement Amount of two hundred seventy-five
10 thousand dollars (\$275,000.00), and provides for Class Counsel to apply to the Court for
11 Attorneys' Fees and Costs, consisting of attorneys' fees in an amount up to thirty-five percent
12 (35%) of the Total Settlement Amount (i.e., \$96,250.00) and an amount not to exceed thirty-
13 five thousand dollars (\$35,000.00) for costs and expenses.⁶⁹ The attorneys' fees provided for
14 by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and
15 litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to
16 the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class
17 Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class
18 Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to
19 turn down in order to devote its time and efforts to this matter. The proposed Notice provides
20 Class Members with information about the amount allocated toward the Attorneys' Fees and
21 Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the
22 Settlement.⁷⁰

23 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
24 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*

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26 ⁶⁵ Aiwazian Decl., ¶ 12.

27 ⁶⁶ *Ibid.*

28 ⁶⁷ *Id.*, ¶ 11.

⁶⁸ *Id.*, ¶¶ 6-7.

⁶⁹ Settlement Agreement, ¶¶ 7.KK & 11.

⁷⁰ *Id.*, Exh. A.

1 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
2 “experienced trial judge is the best judge of the value of professional services rendered in his
3 court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
4 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
5 achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
6 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
7 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
8 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
9 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
10 settlement fund and the settlement agreement provides that the defendant agrees to paying the
11 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

19 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
20 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
21 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
22 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
23 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
24 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
25 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
26 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
27 actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case
28

No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹

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

VIII. THE PROPOSED NOTICE IS ADEQUATE

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

The proposed Notice⁷² describes the Settlement, the deadlines and procedures to submit a Notice of Objection, a Request for Exclusion, and/or a dispute regarding Class Workweeks to the Settlement Administrator, and the date and time set for the Final Approval Hearing.⁷³

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁴ The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁵ The proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement

⁷¹ Aiwazian Decl., ¶ 19.

⁷² Settlement Agreement, Exh. A.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

Share is calculated and the number of Class Workweeks credited to them.⁷⁶

The proposed 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 Notice.

**IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT
ADMINISTRATOR**

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will translate and mail the Notice in English and Spanish to each Class Member by First-Class U.S. Mail.⁷⁷ With respect to Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Notice within five (5) calendar days.⁷⁸ The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objections, and any disputes regarding Class Workweeks.⁷⁹

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Settlement checks to Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys’ Fees and Costs, Enhancement Payment, and LWDA Payment; provide weekly reports; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁰ The Settlement Administration Costs are currently estimated not to exceed ten thousand dollars

⁷⁶ Settlement Agreement, Exh. A.

⁷⁷ *Id.*, ¶ 18.a.

⁷⁸ *Id.*, ¶ 18.b.

⁷⁹ *Id.*, ¶¶ 19, 21, & 23.

⁸⁰ *Id.*, ¶¶ 13, 20, & 24; Aiwazian Decl., ¶ 15.

1 (\$10,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the
2 Court.⁸¹

3 Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the
4 Settlement Administrator and direct the mailing of the Notice to the Class Members in the
5 manner outlined and based on the proposed deadlines as described herein and set forth in the
6 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, in the form approved by the Court, to all known and reasonably
11 ascertainable Class Members based on Defendants' records.⁸²

12 Within twenty-one (21) calendar days after the date on which the Court grants
13 preliminary approval of the Settlement, Defendants will provide the Settlement Administrator
14 with a complete list of all Class Members and PAGA Members that Defendants will diligently
15 and in good faith compile from their records, which will include their full names, last known
16 mailing addresses, last known telephone numbers (if available), and Social Security Numbers,
17 as well as their dates of employment, total Class Workweeks, total PAGA Workweeks, and
18 such other information as is necessary for the Settlement Administrator to administer the
19 Settlement (collectively, "Data List").⁸³

20 Within fourteen (14) calendar days of receipt of the Data List, the Settlement
21 Administrator will mail the Notice in English and Spanish to the Class Members via First-Class
22 U.S. Mail.⁸⁴ Class Members will have until the applicable Response Deadline to mail a Request
23 for Exclusion, Notice of Objection, and/or a dispute regarding Class Workweeks.⁸⁵

24 Defendants will make a one-time deposit of the Total Settlement Amount, together with
25 an amount sufficient to pay Employer Taxes, into a settlement account to be established by the

26 ⁸¹ Settlement Agreement, ¶ 13.

27 ⁸² *Id.*, ¶ 7.k.

28 ⁸³ *Id.*, ¶¶ 7.k & 17.

⁸⁴ *Id.*, ¶ 18.a.

⁸⁵ *Id.*, ¶ 7.gg.

Settlement Administrator, within thirty (30) calendar days after the Effective Date.⁸⁶ Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement Administrator will distribute: (1) Individual Settlement Payments to Settlement Class Members; (2) Individual PAGA Payments to PAGA Members; (3) LWDA Payment to the Labor and Workforce Development Agency; (4) Enhancement Payment to Plaintiff; (5) Attorneys' Fees and Costs to Class Counsel; and (6) Settlement Administration Costs to itself.⁸⁷

To the extent that a Settlement Class Member is also a PAGA Member, the Settlement Administrator will issue both Individual Settlement Payments and Individual PAGA Payments by way of a single check.⁸⁸ Settlement checks will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and be cancelled thereafter.⁸⁹ The funds from associated with such cancelled checks will be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Member whose check is cancelled and in the respective amount of the cancelled check.⁹⁰

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Nathan Pool respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to seven thousand five hundred dollars (\$7,500.00) to Plaintiff.⁹¹ 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

⁸⁶ Settlement Agreement, ¶ 10.

⁸⁷ *Ibid.*

⁸⁸ *Id.*, ¶ 20.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Id.*, ¶ 12.

duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹² Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁹³ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class, in addition to his Individual Settlement Payment and Individual PAGA Payment.

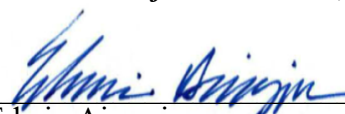
XII. CONCLUSION

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 Edwin Aiwarzian, Arby Aiwarzian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Nathan Pool as Class Representative; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Penalties, and Settlement Administration Costs; approve the proposed Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately late February 2022; and permit the filing of a memorandum that exceeds the page limit.

Dated: June 22, 2021

LAWYERS for JUSTICE, PC

By:


Edwin Aiwarzian
Attorneys for Plaintiff

⁹² Aiwarzian Decl., ¶ 20; Declaration of Nathan Pool in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Pool Decl."), ¶ 4.

⁹³ Aiwarzian Decl., ¶ 20; Pool Decl., ¶¶ 3-6.