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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

LIBRADO SARCENO, 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.

REGULUS GROUP, LLC, an unknown
business entity; TRANSCENTRA, INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 34-2018-00234541

Honorable David I. Brown
Department 53

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 (Librado Sarceno); and
[Proposed] Order filed concurrently
herewith.]

Date: Nov 25, 2020
Time: 1:30 p.m.
Department: 53
Reservation: 2531396

Complaint Filed: June 11, 2018
FAC Filed: June 1, 2020
Jury Trial Date: None Set

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

PLEASE TAKE NOTICE that on November 25, 2020 at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable David I. Brown in Department 53 of the Superior Court of California for the County of Sacramento, located in the Hall of Justice, 813 6th Street, Sacramento, California 95814, Plaintiff Librado Sarceno 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 and Release (“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 Attorneys’ Fees and Costs, Enhancement Award, and Settlement Administration Costs;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Edwin Aiwarzian, Esq., Arby Aiwarzian, Esq., and Joanna Ghosh, Esq. of Lawyers *for* Justice, PC as Class Counsel;
- Preliminarily appointing Plaintiff Librado Sarceno as Class Representative;
- Approving the proposed Notice of Proposed Class Action Settlement, and Hearing Date for Final Court Approval of Settlement (“Class Notice”) and the Claim Form (“Claim Form”), attached as “**EXHIBIT 1**” and “**EXHIBIT 2**,” respectively, of the [Proposed] Order Granting Preliminary Approval of Class Action Settlement filed concurrently herewith;
- Directing the mailing of the Class Notice, Claim Form, and a pre-addressed and postage-paid return envelope (“Return Envelope”) (together, “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 Attorneys' Fees and Costs, Enhancement Award, and Settlement Administration Costs.

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.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and Proposed Class Representative (Librado Sarceno) 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: October 27, 2020

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Librado Sarceno (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and Private Attorneys General Act Settlement and Release (“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 Defendants Regulus Group, LLC and Transcentra, Inc. (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of One Million Four Hundred Thousand Dollars (\$1,400,000).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Shares to Class Members who submit valid and timely Claim Forms (“Claimants”); (2) Enhancement Award to Plaintiff; (3) Attorneys’ Fees and Costs to Class Counsel; (4) Settlement Administration Costs to the Settlement Administrator; (5) the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares (“Employer Taxes”); and (6) payment to the California Labor and Workforce Development Agency (“LWDA”) of its 75% share of the Twenty-Five Thousand Dollars (\$25,000) allocated to penalties under PAGA (“PAGA Payment”).²

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendants do not oppose³:

All persons currently and formerly employed by Defendants as non-exempt employees in California during the period from June 11, 2014 through the date the Court preliminarily approves the Settlement (“Settlement Class” or “Class Members”).⁴

The Class, however, shall not include any person who previously settled or released the claims covered by this Settlement, any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement, or any person

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 14.c.

² *Id.*, ¶¶ 14.c. & 14.c.ii.

³ *Id.*, ¶ 8.

⁴ *Id.*, ¶¶ 4 & 7.

who submits a valid and timely Request for Exclusion.⁵

Based on information provided by Defendants before the Settlement, the Class was estimated to consist of approximately two hundred and two (202) individuals.⁶

Class Members who submit a valid and timely Claim Form (i.e., Claimants) will receive *pro rata* a share of the Net Settlement Amount.⁷ The Net Settlement Amount refers to the Maximum Settlement Amount, less the following amounts as approved by the Court: Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, LWDA Payment, and Employer Taxes.⁸ The amount to be paid to Claimants will be calculated on a *pro rata* basis based upon the number of weeks they worked for Defendants as a non-exempt employee in California during the period from June 11, 2014 to the date the Court preliminarily approves the Settlement ("Workweeks").⁹

The Settlement resolves Plaintiff's and the Class Members' Released Claims 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 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

Defendant TransCentra, Inc. ("TransCentra") provides billing and payment transaction software and services in both the consumer and business-to-business markets across a variety of industries, including financial services, telecommunications, and utilities. Defendant Regulus Group LLC ("Regulus Group") was a predecessor entity of TransCentra (collectively, "Defendants"). Plaintiff is a former employee of Defendants.

///

⁵ Settlement Agreement, ¶ 7.

⁶ Aiwazian Decl., ¶ 9.

⁷ Settlement Agreement, ¶¶ 14.c. & 14.c.i.

⁸ *Id.*, ¶ 14.c.

⁹ *Id.*, ¶ 4.

¹⁰ See *Id.* at ¶¶ 21 & 22.g., for the full scope of the "Released Claims," and for the definition of the "Released Parties."

1 On June 11, 2018, Plaintiff Librado Sarceno filed the Class Action Complaint for
2 Damages (“Original Complaint”) in the Sacramento County Superior Court (the “Court”),
3 thereby commencing the above-captioned putative class action (“Action”). On August 6, 2018,
4 Defendants filed an answer to Plaintiff’s Original Complaint.

5 On August 15, 2018, Plaintiff propounded General Form Interrogatories (Set One),
6 Special Interrogatories (Set One and Set Two), and Requests for Production of Documents (Set
7 One) each onto each Defendants and noticed the depositions of Defendants’ Person Most
8 Knowledgeable designees regarding job duties and organizational structure. On September 21,
9 2018, Plaintiff propounded Special Interrogatories (Set Three) and Requests for Production of
10 Documents (Set Two) onto each Defendants and noticed the deposition of both Defendants’
11 Person Most Knowledgeable designee regarding corporate organizational structure and
12 Defendants’ policies and procedures.

13 On August 15, 2019, the parties conducted a full day mediation with experienced, third-
14 party mediator, the Honorable Raul A. Ramirez (Ret.).

15 On June 1, 2020, Plaintiff filed the First Amended Class Action Complaint for Damages
16 and Enforcement under the Private Attorneys General Act, Cal. Labor Code § 2698 *Et Seq.*
17 (“First Amended Complaint” or “Operative Complaint”). On June 16, 2020, Defendants filed
18 an answer to the First Amended Complaint.

19 Plaintiff’s core allegations are that Defendants have violated the California Labor Code
20 by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class
21 Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide
22 compliant meal period and rest periods and associated premium pay, failing to timely pay wages
23 during employment and upon termination of employment, failing to provide compliant wage
24 statements, failing to maintain requisite payroll records, and failing to reimburse necessary
25 business expenses, and thereby engaged in unfair business practices under California Business
26 and Professions Code section 17200, *et seq.* and conduct giving rise to civil penalties
27 recoverable under the California Private Attorneys General Act, California Labor Code § 2698,
28

1 *Et Seq.* (“PAGA”). Plaintiff contends that he and the Class Members are entitled to, *inter alia*,
2 unpaid wages, penalties, interest, and attorneys’ fees.

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

6 The Parties have actively litigated the Action since it was commenced on June 11, 2018.
7 The Parties have conducted significant investigation, extensive formal and informal discovery,
8 and exchange of data regarding the claims. The Parties engaged in extensive discussions about
9 the strengths and weaknesses of Plaintiff’s claims and Defendants’ defenses thereto, to try to
10 resolve the case. Ultimately, the Parties reached the Settlement described herein to resolve the
11 Action in its entirety.

12 **III. SUMMARY OF THE SETTLEMENT TERMS**

13 Under the terms of the Settlement, Defendants will pay a Maximum Settlement Amount
14 in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000) to resolve the
15 Released Claims of Plaintiff and the Class Members who do not exclude themselves from the
16 Settlement with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net
17 Settlement Amount will be calculated by deducting the following amounts from the Maximum
18 Settlement Amount: (1) attorneys’ fees in an amount not to exceed thirty-five percent (35%) of
19 the Maximum Settlement Amount (i.e., \$490,000 of \$1,400,000) and reimbursement of
20 litigation costs and expenses in an amount not to exceed Thirty Thousand Dollars (\$30,000)
21 (collectively, “Attorneys’ Fees and Costs”) to Class Counsel; (2) Settlement Administration
22 Costs, which are currently estimated not to exceed Eight Thousand Five Hundred Dollars
23 (\$8,500), to the Settlement Administrator; (3) Enhancement Award of up to Seven Thousand
24 Five Hundred Dollars (\$7,500) to Plaintiff; (4) payment to the LWDA in the amount of Eighteen
25 Thousand Seven Hundred Fifty Dollars (\$18,750) for its share of the PAGA Payment (i.e., 75%
26 of \$25,000); and (5) Employer Taxes.¹² The Parties have agreed to retain Simpluris, Inc.

27
28 ¹¹ Settlement Agreement, ¶¶ 13 & 14.c.

¹² Settlement Agreement, ¶¶ 14.c, 14.c.ii, 14.c.vi, & 16. *See also*, Exh. A.

1 (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration
2 process.¹³

3 Claimants (i.e., Class Members who do not submit a Request for Exclusion and also
4 timely submit a valid Claim Form to the Administrator) will receive payment of a *pro rata* share
5 of the Net Settlement Amount (his or her “Individual Settlement Share”).¹⁴ The Individual
6 Settlement Share that each Class Member is eligible to receive will be determined based on the
7 number of weeks that he or she worked for Defendants as a non-exempt employee in California
8 during the Class Period (“Workweeks”), based on information provided by Defendants.¹⁵ Each
9 Class Member’s Workweeks will be calculated by Defendants and independently reviewed by
10 the Settlement Administrator, by dividing the total number of days each Class Member was
11 employed as a non-exempt employee of Defendants in California during the Class Period (using
12 their start and end dates of employment) by seven.¹⁶ The amount to be paid per Workweek to
13 Claimants will ultimately be calculated by the Settlement Administrator by dividing the Net
14 Settlement Amount by the number of Workweeks of all Claimants.¹⁷ **Defendants will maintain**
15 **no reversionary interest in the Maximum Settlement Amount, and the entire Net**
16 **Settlement Amount will be paid out in full to Claimants.**¹⁸

17 Each Individual Settlement Share will be allocated as follows: one-third (1/3) for alleged
18 unpaid wages, which will be reported on an IRS Form W-2; and two-thirds (2/3) for alleged
19 penalties and interest and other alleged non-wage damages, which will be reported on an IRS
20 Form 1099.¹⁹ Claimants will be issued payment of their Individual Settlement Share subject to
21 reduction for employees’ share of payroll taxes and withholdings with respect to the wage
22 portion of their Individual Settlement Share.²⁰ The net payment of each Individual Settlement
23 Share is referred to as the “Individual Settlement Payment.”²¹

24 _____
25 ¹³ *Id.*, ¶ 14.c.vii.

26 ¹⁴ *Id.*, ¶ 14.c.i.

27 ¹⁵ For the full definition of “Workweeks” and the agreed-upon method of calculating Workweeks, *see Id.*, ¶14.c.i.

28 ¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Id.*, ¶¶ 14, 14.c, & 14.c.i.

¹⁹ Settlement Agreement, ¶ 14.c.iii.

²⁰ *Ibid.*

²¹ *Ibid.*

Individual Settlement Payment checks issued to Claimants will remain valid and negotiable for one hundred twenty (120) calendar days from the date of issuance, and Claimants who do not cash or deposit their checks within ninety (90) calendar days of issuance will be sent a reminder notice reminding them of the deadline to cash or negotiate their check.²² Checks that are not negotiated within the 120-day period will be cancelled, and the funds from such cancelled checks will be transmitted to Koinonia Family Services, a non-profit 501(c)(3) organization with child advocacy programs in the State of California, as the *cy pres* recipient pursuant to Code of Civil Procedure section 384.²³

A Class Member who wishes to be excluded from the Settlement must submit a timely written request (“Request for Exclusion”) to the Settlement Administrator.²⁴ A Request for Exclusion must contain: (a) the individual’s full name, with signature and date; (b) the case name and number of the Action; and (c) a clear statement indicating that he or she desires to be excluded from the Settlement.²⁵ The Request for Exclusion must be signed, dated, and mailed by First Class U.S. Mail, or the equivalent, to the Settlement Administrator, postmarked no later than sixty (60) calendar days from the date of the initial mailing of the Notice Packet to the Class Members (“Response Deadline”).²⁶ Class Members who submit a valid and timely Request for Exclusion will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon.²⁷

Only individuals who do not exclude themselves from the Settlement (i.e., Class Members) can object to the Settlement.²⁸ Class Members who wish to object to the Settlement must file a written objection with the Court and mail a copy to the Settlement Administrator, no later than the Response Deadline.²⁹ A written objection must contain: (a) the Class Member’s full name, signature with date, and the dates he/she was worked as a non-exempt employee for

²² *Id.*, ¶ 18.

²³ *Ibid.*

²⁴ *Id.*, ¶ 19.

²⁵ *Ibid.*

²⁶ *Id.*, ¶¶ 14.c.ix. and 19.

²⁷ *Id.*, ¶ 19.

²⁸ *Id.*, ¶ 20.

²⁹ Settlement Agreement, ¶ 20.

Defendants in California; (b) the case name and number of the Action; (c) a clear statement indicating that he or she objects to the Settlement each specific reason in support of the objection along with any legal support for each objection; and (d) a clear statement indicating whether he or she is represented by counsel and whether he or she intends to appear at the Final Approval Hearing.³⁰

Class Members who wish to challenge the pre-printed information on the Claim Form as to the Workweeks credited him or her may do so by completing the designated portion of the Claim Form and submitting written evidence to the Settlement Administrator with the Claim Form, postmarked no later than the Response Deadline.³¹ The Settlement Administrator will resolve and decide all disputes based on Defendants' records.³²

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*

³⁰ *Ibid.*

³¹ *Id.*, ¶ 14.c.ix.

³² *Ibid.*

1 *Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both
2 federal and state courts, assures class members of the protection of procedural due process
3 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement
4 class.

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

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

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

19 The trial court has broad powers to determine whether a proposed settlement is fair under
20 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
21 this fairness determination, courts must consider several relevant factors, including “the strength
22 of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the
23 risk of maintaining class action status through trial, the amount offered in settlement, the extent
24 of discovery completed and the stage of the proceedings, the experience and view of counsel,
25 the presence of a governmental participant, and the reaction of the class members to the
26 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
27 and the court is free to engage in a balancing and weighing of the factors depending on the
28 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give

“proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties actively litigated the Action since it was commenced on June 11, 2018. Both sides used the pre-settlement time period to investigate the veracity, strength, and scope of the claims.³³ Prior to reaching the Settlement, the Parties conducted significant investigation into the facts of the case and the Parties engaged in extensive formal and informal discovery, and the exchange, review, and analysis of a large volume of documents and data produced by Defendants.³⁴ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, a sampling of Class Members’ payroll and time data (such as Time Card Reports and Earning Statements), multiple iterations of Defendants’ Employee Handbook, agreements (such as Defendants’ Confidentiality Agreement, and Employment Inquiry Release), acknowledgments (such as Defendants’ Acknowledgment of Receipt of the Employee Handbook and Employment Policies), internal memoranda (regarding topics such as Defendants’ meal and rest period policies), and Defendants’ operations and employment practices, training and orientation materials, forms (such as Defendants’ Acknowledgment of Receipt of the Employee Handbook and Employment Policies form, procedures and policies (such as Defendants’ Regulus Cash and Card Handling

³³ Aiwazian Decl., ¶¶ 11-13.

³⁴ *Id.*, ¶ 12.

Policy, Smock and Security Policy, timekeeping policies, overtime, and travel costs policy, and meal and rest break policies), among other information and documents.³⁵ Class Counsel also propounded multiple sets of formal written discovery requests on Defendants and noticed the depositions of Defendants' Person Most Knowledgeable designees.³⁶ Counsel for the Parties also met and conferred on numerous occasions, e.g., regarding the pleadings, discovery, and the production of documents and data prior to settlement discussions.³⁷ Class Counsel also prepared for and attended court proceedings and settlement negotiations, among other tasks.³⁸

The Parties engaged in extensive settlement negotiations.³⁹ Prior to and during the settlement discussions, the Parties exchanged extensive class information and engaged in an intensive discussion regarding their evaluations of the lawsuit and various aspects of the Action, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification, the law relating to off-the-clock theory, meal and rest periods, and wage-and-hour enforcement, 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 extensive investigations, discovery and exchange of documents and data, and settlement negotiations, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴³

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³⁵ Aiwazian Decl., ¶ 12

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Id.*, ¶ 11.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Id.*, ¶¶ 16-18.

⁴³ Aiwazian Decl., ¶¶ 16-18.

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and/or 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, 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 complex employment litigation, including significant experience in California wage-and-hour class actions.⁴⁷

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

The Maximum Settlement Amount of One Million Four Hundred Thousand Dollars (\$1,400,000) 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 formal and informal discovery and exchange of information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵⁰ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵¹

Taking into account the Attorneys' Fees and Costs, Enhancement Award, and Settlement Administration Costs provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Eight Hundred Forty-Five Thousand Two Hundred Fifty Dollars (\$845,250) less Employer Taxes.⁵² As discussed in Part III, *supra*, the

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.

⁵² Aiwazian Decl., ¶ 14.

entire Net Settlement Amount will be fully distributed to Claimants, without reversion to Defendants. The amount of each Claimant's Individual Settlement Share will be calculated based on his or her 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 have experience with this type of litigation, and significant discovery 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 reaching the Settlement.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 Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁷

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⁵³ Settlement Agreement, ¶¶ 14.c. & 14.c.i.

⁵⁴ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁵⁵ *Id.*, ¶¶ 11-13 & 18.

⁵⁶ *Id.*, ¶ 18.

⁵⁷ Aiwazian Decl., ¶¶ 11-13 & 16-18.

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 case. 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 Plaintiff by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

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⁵⁸ Settlement Agreement, ¶ 8.

This Action involves a class that is estimated to consist of approximately two hundred and two (202) individuals.⁵⁹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding its non-exempt employees who were paid in whole or in part on an hourly basis at any time during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Action. Plaintiff contends that all of the Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures

⁵⁹ Aiwazian Decl., ¶ 9.

1 during the time period at issue.⁶⁰ Plaintiff's claims arise from Defendants' alleged uniform
2 policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*,
3 failing to properly pay overtime and minimum wages for all hours worked, failing to provide
4 compliant meal and rest periods and associated premium pay, failing to timely pay wages during
5 and after employment, failing to provide compliant wage statements, failing to maintain
6 requisite payroll records, and failing to reimburse necessary business-related expenses.⁶¹

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

11 Plaintiff maintains that the outcome of this litigation would be determined by
12 Defendants' alleged uniform operations and employment policies and procedures that applied
13 across its non-exempt employees who were paid in whole or in part on an hourly basis during
14 the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

17 Class Counsel has litigated the matter for over two years.⁶⁴ The ongoing work has been
18 extensive, demanding, and ultimately successful in achieving a substantial settlement resolution.
19 Class Counsel conducted extensive investigations into the facts of the case, formal and informal
20 discovery, mediation and settlement negotiations.⁶⁵ Counsel reviewed thousands of pages of
21 documents and data⁶⁶ and also interviewed and obtained information from Plaintiff and other
22 Class Members, researched applicable law, undertook damages/valuation calculations, and met
23 and conferred with Defendants' counsel regarding the pleadings and the production of
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25 ⁶⁰ Aiwazian Decl., ¶ 16.

26 ⁶¹ *Ibid.*

27 ⁶² *Ibid.*

28 ⁶³ *Ibid.*

⁶⁴ *Id.*, ¶ 11.

⁶⁵ *Id.*, ¶¶ 11-13.

⁶⁶ *Id.*, ¶ 12.

documents.⁶⁷ Counsel for the Parties also undertook extensive settlement discussions.⁶⁸

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁹

The Settlement establishes a Maximum Settlement Amount of One Million Four Hundred Dollars (\$1,400,000), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs consisting of an award in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$490,000) for attorneys' fees and an amount not to exceed Thirty Thousand Dollars (\$30,000) for reasonable litigation costs and expenses.⁷⁰ The Attorneys' Fees and Costs provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides the Class Members with information about the amount allocated toward Attorneys' Fees and Costs, and that Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷¹

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to

⁶⁷ Aiwazian Decl., ¶ 12.

⁶⁸ *Id.*, ¶ 11.

⁶⁹ *Id.*, ¶¶ 6-7.

⁷⁰ Settlement Agreement, ¶¶ 13, 14.c. & 16.

⁷¹ *Id.*, Exh. A.

1 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
2 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
3 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
4 settlement fund and the settlement agreement provides that the Defendants agree to paying the
5 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

24 Class Counsel has borne all of the risks and costs of litigation and will not receive any
25 compensation until recovery is obtained.⁷²

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28 ⁷² Aiwazian Decl., ¶ 19.

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 Attorneys' Fees and Costs, and, also at the Final Approval Hearing. Considering the work performed and the risks incurred, the Attorneys' Fees and Costs provided for by the Settlement, and to be requested by Class Counsel, are well within the range of reasonableness.

VIII. THE PROPOSED NOTICE PACKET IS ADEQUATE

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

The proposed Class Notice describes the Settlement, the deadlines and procedures to submit a Request for Exclusion from the Settlement, objection to the Settlement, written dispute regarding Workweeks, and/or Claim Form, and the date and time set for the Final Approval Hearing.⁷³ Each Class Member will also be mailed a Claim Form, that will state the number of Workweeks credited to him or her based on Defendants' records and his or her estimated Individual Settlement Share, as well as a Return Envelope.⁷⁴ A Class Member may challenge the number of Workweeks credited him or her by completing the designated portion of the Claim Form and returning it to the Settlement Administrator along with supporting documents. Together, the Class Notice, Claim Form, and Return Envelope, are referred to as "Notice Packet."⁷⁵

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the

⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Id.*, ¶¶ 15. & 17.

⁷⁵ *Id.*, ¶¶ 15, see Exh. B.

proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁶ The proposed Class Notice recognizes that the Court has not yet granted final approval of the Settlement.⁷⁷ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Shares are calculated and the number of Workweeks credited to them.⁷⁸

The proposed Notice Packet 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 Packet.

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

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Notice Packet to each Class Member by First Class U.S. mail.⁷⁹ With respect to any returned, undeliverable Notice Packet that is returned with a forwarding address on or before the Response Deadline, the Settlement Administrator will re-mail the Notice Packet via First Class U.S. Mail to the forwarding address.⁸⁰ With respect to any returned, undeliverable Notice Packets returned without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Notice Packet to the Class Member within five (5) calendar days of receipt.⁸¹ The Settlement Administrator will receive Requests for Exclusion, written objections, and any disputes regarding Workweeks.⁸²

⁷⁶ Settlement Agreement, Exh. A.

⁷⁷ *Ibid.*

⁷⁸ *Id.*, Exh. A. & Exh. B.

⁷⁹ Settlement Agreement, ¶ 17.

⁸⁰ *Id.*, ¶ 17.b.

⁸¹ *Ibid.*

⁸² *Id.*, ¶¶ 14.c.i, 14.c.ix, 19, & 20.

The Settlement Administrator will calculate the amounts due to Class Members; undertake all required withholding, remittances, and reporting of taxes in accordance with local, state, and federal laws; mail the Individual Settlement Share checks to Claimants; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Awards, and the LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸³ The Settlement Administration Costs are currently estimated to be Eight Thousand Five Dollars (\$8,500) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁸⁴

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris as the Settlement Administrator and direct the mailing of the Notice Packet to the Class Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice Packet, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸⁵

Within thirty (30) calendar days of the date on which the Court grants preliminary approval of the Settlement, Defendants will provide the Settlement Administrator with the following information for each Class Member: name, last-known mailing address, last-known telephone number, Social Security number or Federal Employment Identification Number, start and end dates of employment for Defendants as a non-exempt employee in California, and his or her Workweeks (collectively, "Class Data List").⁸⁶

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⁸³ Settlement Agreement ¶¶ 14.c, 14.c.i, 14.c.ix, & 15.

⁸⁴ Aiwasian Decl., ¶ 15.

⁸⁵ Settlement Agreement ¶¶ 15, 17, *see* Exh. A & Exh. B.

⁸⁶ *Id.*, ¶ 17.a.

1 Within sixty (60) calendar days of preliminary approval of the Settlement, the Settlement
2 Administrator will mail the Notice Packets to Class Members via First Class U.S. Mail.⁸⁷ If a
3 Notice Packet is returned to the Settlement Administrator with a forwarding address, the
4 Settlement Administrator will re-send the Notice Packet to the forwarding address.⁸⁸ If no
5 forwarding address is provided, then the Settlement Administrator will make reasonable efforts
6 to obtain an updated mailing address, including but not limited to conducting one skip-trace,
7 and re-mail the Notice Packet to the Class Member within five (5) calendar days of receipt.⁸⁹
8 Class Members will have until the Response Deadline to submit a Request for Exclusion,
9 objection to the Settlement, dispute regarding Workweeks, and/or Claim Form.⁹⁰ The
10 Settlement Administrator will send a deficiency notice to Class Members who timely submit
11 defective Claims Forms, and will provide those Class Members with fifteen (15) calendar days
12 from the date of the deficiency notice to cure any deficiency and re-submit their Claim Form.⁹¹
13 Additionally, the Settlement Administrator will send one reminder notice to Class Members
14 who have not returned a Claim Form on or before the date that is twenty (20) calendar days
15 before the Response Deadline.⁹²

16 Defendants will deliver the Maximum Settlement Amount to the Settlement
17 Administrator within thirty (30) calendar days after the Effective Date.⁹³ Within thirty (30)
18 calendar days after the Effective Date, the Settlement Administrator will distribute: (1) the
19 Individual Settlement Shares to Claimants; (2) the Court-approved Enhancement Awards to
20 Plaintiff; (3) the Court-approved Attorneys' Fees and Costs to Class Counsel; (4) the LWDA
21 Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁹⁴

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25 ⁸⁷ *Ibid.*

26 ⁸⁸ Settlement Agreement, ¶ 17.b.

27 ⁸⁹ *Ibid.*

28 ⁹⁰ *Id.*, ¶¶ 15.c.ix, 19, 20.

⁹¹ *Id.* ¶ 17.c.

⁹² *Ibid.*

⁹³ *Id.*, ¶ 14.c. & 14.c.viii, *see* ¶ 14.b for the definition of "Effective Date."

⁹⁴ *Id.*, ¶ 14.c.viii.

Individual Settlement Payment checks will remain valid and negotiable for one hundred and twenty (120) calendar days from the date of their issuance.⁹⁵ The Settlement Administrator will send one reminder notice to all Claimants who have not cashed or deposited their Individual Settlement Payment checks within ninety (90) calendar days from the date of issuance of the checks reminding them of the deadline to cash the check.⁹⁶ Individual Settlement Payment checks that are not negotiated within the 120-day period will be cancelled, and the funds from such cancelled checks will be transmitted to Koinonia Family Services, a non-profit 501(c)(3) organization with child advocacy programs in the State of California, as the *cy pres* recipient pursuant to Code of Civil Procedure section 384.⁹⁷

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT AWARD

Plaintiff Librado Sarceno respectfully requests that the Court appoint him as Class Representative and preliminarily approve the request for Enhancement Award of up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff, subject to the terms the terms set forth in the Agreement and the General Release Agreement of Librado Sarceno (“General Release Agreement”) attached as “**Exhibit E**” to the Settlement Agreement.⁹⁸ It is within the Court’s discretion to award payment to the class representative for his 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 incentive 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.*

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⁹⁵ *Id.*, ¶ 18.

⁹⁶ Settlement Agreement, ¶ 18.

⁹⁷ *Ibid.*

⁹⁸ Settlement Agreement, ¶ 14.c.vi, *see also* Settlement Agreement, Exh. E.

The contemplated Enhancement Award to Plaintiff is fair and appropriate. Plaintiff spent a substantial amount of time and effort in looking for relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁹ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.¹⁰⁰ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for his services on behalf of the Class, in addition to his Individual Settlement Share.

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; preliminarily appoint and designate Edwin Aiwazian, Esq., Arby Aiwazian, Esq., and Joanna Ghosh, Esq. of *Lawyers for Justice, PC* as Class Counsel; preliminarily appoint and designate Plaintiff Librado Sarceno as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Award, and Settlement Administration Costs; approve the proposed Class Notice and Claim Form; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately three and one half months after preliminary approval of the Settlement is granted; and permit the filing of a memorandum that exceeds the page limit.

Dated: October 27, 2020

LAWYERS for JUSTICE, PC

By:


Edwin Aiwazian
Attorneys for Plaintiff

⁹⁹ Aiwazian Decl., ¶ 20; Declaration of Librado Sarceno in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Sarceno Decl."), ¶ 4.

¹⁰⁰ Aiwazian Decl., ¶ 20; Sarceno Decl., ¶¶ 3-7.