

1 Taras Kick (SBN 143379)
taras@kicklawfirm.com
2 Greg Taylor (SBN 315128)
greg@kicklawfirm.com
3 THE KICK LAW FIRM, APC
815 Moraga Drive
4 Los Angeles, California 90049
Telephone: (310) 395-2988
5 Facsimile: (310) 395-2088

6 Attorneys for Plaintiffs SHIRLEY GOEMAAT
and REHANA BALUCH

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

10 SHIRLEY GOEMAAT and REHANA
BALUCH, individually, and on behalf of all
11 others similarly situated,

12 Plaintiffs,

13 vs.

14 ORANGE COUNTY ASSOCIATION FOR
MENTAL HEALTH, a California Corporation;
15 and DOES 1 through 100, inclusive,

16 Defendants.

Case No.: 30-2019-01106371-CU-BT-CXC

*[Assigned for all purposes to the Hon. Peter
Wilson, Dept. CX101]*

COMPLEX CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT;**

PROOF OF SERVICE

17 Date: December 22, 2022
18 Time: 2:00 p.m.
19 Dept: CX101

20 *[Filed concurrently with Declaration of Taras
21 Kick; Declaration of Stephen Gomez; and
[Proposed] Order]*

22 Complaint filed: October 21, 2019
23 FAC filed: June 12, 2021
24 Trial date: None set

1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS:**

2 **PLEASE TAKE NOTICE** that on December 22, 2022, at 2:00 p.m. in Department CX101
3 of this Court, or as soon thereafter as the matter as the matter may be heard, Plaintiffs Shirley Goemaat
4 and Rehana Baluch (“Plaintiffs”) respectfully move this Court for an order that:

5 1. Finally approves of the proposed class action settlement described herein and as set forth
6 in the parties’ Stipulation of Class and Representative Action Settlement Agreement and Release
7 (“Settlement” or “Settlement Agreement”), on the grounds that the Settlement is fair, reasonable and
8 adequate for all Class Members;

9 2. Finally certifies and binds the Class for settlement purposes only;

10 3. Finds that the Court-approved Class Notice distributed to the Settlement Class pursuant
11 to the Court’s August 5, 2022 Order granting preliminary approval constituted the best notice
12 practicable under the circumstances;

13 4. Orders Defendant to remit payment of \$175,000.00 to the Settlement Administrator;

14 5. Orders the Settlement Administrator to distribute \$15,000.00 to the California Labor and
15 Workforce Development Agency (“LWDA”) for penalties pursuant to the Labor Code Private
16 Attorneys General Act of 2004 (“PAGA”); and to distribute \$5,000.00 in PAGA penalties to PAGA
17 Members;

18 6. Approves the award of Class Representative Service Awards of \$10,000.00 each to
19 Plaintiffs Shirley Goemaat and Rehana Baluch as for their time and effort in representing the Class
20 and orders the Settlement Administrator to distribute the awards to Plaintiffs Goemaat and Baluch;
21 and

22 7. Approves Class Counsel’s Attorneys’ Fees Award in the amount of \$58,333.33 or one-
23 third (33-1/3%) of the total recovery and orders the Settlement Administrator to distribute the fee
24 award to The Kick Law Firm, APC and costs of \$11,655.84 for reimbursement of costs incurred by
25 Class Counsel in connection with the prosecution of this action, and to distribute up to \$6,995.00
26 Settlement Administration Costs to itself, Simpluris, Inc.

27 Plaintiffs shall also request that this Court enter a Final Judgment, which includes a provision
28 for this Court’s retention of jurisdiction over the parties to enforce the terms of the judgment.

1 This Motion is made pursuant to Rules of Court, Rules 3.764, 3.766, and 3.769, and Code of
2 Civil Procedure section 382, and is based on this Notice, the attached Memorandum of Points and
3 Authorities, the accompanying Declaration of Taras Kick and exhibits thereto, the Declaration of
4 Stephen Gomez, the complete files and records of this case, and any other evidence or oral argument
5 which may be considered by the court at the time of the hearing.

6
7 Dated: November 29, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

8
9 By: /s/ Taras Kick
Taras Kick
Greg Taylor
Attorneys for Plaintiffs Shirley Goemaat,
10 Rehana Baluch and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY**

3 Plaintiffs Shirley Goemaat and Rehana Baluch (“Plaintiffs”) filed this class and representative
4 action (“the Action”), individually and on behalf of all others similarly situated, on October 21, 2019,
5 alleging systematic illegal payroll practices and policies of Defendant Orange County Association for
6 Mental Health (“Defendant” or “OCAMH”) (collectively with Plaintiffs, “the Parties”).

7 After engaging in a private mediation with an experienced mediator and continuing to engage
8 in arm’s length negotiations thereafter, the Parties ultimately reached the proposed Settlement. (*See*
9 concurrently filed Declaration of Taras Kick [“Kick Declaration”], ¶ 15.) A true and correct copy of
10 the fully executed Stipulation of Class and Representative Action Settlement Agreement and Release
11 (“Settlement” or “Settlement Agreement”) is attached as **Exhibit 1** to the Kick Declaration.

12 This Court granted preliminary approval to the proposed settlement, as amended, in an Order
13 dated August 5, 2022, and conditionally certified the following Settlement Class: All current and
14 former non-exempt employees of Defendant employed in the State of California at any time from
15 February 7, 2019 to March 24, 2021. (*See* Order Granting Motion for Preliminary Approval of
16 Stipulation of Class and Representative Action Settlement [“Preliminary Approval Order”], ¶ 1.) The
17 Court preliminarily found the terms of the Settlement “to be within the range of reasonableness of a
18 settlement that ultimately could be granted final approval by the Court at the Final Approval Hearing.”
19 (*Id.*) The Court also found for purposes of the Settlement “that the proposed Class is ascertainable
20 and that there is a sufficiently well-defined community of interest among the Class in questions of
21 law and fact.” (*Id.*)

22 In its Order, the Court also appointed Simpluris, Inc. (“Simpluris”) as the Settlement
23 Administrator (Preliminary Approval Order, ¶ 5); approved the proposed Class Notice as to form and
24 content (*Id.*, ¶ 9); and found that the forms and methods of giving notice prescribed in the Settlement
25 Agreement consisute the best notice practicable under the circumstances, and constitute valid, due
26 and sufficient notice to all Class Members (*Id.*, ¶ 10). The Court ordered Simpluris to distribute the
27 Notice to the Class Members and ordered the Parties “to carry out the proposed Settlement according
28 to the terms of the Agreement.” (*Id.*, ¶¶ 13, 15.)

1 Plaintiffs can now report that the notice program ordered by this Court has been very
2 successful, and Plaintiffs therefore present the matter for final approval. Specifically, as evidenced
3 by the contemporaneously filed Declaration of Stephen Gomez of the court-appointed claims
4 administrator Simpluris, notice of the proposed Settlement was mailed by Simpluris to 300 unique
5 Class Members, to 296 of whom delivery was successful, meaning a successful deliverable rate of
6 98.67%. (Declaration of Stephen Gomez Regarding Notice and Settlement Administration
7 [“Simpluris Decl.”], ¶¶ 8-9.)

8 To date, not a single Class Member has objected to any aspect of the proposed settlement, and
9 not a single Class Member has disputed their workweeks. (*Id.*, ¶¶ 11-12.) Of the 300 Class Members,
10 Simpluris has received four (4) requests for exclusion from the proposed Settlement, which
11 constitutes 1.32% of the Class. (*Id.*, ¶ 13.) Therefore, if these numbers do not change, if this Court
12 approves the proposed Settlement in full, 296 Settlement Class Members will be paid their portion of
13 the Net Settlement Amount averaging \$208.11, including a highest estimated payment of \$710.48.
14 (*Id.*, ¶ 14.) This is in addition to 169 PAGA Members receiving their proportionate share of \$5,000.00
15 in PAGA penalties, with an estimated average Individual PAGA Payment of \$29.59 and the highest
16 estimated award of \$55.26. (*Id.*, ¶ 15.)

17 In sum, the proposed settlement of this class action is an excellent result for class members,
18 and Class Members’ reaction to it to date has been very favorable. For these reasons, and in keeping
19 with the points and authorities below, Plaintiffs respectfully request this Court enter a Final Approval
20 Order and an accompanying Final Judgment that: (1) finally approves the Settlement; (2) finally
21 certifies and binds the Class to the Settlement; (3) directs payments to Participating Class Members;
22 (4) directs payments to the Settlement Administrator; (5) directs payment to Plaintiffs; and (6) directs
23 payments to Class Counsel in accordance with Settlement terms.

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 **A. The Parties**

26 Defendant Orange County Association for Mental Health (“Defendant”) provides direct
27 services, advocacy, education, and information dissemination to residents of Orange County who are
28 impacted by mental illness. (Declaration of Shirley Goemaat in Support of Motion for Preliminary

1 Approval of Class Action Settlement [“Goemaat MPA Decl.”], ¶ 4.) Plaintiffs Shirley Goemaat and
2 Rehana Baluch worked for Defendant as non-exempt employees at Defendant’s South County
3 Wellness Center in Lake Forest, California, during the Class Period. Specifically, Plaintiff Goemaat
4 worked for Defendant from approximately November 25, 2015, through November 2016. (*Id.*)
5 Plaintiff Baluch worked for Defendant from approximately August 3, 2017, through May 2018.
6 (Declaration of Rehana Baluch in Support of Motion for Preliminary Approval of Class Action
7 Settlement [“Baluch MPA Decl.”], ¶ 4.)

8 **B. Procedural History**

9 On October 21, 2019, Plaintiff Shirley Goemaat filed this putative class and representative
10 action, entitled *Shirley Goemaat v. Orange County Association for Mental Health, et al., Orange*
11 *County Superior Court*, Case No. 30-2019-01106371-CU-BT-CXC (the “Action”), on behalf of
12 herself and others similarly situated to recover for wage and hour violations alleged against
13 Defendant, including: failure to pay minimum wages; failure to pay overtime wages; failure to provide
14 meal periods; failure to provide rest periods; failure to indemnify employees for necessary
15 expenditures incurred in discharge of duties; failure to provide accurate itemized wage statements;
16 and failure to timely pay all wages due at termination. Plaintiff alleged further that these Labor Code
17 violations constituted unfair and unlawful business practices under to the Unfair Competition Law
18 (“UCL”), Bus. & Prof. Code § 17200, *et seq.*

19 On February 7, 2020, Plaintiff Goemaat submitted a PAGA Notice to the Labor and
20 Workforce Development Agency (“LWDA”) and to Defendant, Case No. LWDA-CM-771404-20,
21 pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), alleging
22 Defendant violated various provisions of the California Labor Code and IWC Wage Orders. (Kick
23 Decl., ¶ 10.)

24 On June 12, 2020, upon the filing of the First Amended Complaint (“FAC”), Plaintiff Rehana
25 Baluch joined the Action as a proposed class representative and Plaintiffs added a cause of action
26 under the Private Attorneys General Act of 2004 (“PAGA”), Lab. Code § 2698, *et seq.* (Kick Decl.,
27 ¶ 11.) Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
28 associated with any of the allegations in the Action. (*Id.*)

1 **C. Investigation and Discovery, Settlement Negotiations, and Preliminary Approval.**

2 Prior to attending private mediation, Plaintiffs gathered the facts and data necessary to reach
3 a fair and reasonable settlement. (Kick Decl., ¶¶ 12-14.)

4 The Parties engaged in formal discovery, and Class Counsel prepared and propounded on
5 Defendant interrogatories, requests for admissions, and production demands. (*Id.*, ¶ 13.) In addition
6 to formal requests for production of documents, the Parties engaged in substantial informal discovery,
7 which Class Counsel used to evaluate the value of the claims. (*Id.*) Defendant's production included
8 relevant timekeeping and payroll records for 56 randomly selected putative Class Members employed
9 by Defendant during the period from October 2015 to October 2020. (*Id.*) Employee handbooks and
10 other documents pertaining to written policies and procedures were also produced. (*Id.*) Review of
11 all records confirmed substantial violations, including Defendant's systemic failure to record all hours
12 worked. (*Id.*, ¶ 14.) Defendant's violative policies and procedures are evidenced by the uniformity of
13 Defendant's virtually error-free timekeeping and payroll records. (*Id.*) Class Counsel carefully
14 considered the class claims at issue and its analysis of violation rates for Defendant's sample of time
15 and payroll data based on facially violative policies. (*Id.*)

16 Based on good faith meet and confer efforts, the Parties agreed to proceed to mediation with
17 Steve Mehta, Esq., a well-respected and experienced mediator. (*Id.*, ¶ 15.) On October 20, 2020, the
18 Parties attended a full-day, private mediation with Mr. Mehta. (*Id.*) Given the contentious negotiations
19 and the disputed claims, the matter was not resolved that day. Thereafter, the Parties engaged in
20 further negotiations, with Mr. Mehta's assistance, which ultimately resulted in the proposed
21 Settlement. (*Id.*, Ex. 1.)

22 On March 24, 2022, Plaintiffs filed an Unopposed Motion for Preliminary Approval of Class
23 Action Settlement ("MPA"), which was before this Court on May 5, 2022, and again on June 9, 2022.
24 (*Id.*, ¶ 16.) Following the hearing on May 5, 2022, the Parties made revisions as requested by the
25 Court, including amending the Settlement Agreement to clarify the release provisions. (*Id.*, Ex. 2.)
26 Following the hearing on June 9, 2022, additional briefing and revisions were completed as the Court
27 requested in its Order dated June 9, 2022. (*Id.*)

28 On August 5, 2022, the Court entered its Order Granting Plaintiffs' Motion for Preliminary

1 Approval of Class Action and PAGA Settlement (“Preliminary Approval Order”), preliminarily
2 approving the terms of the Settlement Agreement, the Class Notice, and the proposed administration
3 procedures and associated deadlines. (*Id.*, ¶ 17.)

4 Plaintiffs now move for final approval of the Settlement Agreement.

5 **III. SUMMARY OF PROPOSED SETTLEMENT AGREEMENT**

6 **A. Settlement Amount and Funding after Final Judgment.**

7 Defendant has agreed to pay a gross settlement amount of \$175,000.00 to fund all payments
8 pursuant to the Settlement, including: Individual Settlement Payments for wages, penalties, and
9 interest; a proposed Class Representative Service Award, subject to Court approval; Attorneys’ Fees
10 and Costs to Class Counsel, as approved by this Court; Settlement Administration Costs; and an
11 allocation for penalties under PAGA (the “PAGA Penalties”). (Kick Decl., ¶ 15, Ex. 1, Agreement,
12 ¶ 23.) In the Settlement Agreement, the “Gross Settlement Amount” (or “GSA”) is the actual amount
13 to be paid by Defendant, as no claims are being required, and there is no reversion of any residual
14 funds to Defendant. (*Id.*, ¶¶ 61-62.) Defendant will deposit the GSA with the Settlement
15 Administrator within seven (7) days of the Effective Date. (*Id.*, ¶ 86(a).) Defendant will pay the
16 employer’s payroll tax obligations on the wage portion of Individual Settlement Payments
17 (“Employer Taxes”) separately and in addition to the GSA. (*Id.*, ¶ 18.)

18 **B. No-Claim Form Settlement Binding on Parties.**

19 Participating Class Members and PAGA Members will not be required to submit claim forms
20 to receive Individual Settlement Payments or Individual PAGA Payments. (*Id.*, ¶ 62.)

21 **C. Release.**

22 After Defendant remits the GSA in full to the Settlement Administrator, Plaintiffs and
23 Participating Class Members shall be deemed to have settled and released the Released Parties of all
24 Released Claims, (*Id.*, Ex. 1, ¶¶ 45-46, 63, Ex. 2, ¶ 63), and the State of California, by and through
25 Plaintiffs and PAGA representatives Goemaat and Baluch, shall be deemed to have settled and
26 released the Released Parties of its PAGA Claims. (*Id.*, Ex. 1, ¶¶ 32, 45-46, 63, Ex. 2, ¶ 63.)

27 As defined in the Settlement, Released Claims means “all claims, rights, demands, liabilities
28 and causes of action arising during the Class Period that were alleged or reasonably could have been

1 alleged based on the facts asserted in the operative complaint in the Action.” (*Id.*, Ex. 1, ¶ 45.) The
2 release of PAGA Claims releases “all claims or causes of action under PAGA that could have been
3 premised on the claims alleged in Plaintiffs’ February 7, 2020 PAGA Notice to the LWDA and
4 Defendant and that were alleged or reasonably could have been alleged based on the facts asserted in
5 the FAC including, but not limited to, for violations of the California Labor Code and California
6 Industrial Welfare Commission Wage Orders.” (*Id.*, ¶ 32.) The Release agreed to by the Parties does
7 not contain any terms outside the scope of the Action. (*Id.*, ¶ 45.)

8 **D. Net Settlement Amount and Settlement Payments to Participating Class Members.**

9 The Net Settlement Amount (“NSA”) shall be calculated by deducting from the Gross
10 Settlement Amount the following: (i) Class Counsel’s attorneys’ fees and costs, (ii) the Class
11 Representative Service Awards, (iii) the PAGA Penalties, and (iv) the fees and expenses of the
12 Settlement Administrator. (*Id.*, ¶ 28.) Under the Settlement, each Participating Class Member will be
13 entitled to payment of a pro rata portion of the Net Settlement Amount. (*Id.*, ¶¶ 36, 71(a).)

14 Individual Settlement Payments will be calculated based on the total number of workweeks
15 Class Members worked during the Class Period, based on Defendant’s records (“Workweek Dollar
16 Value”). (*Id.*, ¶¶ 26, 52, 71.) The amount to be paid to each Class Member who does not opt out
17 (“Participating Class Member”) will be calculated by dividing the NSA by the Workweek Dollar
18 Value. (*Id.*) Defendant’s payroll records shall be determinative for purposes of calculating the
19 Workweek Dollar Value and the Individual Settlement Payments, absent proof to the contrary. (*Id.*, ¶
20 51.) Each Individual Settlement Payment of the Net Settlement Amount will be reported as 25%
21 wages and 75% interest, penalties, and other non-wage damages. (*Id.*, ¶¶ 71, 87(g).)

22 **E. PAGA Payment to the LWDA and PAGA Members.**

23 The PAGA Penalties is \$20,000, with \$15,000, or 75%, of the PAGA Penalties to be made
24 payable to the Labor and Workforce Development Agency (“LWDA”), and the remaining \$5,000, or
25 25%, to be distributed to PAGA Members based on the number of 14-day pay periods that each
26 worked between February 7, 2019, and March 24, 2021 (“the PAGA Period”). (*Id.*, ¶¶ 25, 34, 37.)

27 The amount to be paid per pay period to eligible Class Members who worked for Defendant
28 during the PAGA Period (“PAGA Members”), will be calculated by the Settlement Administrator by

1 dividing the \$5,000.00 PAGA payment due to PAGA Members by the total number of pay periods
2 for all PAGA Members. Each Individual PAGA Payment will be based on the number of pay periods
3 worked during the PAGA Period by each PAGA Member. (*Id.*, ¶ 70(a).) PAGA Members may not
4 opt out of the PAGA Settlement. (*Id.*, ¶ 75.) Individual PAGA Payments will be reported as one
5 hundred percent (100%) non-wage income on IRS Form 1099-MISC. (*Id.*, ¶ 87(d).)

6 **F. Settlement Checks Void at 180 Days and *Cy Pres* Transfer.**

7 No money will revert to Defendant under any circumstances. (*Id.*, ¶¶ 61-62.) If any Individual
8 Settlement Payment check remains uncashed after one hundred eighty (180) days from the date the
9 check is issued, such check(s) will be cancelled. (*Id.*, ¶ 72.) Thereafter, the funds represented by any
10 uncashed checks shall be distributed to Public Counsel, a 501(c)(3) organization, subject to the
11 Court's approval. (*Id.*) Public Counsel is a 501(c)(3) consumer advocacy organization that provides
12 pro bono legal services at sites across California. (*Id.*) The proposed *cy pres* distribution to Public
13 Counsel fulfills the purpose of the underlying causes of action by ensuring the non-reversionary
14 nature of the GSA, which serves to deter the misconduct alleged, and promotes justice for all
15 Californians. *See, e.g., In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 722. (*State of*
16 *California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472.) Class Counsel is not aware of any
17 financial interest or involvement by any counsel or party in the governance or work of the proposed
18 *cy pres* recipient. (Kick Decl., ¶ 25, Ex. 1, ¶ 72(b).)

19 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

20 On August 18, 2022, Defense Counsel provided Simpluris with a mailing list ("Class List")
21 containing contact information and dates of employment for all Class Members and PAGA Members.
22 The Class List contained data for three hundred and one (301) Class Members. (Simpluris Decl., ¶ 6.)
23 The mailing addresses contained in the Class List were processed and updated utilizing the National
24 Change of Address Database ("NCOA") maintained by the U.S. Postal Service. (*Id.*, ¶ 7.) From the
25 Class List, 169 individuals were identified as PAGA Members, who worked during the PAGA Period
26 from February 7, 2019 through March 24, 2021. (*Id.*, ¶ 15.)

27 On August 23, 2022, Defense Counsel provided Simpluris with the Court-approved Notice of
28 Class Action Settlement ("Class Notice"). (*Id.*, ¶ 5.)

1 On September 1, 2022, Class Notice was mailed to three hundred (300) Class Members with
2 addresses contained in the Class List via First Class mail or updated via the NCOA search. (*Id.*, ¶ 8.)
3 A total of 25 Class Notices were returned as undeliverable. (*Id.*, ¶ 9.) For those returned without a
4 forwarding address, Simpluris performed an advanced address search (i.e., skip trace), and Simpluris
5 re-mailed a Class Notice to 21 updated addresses. (*Id.*) Ultimately, there are four (4) Class Notices
6 that remain undeliverable, resulting in a successful delivery rate of 98.67%. (*Id.*)

7 To date, Simpluris has received no objections to the Settlement and no workweek/pay period
8 disputes. (*Id.*, ¶¶ 11-12.) Simpluris has received four opt-out requests, representing 1.32% of the
9 Class. (*Id.*, ¶ 13.)

10 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

11 “The trial court has broad discretion to determine whether the settlement is fair. [Citation.]”
12 (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581.)¹ The proponent of the settlement has the
13 burden to show that it is fair and reasonable. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
14 224, 245.) “‘Ultimately, the [trial] court’s determination is nothing more than an ‘amalgam of delicate
15 balancing, gross approximations and rough justice.’” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
16 1794, 1801.) A presumption of fairness exists where: (1) the settlement is reached through arm’s-
17 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
18 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
19 small. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *7-Eleven Owners for Fair*
20 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.)

21 In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues
22 of fact and law that underlie the merits of the dispute. (*7-Eleven, supra*, 85 Cal.App.4th at 1146.) The

24 ¹ “It should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,
25 complexity and likely duration of further litigation, the risk of maintaining class action status through
26 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
27 proceedings, the experience and views of counsel, the presence of a governmental participant, and
28 the reaction of the class members to the proposed settlement ... Due regard should be given to what
is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the
extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned.’” (*Nordstrom Com. Cases* (2010) 186
Cal.App.4th 576, 581.)

1 inquiry is not whether the settlement agreement is the best one that class members could have possibly
2 obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” (*Chavez*
3 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55.) A settlement need not obtain 100 percent of the
4 damages sought in order to be fair, reasonable, and ultimately, meaningful. (*Wershba, supra*, 91
5 Cal.App.4th at 251.) Even if the proposed settlement affords relief that is substantially narrower than
6 it would be if the case were to be successfully litigated, that is no bar to a class settlement because
7 the public interest may indeed be served by a voluntary settlement in which each side gives ground
8 in the interest of avoiding prolonged litigation. (*Id.*)

9 **A. The Settlement Resulted from Arm’s-Length Bargaining Based Upon Extensive**
10 **Investigation and Discovery**

11 The investigation and discovery conducted in this matter have been adequate to give the
12 Plaintiffs and Class Counsel a sound understanding of the merits of their position, Defendant’s
13 defenses, and to evaluate the reasonable value range of the claims of the Class. (Kick Decl., ¶¶ 12-
14 14.) In the pre-mediation time period, Defendant produced its company policies and procedures as
15 well as a statistically significant sample of Class Members’ timekeeping and payroll records. (*Id.*)
16 Class Counsel conducted significant investigation into the claims and estimates, including careful
17 analysis of this data, which was used as a damages model for the mediation. (*Id.*) Based on the
18 information gathered, including these damages calculations, Class Counsel estimated the recovery
19 the Class could potentially obtain, if Plaintiffs were to prevail. (*Id.*)

20 On October 20, 2020, the Parties engaged in a full-day mediation session with an experienced
21 mediator, Steve Mehta, Esq. Although the mediation did not result in a settlement, the Parties
22 continued to engage in arm’s length negotiations that ultimately resulted in the proposed Settlement.
23 (*Id.*, ¶ 15.)

24 **B. The Risks Inherent in Continued Litigation and Individual Settlement Favor Final**
25 **Approval of the Settlement**

26 Had the Action not settled, Defendant would have challenged class certification and liability.
27 Defendant contended that individualized questions of fact predominate over any common issues, and
28 these issues would pose challenges to certification. (Kick Decl., ¶ 26.) Defendant would have likely

1 argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide adjudication.
2 On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to
3 decide Plaintiffs' claims on a class-wide basis. Additionally, preparation for trial would have been
4 expensive for all Parties. (*Id.*)

5 It is preferable to reach an early resolution of a dispute because such resolutions save time and
6 money that would otherwise go to litigation. Were litigation to proceed, there is a strong likelihood
7 it would be protracted and contentious, as Defendant disputes all aspects of Plaintiffs' claims. (Kick
8 Decl., ¶ 27.) As a threshold matter, if the Agreement is not approved, Plaintiffs will have to prepare
9 and file a motion for class certification, which outcome is uncertain based on Defendant's contentions,
10 *inter alia*, that individual questions of fact predominate, and that Plaintiffs cannot show the
11 "willfulness" requirement for Section 203 penalties. If the motion were granted, Defendant would
12 likely move for decertification, appeal certification, or move for Summary Judgment. (*Id.*) Plaintiffs
13 believe they would prevail on the question of certification, but the risks to absent Class Members are
14 significant. (*Id.*, ¶ 28.)

15 To succeed on the merits, Plaintiffs would have to prove that Defendant actually engaged in
16 the practices and policies alleged and that those practices and policies violated the law. While Class
17 Counsel believe strong evidence exists showing Defendant's liability, there remains a risk that the
18 trier of fact might find otherwise. (*Id.*) If the case were to proceed to trial, additional discovery would
19 be needed and the Parties would thus incur significant additional expenses, which money could go
20 instead to fund a settlement for the benefit of the Class as a whole. (*Id.*) Moreover, discovery disputes
21 would have certainly arisen, which would have cost the Parties additional time and money. (*Id.*)
22 Further, regardless of which Party prevailed, appellate practice would no doubt ensue, further
23 delaying any possible recovery by Class Members. (*Id.*, ¶ 29.) In other words, both Parties would
24 likely incur substantial attorneys' fees and costs from continued litigation, likely approaching
25 hundreds of thousands of dollars. (*Id.*)

26 In contrast, the Settlement provides real and significant benefits for the Class Members here
27 and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the
28 possibility of recovery.

1 Along with determining a well-defined community of interest, courts may also evaluate “the
2 probability that each class member will come forward ultimately to prove his or her separate claim to
3 a portion of the total recovery and whether the class approach would actually serve to deter and redress
4 alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Here, if absent Class
5 Members wish to seek individual legal redress from Defendant for their wage and hour claims by
6 filing suit on their own, they may opt out of the Settlement. (Kick Decl., Ex. 1, ¶ 75.) Moreover,
7 individual litigation arising from similar operative facts unduly burden the courts and may produce
8 inconsistent results, which may be avoided here. The Settlement fund created will deter and redress
9 the wage-and-hour violations that Defendant is alleged to have committed.

10 It would be grossly inefficient for such a large class of current and former employees to bring
11 individual actions to recover from Defendant for the alleged violations of wage-and-hour laws.
12 Moreover, the potential individual recovery that could be obtained by a Class Member would not be
13 significant enough to provide him or her with the incentive to sue. By granting final approval of the
14 Settlement, the Court can approve a resolution that provides a certain and substantial recovery for
15 Class Members.

16 **C. The Proposed Settlement is Fair and Reasonable.**

17 A trial court has “broad discretion” to determine “whether a settlement [is] fair and
18 reasonable.” (*Wershba, supra*, 91 Cal.App.4th at 234-235; *In re Cellphone Fee Termination Cases*
19 (2010) 186 Cal.App.4th 1380, 1389.) A trial court should consider relevant factors, which may
20 include the strength of a plaintiff’s case, the risk, expense, complexity and likely duration of further
21 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
22 the extent of discovery completed and the stage of the proceedings, the experience and views of
23 counsel, the presence of a governmental participant, and the reaction of the class members to the
24 proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) The court
25 must satisfy itself that the settlement is within the “ballpark” of reasonableness. (*Id.*, at p. 133.)

26 Here, the Settlement, which provides for a gross settlement amount of \$175,000.00, is fair,
27 adequate and reasonable to Class Members. The Settlement was calculated using information and
28 data uncovered through extensive case investigation, formal and informal discovery, and the

1 exchange of information in the context of mediation. (Kick Decl., ¶¶ 13-14.) The Settlement takes
2 into account the potential risks and rewards inherent in any case and in this matter, in particular.
3 Moreover, considering all of the facts in this case, the Settlement represents a considerable recovery.

4 To date, there are 296 Participating Class Members who will receive an average Individual
5 Settlement Award currently estimated to be \$208.11, with a highest estimated payment of \$710.48.
6 (Simpluris Decl., ¶ 14.) This is in addition to 169 PAGA Members receiving an estimated average
7 payment of \$29.59. (*Id.*, ¶ 15.) These are significant individual recoveries in light of the risks of
8 litigation.

9 Courts have determined that settlements are, of course, reasonable even where plaintiffs
10 recover only a portion of their actual losses. *See, e.g., Behrens v. Wometco Enters., Inc.* (S.D. Fla.
11 1988) 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement
12 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or
13 inadequate.”) Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even—a
14 thousandth of a single percent of the potential recovery.” (*Id.*; *see also Martel v. Valderamma* (C.D.
15 Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement of \$75,000 when potential
16 damages were \$1.2 million, or about 6%); *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D.
17 438, 453 (approving settlement with vouchers, not cash, potentially worth a maximum of 3% if all
18 possible claims were actually made, or \$391.5 million aggregate voucher potential where the class
19 could have recovered \$13.05 billion); *City of Detroit v. Grinnell Corp.* (S.D.N.Y. 1972) 356 F. Supp.
20 1380, 1386, *aff'd in part, rev'd on other grounds*, (2d Cir. 1974) 495 F.2d 448 (a recovery of 3.2 %
21 to 3.7 % of the amount sought is “well within the ball park.”)

22 As this Court knows, the inquiry is not whether the settlement agreement is the best one that
23 class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair,
24 adequate, and reasonable.” (*Chavez*, 162 Cal.App.4th at 55.) The Action involves multiple complex
25 legal issues, including Defendant’s liability for alleged Labor Code violations and class certification.
26 If the proposed Agreement is not approved, the litigation could go on for several years, which would
27 be extremely expensive and an inefficient use of judicial resources. Continued litigation would also
28 have been expensive, including the expense of expert witnesses and trial consultants, and, potentially

1 hundreds of thousands of additional dollars in attorney fees for both sides. (Kick Decl., ¶¶ 28-30.)

2 Accordingly, Class Counsel believes that \$175,000.00 represents a victory on multiple
3 theories and commensurate with any potential recovery at trial, had Plaintiffs certified a class and
4 then prevailed, which outcome is not certain. (*Id.*) Given the risks inherent in continuing to litigate,
5 including 1) the possibility of an unfavorable, or less favorable, result at trial, 2) the likely possibility
6 that post-trial motions may similarly result in a less favorable result than at trial, and 3) the possibility
7 of a less favorable result on appeal, with the certainty that the appeal process would be lengthy, the
8 Agreement is a fair, adequate, and reasonable resolution for the Class as a whole. (Kick Decl. ¶ 31.)

9 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational
10 basis [to warrant approval], particularly if recommended by experienced and competent class
11 counsel.” (*In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127
12 F.Supp.2d 418, 429-30.) The *pro rata* allocation here is a fair and reasonable way to distribute the
13 Net Settlement Amount. In light of the above considerations, Class Counsel believes that the
14 Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.
15 (Kick Decl., ¶ 31.) Although the recommendations of Class Counsel are not conclusive, the Court can
16 properly take the recommendations into account, particularly if Class Counsel appears to be
17 competent, has experience with this type of litigation, and significant discovery and investigation
18 have been completed, as is the case here. (Conte & Newberg, *Newberg on Class Actions* (4th Ed.,
19 2002) § 11.47.) As such, the Court should grant final approval of the Settlement.

20 **VI. REASONABLE SETTLEMENT ADMINISTRATION COSTS TO BE APPROVED**

21 As set forth in the accompanying Declaration of Stephen Gomez from Simpluris, Inc., the
22 total costs incurred and to be incurred by Simpluris for the notice and settlement administration
23 process is \$6,995.00. (Simpluris Decl., ¶ 16.) The costs incurred and to be incurred include, but are
24 not limited to, expenses for printing and mailing the Notice of Class Action Settlement to Class
25 Members; establishing and maintaining a means to receive and validate opt out requests submitted
26 by Class Members, including a toll-free telephone number; establishing and maintaining a settlement
27 fund account; calculating Individual Settlement Payments and distributing funds to Class Members;
28 calculating Employer Taxes and providing appropriate forms and calculations to Defendant;

1 and providing counsel with weekly reports; among other things. (*Id.*, ¶ 3, Ex. B.) Accordingly, the
2 Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the
3 notice and settlement process, in the amount of \$6,995.00.

4 **VII. PLAINTIFFS SERVED ADMIRABLY AS CLASS REPRESENTATIVES AND THE**
5 **REQUESTED SERVICE AWARDS ARE REASONABLE**

6 Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
7 compensation “for the expense or risk they have incurred in conferring a benefit on other members
8 of the class.” (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th
9 399, 412.) It is within a court’s discretion to award payment to a class representative for their efforts
10 and work. (*Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299 [approving
11 \$50,000 participation award to a single class representative].)

12 The criteria courts may consider in determining whether to make an incentive award
13 include: 1) the risk to the class representative in commencing suit, both financial and
14 otherwise; 2) the notoriety and personal difficulties encountered by the class
15 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. [Citations.] (*Ibid.*)

16 Here, the Court appointed Plaintiffs Shirley Goemaat and Rehana Baluch as Class
17 Representatives and preliminarily approved the requested disbursement of a Class Representative
18 Service Award in an amount not to exceed \$10,000 to each Plaintiff, for a total of \$20,000.00.
19 (Preliminary Approval Order, ¶ 12.) This Service Award request is fair and appropriate given: (1) the
20 substantial time and effort Plaintiffs expended; (2) the risks they faced and continue to face as a result
21 of bringing the Action; (3) the fact they put Class Members’ interests ahead of their own; and (4) the
22 substantial benefit conferred upon the Class. (Kick Decl., ¶¶ 23-24; Goemaat MPA Decl., ¶¶ 6-9;
23 Baluch MPA Decl., ¶¶ 6-9.) Ms. Goemaat and Ms. Baluch spent a substantial amount of time and
24 effort in producing relevant documents and past employment records and providing the facts and
25 evidence necessary to attempt to prove the allegations. (Kick Decl., ¶ 24; Goemaat MPA Decl., ¶¶ 8-
26 9; Baluch MPA Decl., ¶¶ 8-9.) Ms. Goemaat and Ms. Baluch assisted actively in the investigation of
27 the claims alleged, conferred regularly with counsel, aided in preparation for the Parties’ mediation,
28 made themselves available the entire day of mediation, and provided all information requested by

counsel to benefit the Class. (*Id.*) Accordingly, it is appropriate and just for Plaintiffs to receive Class Representative Service Awards for their services on behalf of the Class, in addition to their Individual Settlement Payment as Class Members.

VIII. PLAINTIFFS' REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

Class Counsel request an award of attorneys' fees in the amount of \$58,333.33, which is one-third of the GSA. Although Plaintiffs apply pursuant to the percentage-of-the-benefit methodology, the requested fee award is appropriate under both a percentage-of-the-benefit methodology, as well as under a lodestar cross-check. Defendant does not oppose this request.

A. Plaintiffs Request a One-Third Percentage-Based Fee Award

California law allows the award of attorneys' fees in class actions based on the percentage-of-the-fund method. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 486; *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 63 ["fees based on a percentage of the benefits are in fact appropriate in large class actions when the benefit per class member is relatively low"]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *Consumer Cause v. Mrs. Gooch's Natural Food Markets* (2005) 127 Cal.App.4th 387, 397 [the common fund doctrine is "frequently applied in class actions when the efforts of the attorney for the named class representatives produce monetary benefits for the entire class"].) There is substantial authority for determining the fee award based on a percentage of the total value of the recovery. The requested fees fall well within an appropriate range under the common fund approach as it is common to award attorney's fees to class counsel of one-third (33-1/3%) of the settlement amount or higher. (*Chavez*, at 66: "[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.")

In *Laffitte*, the Supreme Court of California, in a case involving an objection to a one-third percentage based recovery in a \$19 million employment class action lawsuit, stated: "We hold further that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee ... [and] also retain the discretion to forego a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee." (*Laffitte*, 1 Cal.5th at 506, emphasis added.) Several courts have expressed frustration with the alternative "lodestar" approach, which usually involves

1 wading through voluminous and often indecipherable time records. (See, e.g., *In re Activision*
2 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375.) The percentage approach is
3 preferable to the lodestar because: (1) it provides predictability to class counsel and class members;
4 (2) encourages efficient resolution by providing an incentive for early, yet reasonable, settlement; and
5 (3) reduces the demands on judicial records. (*Id.*, at 1378-79.) In fact, “[a] task force commissioned
6 by the Third Circuit concluded that the lodestar approach... is a cumbersome, enervating, and often
7 surrealistic process of preparing and evaluating fee petitions that now plagues the Bench and Bar and
8 recommended a return to the percentage of the recovery fee formula in cases involving a settlement
9 fund.” (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28, citations and quotation
10 marks omitted.) In *Lealao*, the Court of Appeal considered counsel’s efficiency and skill in bringing
11 the case to an early resolution.

12 [T]he promptness of settlement cannot be used to justify the refusal to apply a
13 multiplier to reflect the size of the class recovery without exacerbating the disincentive
14 to settle promptly inherent in the lodestar methodology. Considering that our Supreme
15 Court has placed an extraordinarily high value on settlement . . . it would seem counsel
16 should be **rewarded, not punished**, for helping to achieve that goal....
17 (*Id.*, at 52, citations omitted, emphasis added.) Newberg notes that achievement of a substantial
18 recovery with modest hours expended should not be penalized but should be rewarded for
19 considerations of time saved by superior services performed. (Newberg on Class Actions, 4th Ed.
20 2002, § 14:6.) Courts should not only consider the size of the class or the amount of the recovery;
21 instead, it should also examine the size of the individual settlement amount of each class member as
22 an indication of counsel’s contribution to the case. (*Lealao*, 82 Cal.App.4th at 53.)

23 Here, not only have there been no objections to any aspect of this proposed settlement, but
24 Class Counsel obtained an exceptional result – a proposed settlement of \$175,000.00 for a Class of
25 296 employees.

26 **B. Analysis Pursuant to the Lodestar Methodology.**

27 Regarding the lodestar methodology, a lodestar figure is calculated by multiplying the
28 reasonable hours expended by a reasonable hourly rate. (*Wershba v. Apple Computer* (2001) 91
Cal.App.4th 224, 254.) A lodestar amount may be increased by a multiplier. (*Serrano*, 20 Cal.3d at
49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407.) “Multipliers can range from 2 to 4 or

1 even higher.” (*Wershba*, at 255.) Class Counsel’s lodestar totals \$186,290, after voluntary deductions
2 based on business judgment, but will be restricting their fee request to \$58,333.33 one-third of the
3 GSA, despite the substantial risk they bore in this case. (Kick Decl., ¶¶ 26-31.)² In other words,
4 although this is the sort of case which would certainly merit a “positive multiplier” on the lodestar,
5 nonetheless, if this Court grants the fee request made by Class Counsel, Class Counsel will be
6 receiving a “negative multiplier.”³

7 There is a strong presumption that the lodestar represents a reasonable fee. (*See Perdue v.*
8 *Kenny A. ex rel. Winn* (2010) 559 U.S. 542, 543 [130 S.Ct. 1662, 1667, 176 L.Ed.2d 494] (citing
9 *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565, 106 S.Ct. 3088,
10 92 L.Ed.2d 439, 564)). Furthermore, Courts have noted that a percentage fee that falls *below* counsel’s
11 lodestar supports the reasonableness of the award. (*See, e.g., In re Portal Software, Inc. Sec. Litig.*,
12 No. C- 03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (“negative multiplier
13 suggests that the percentage-based amount is reasonable and fair”); *In re Amgen Inc. Sec. Litig.*, Case
14 No. CV 07-2536 PSG (PLAx), 2016 WL 10571773, at *9 (C.D. Cal. Oct 25, 2016) (same).)
15 Moreover, a negative multiplier, like the negative multiplier here, means that Plaintiffs’ Counsel is
16 seeking to be paid “for only a portion of the hours that they expended on the action.” (*Amgen*, at *9.)

17 The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group,*
18 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). “[I]n assessing a reasonable hourly rate, the trial court
19 is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’
20 reputation and status.” (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The
21 trial court may also “find hourly rates reasonable based on evidence of other courts approving similar
22 rates.” (*Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.) The

24 ² Under California law, this Court may award the attorneys’ fees without the attorneys’ timesheets *Concepcion*
25 *v. Amscan Holdings* (2014) 223 Cal.App.4th 1309, 1324; *Raining Data v. Barrenchea* (2009) 175 Cal.App.4th
26 1363, 1375-76 (“[t]he law is clear, however, that an award of attorney fees may be based on counsel's
27 declarations, without production of detailed time records”). The concurrently filed declaration by Taras Kick
of The Kick Law Firm, APC summarizes and categorizes the firm’s time records. Class Counsel can also
provide time sheets and make them available for *in camera* review by this Honorable Court if the Court so
wishes.

28 ³ Were this Court for some reason not to accept all of the hours or rates specified in the concurrently filed Kick
Declaration, Class Counsel respectfully request a multiplier which will allow the awarded attorneys’ fees to
reach the one-third of the \$175,000 recovery, meaning \$58,333.33.

1 current prevailing billing or “market” rates in the Southern California area range from over \$300.00
2 to over \$1,000.00 per hour.⁴ As can be seen in the Kick Declaration at Paragraph 5, the rate sought
3 here has been approved by numerous courts across the country, including in California. (Kick Decl.,
4 ¶ 5.) Further, the rates are well within the range of rates awarded in class action litigation in
5 California. (*In re Toyota Motor* (C.D. Cal. 2013) 2013 U.S. Dist.Lexis 123298 [approving rate of
6 \$950]; *Banas v. Volcano Corp.* (N.D. Cal. 2014) 47 F.Supp.3d 957 [approving 2014 rate of \$1,095;
7 *In re High Tech Empl. Antitrust Litig.*, (N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 118052 *33
8 [approving rates of \$975 an hour].)

9 Trial courts consider the following factors when determining whether to apply a multiplier:
10 “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them,
11 (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4)
12 the contingent nature of the fee award.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, citations
13 omitted.) In California, “[m]ultipliers can range from two to four or even higher” and are routinely
14 applied. (*Wershba*, 91 Cal.App.4th at 254.)⁵ The goal is “to entice competent counsel to undertake
15 difficult public interest cases.” (*San Bernardino Valley Audubon Soc. v. County of San Bernardino*
16 (1985) 155 Cal.App.3d 738, 755.) Fee awards that are too small “chill the private enforcement
17 essential to the vindication of many rights[.]” (*Lealao*, 82 Cal.App.4th at 53.)

18 If for whatever reason the Court wishes to apply a lower hourly rate such that the fee award
19

20
21 ⁴ See, e.g., *McKnight, et al., v. Uber Technologies, Inc., et al.* 3:14-CV-05615-JST, Docket No. 148, [December
22 8, 2017 attorney fee declaration citing *In re High-Tech Employee Antitrust Litig.* (N.D. Cal. Sept. 2, 2015)
23 2015 WL 5158730, at *9 (finding reasonable “billing rates for partners [that] range from about \$490 to \$975
24 ... billing rates for non-partner attorneys, including senior counsel, counsel, senior associates, associates, and
25 staff attorneys, [that] range from about \$310 to \$800...”]; *Bickley v. CenturyLink, Inc.* (C.D. Cal. Nov. 29,
2016) No. CV 15-1014-JGB (ASX), 2016 WL 9046911, at *3-4 [finding attorneys’ fee requests of up to \$750
per hour reasonable and in line with the prevailing rate in the District].). In *Bickley*, a billing survey was
submitted from 2013 listing the rates for partners and associates from large law firms, noting that those rates
ranged from a low of \$515/per hour for associates to \$1,220/per hour for partners. (*Id.*, at ¶ 4.) The majority
of the rates for partners were between \$700 and \$1000 per hour. (*Ibid.*)

26 ⁵ See also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora*
27 *Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that
28 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125
(awarding a common fund fee award that amounted to a 5.2 multiplier); *Vizcaino v. Microsoft Corp.* (9th Cir.
2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*, 901 F.Supp. at 298-299 (approving
multiplier of 3.6).

1 were lower than the one-third leading to the \$58,333.33 sought, Class Counsel respectfully requests
2 an increased multiplier to bring it to that amount. If for whatever reason the Court were inclined to
3 use a percentage lower than one-third, Class Counsel request the lodestar and multiplier be used to
4 arrive at \$58,333.33. Although there are a number of valid reasons for a multiplier in this case, one
5 is the contingent risk as explained by the California Supreme Court in *Ketchum v. Moses* (2001) 24
6 Cal.4th 1122, 1133: “A lawyer who both bears the risk of not being paid and provides legal services
7 is not receiving the fair market value of his work if he is paid only for the second of these functions.”

8 Finally, Class Counsel have spent significant time and resources on this case, which could have
9 been directed towards other cases. (Kick Decl. ¶ 19.)

10 **C. Litigation Costs Reimbursement**

11 Class Counsel seek reimbursement of necessary litigation costs in the amount of \$11,655.84,
12 which is the amount that has been advanced on behalf of the class members to date and is less than
13 the “not to exceed” cost represented in the notice to Class Members as \$15,000. (*Id.*, ¶ 22). These
14 costs include already incurred costs of filing fees, legal research, mediation fees, and others. (*Id.*)

15 **IX. THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED**

16 In granting preliminary approval, this Court already determined that the proposed settlement
17 class fulfills all the criteria of California Code of Civil Procedure section 382, and applicable case
18 law, and is appropriate for certification. None of these factors have changed.

19 Numerosity is readily satisfied because there are 296 members in the settlement Class. (*See*,
20 *Vasquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971); *Simpluris Decl.*, ¶ 15.) Common questions
21 of law and fact predominate because all Class members were subject to a common policies and
22 practices and were paid according to uniform formulae. *See Arenas v. El Torito Rests., Inc.*, 183 Cal.
23 App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913
24 (2001)). The requirements of typicality and adequacy of representation are also satisfied as Plaintiffs
25 were also subject to the same compensation and employment policies and practices. *Newberg*, § 3:13.
26 Plaintiffs’ interests are essentially identical, if not exactly identical, to those of the Class and there is
27 no conflict between Plaintiffs or their counsel, on the one hand, and any other Class Member. (Kick
28 Decl., ¶ 23; *See Richmond v. Dart Industries*, 29 Cal.App.3d 462, 470 (1981).)

1 The requirement of ascertainability is easily met because Class members, who all worked for
2 Defendant during the Class Period, share “a set of common characteristics sufficient to allow a
3 member of that group to identify himself or herself as having a right to recover based on the
4 description,” (*See Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828), and in
5 addition, Defendants’ records readily identified the Class members based on their dates of
6 employment. (Kick Decl. ¶ 32.) Lastly, in this matter, where global resolution is achieved for 296
7 Class members whose claims which would otherwise be too small to warrant individual litigation, a
8 class action is demonstrably superior to other methods of adjudication. (*Richmond, supra*, 29 Cal.3d
9 462, 469; *Simpluris Decl.*, ¶ 15.)

10 With each of these factors satisfied, it is appropriate now to grant final certification.

11 **X. CONCLUSION**

12 Plaintiffs, hence, respectfully request that this Court enter a Final Approval Order and an
13 accompanying Judgment that: (1) finally approves the Settlement; (2) finally certifies and binds the
14 Class; (3) finds the Class Notice satisfied due process; (4) orders Defendant to remit the Gross
15 Settlement Amount of \$175,000.00; (5) orders Individual Settlement Payment distribution; (6) orders
16 the \$15,000.00 PAGA Payment to the LWDA; (7) orders the \$5,000.00 PAGA Payment to PAGA
17 Members; (8) orders the \$6,995.00 Settlement Administration Costs distribution; (9) orders the Class
18 Representative Service Awards of \$10,000.00 each to Plaintiffs Goemaat and Baluch; (10) orders the
19 \$58,333.33 Class Counsel Fee Award distribution; and (11) orders the \$11,655.84 Class Counsel Cost
20 Award distribution.

21
22 DATED: November 29, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

23
24 By: /s/ Taras Kick
25 Taras Kick
26 Greg Taylor
27 Attorneys for Plaintiffs Shirley Goemaat,
28 Rehana Baluch and the Class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049.

On **November 29, 2022**, I served the document(s) described as:

- **PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF TARAS KICK IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF STEPHEN GOMEZ REGARDING NOTICE AND SETTLEMENT ADMINISTRATION.**

on the interested parties in this action by sending a true copy thereof to interested parties as follows:

Steven Amundson
Alina Sookasian
MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
801 S Figueroa St 15th Floor,
Los Angeles, CA 90017
sca@manningllp.com
aws@manningllp.com

Representing:
Defendant Orange County Association for
Mental Health

[X] **BY E-SERVICE:** Based on an agreement of the parties to accept service by e-mail transmission, a request that the party or parties, who have appeared and are represented by counsel identified below, or pursuant to California Rules of Court, Appendix I (Emergency Rules Related to COVID-19), Emergency rule 12 (Electronic service), I caused the documents to be sent to the person(s) at the address(es) at the e-mail address(es) listed below. The transmission was either reported as being sent, complete and without error, or I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 29, 2022, in Los Angeles, California.

/s/ Dariane Rose
Dariane Rose