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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JASON BEINBRECH, 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,

v.

MATTHEWS INTERNATIONAL CORPORATION, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVSB2226992

Honorable Joseph T. Ortiz
Department S17

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 (Annabel Blanchard); Declaration of Proposed Class Representative (Jason Beinbrech); and [Proposed] Order filed concurrently herewith]

Date:	December 20, 2023
Time:	1:30 p.m.
Department:	S17
Complaint Filed:	November 30, 2022
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on December 20, 2023 at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Joseph T. Ortiz in Department S17 of the Superior Court of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Jason Beinbrech ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement ("Agreement"), attached as "EXHIBIT A" to the Declaration of Annabel Blanchard, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Enhancement Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Jason Beinbrech as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement ("Notice"), attached as "EXHIBIT 1" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members and PAGA Employees;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Award for Plaintiff, and Settlement Administration Costs to Settlement Administrator.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Annabel Blanchard) and Proposed Class Representative (Jason Beinbrech) 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: November 17, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________________
Annabel Blanchard
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jason Beinbrech ("Plaintiff" or "Class Representative") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Matthews International Corporation ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to settle this lawsuit for a Gross Settlement Amount of One Million One Hundred Thousand Dollars and Zero Cents ($1,100,000.00).[1] The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Enhancement Award of Ten Thousand Dollars ($10,000.00) to Plaintiff[3]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or $385,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty-Two Thousand Dollars ($32,000.00)[4]; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Ten Thousand Dollars ($10,000.00);[5] and (5) the amount of Forty Thousand Dollars ($40,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $30,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $10,000.00) will be distributed to PAGA Employees as a part of the Net Settlement Amount.[6]

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[1] Settlement Agreement, attached as "**EXHIBIT A**" to Declaration of Annabel Blanchard ("Blanchard Decl."), ¶ 17.
[2] *Id.*, ¶ 18.
[3] *Id.*, ¶ 92.
[4] *Id.*, ¶ 93.
[5] *Id.*, ¶ 86.
[6] *Id.*, ¶ 25.

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

> All current and former non-exempt California employees of Matthews International Corporation and its wholly-owned subsidiary The York Group Inc., and The York Group Inc.'s wholly-owned subdivision Matthews Granite Company, who were paid wages by Defendant at any time during the Class Period ("Class" or "Class Members").[7]

The Class is estimated to consist of approximately two hundred and forty (240) individuals.[8]

Class Members who do not submit a timely and valid Opt Out ("Settlement Class Members") will receive a share of the Net Settlement Amount ("Individual Settlement Payment") on a *pro rata* basis based upon the number of weeks worked by each Class Member during the Class Period as a non-exempt employee in California, based on Defendant's records, to be calculated by Defendant ("Workweeks").[9] All current and former non-exempt California employees of Matthews, and its wholly-owned subsidiary The York Group, Inc., and the York Group Inc.'s wholly-owned subdivision Matthews Granite Company, who were paid wages by Defendant at any time during the PAGA Period ("PAGA Employees") will receive a *pro rata* share of the 25% of the PAGA Payment ("PAGA Payment Share") based on the total number of Workweeks worked by each PAGA Employee during the PAGA Period based on Defendant's records ("PAGA Workweeks").[10]

The Settlement resolves the Released Class Claims of Plaintiff and Settlement Class Members, and the Released PAGA Claims of the State of California and PAGA Employees, against the Released Parties.[11]

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

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[7] Settlement Agreement, ¶ 3. "Class Period" is defined as the period of time between May 29, 2016 through Preliminary Approval or such earlier date pursuant to Paragraph 91.b of the Settlement Agreement. *See id.*, ¶ 5.
[8] Blanchard Decl., ¶ 9.
[9] Settlement Agreement, ¶¶ 18, 41, and 42.
[10] *Id.*, ¶¶ 23, 26, and 29. "PAGA Period" means the period between March 20, 2019, through Preliminary Approval or such earlier date. *See id.*, ¶ 27.
[11] See *id.* at ¶ 34, for the full scope of the "Released Class Claims,", id., at ¶ 35, "Released PAGA Claims," and *id.* at ¶ 36, for the definition of the "Released Parties."

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filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a global provider of brand solutions, memorialization products (including caskets, memorials, and cremation equipment to funeral homes), and industrial technologies. Plaintiff Jason Beinbrech is a former employee of Defendant.

On March 20, 2020, Plaintiff provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendant, giving notice of his intent to pursue a representative action pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"), on behalf of himself and the State of California, as well as on behalf of a proposed group of aggrieved employees ("LWDA Letter").

On May 29, 2020, Plaintiff filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq. (the "Original Complaint"), in the San Bernardino County Superior Court ("Court"), thereby commencing an action ("Original Action").

On September 21, 2020, Defendant filed an Answer to Plaintiff's Class Action Complaint in the Original Action.

On September 23, 2020, Defendant removed the case to the United States District Court, Central District of California, and the case was assigned Case No: 5:20-cv-01971-FLA-SP.

On September 21, 2022, Case No: 5:20-cv-01971-FLA-SP was dismissed without prejudice.

On November 30, 2022, Plaintiff filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq. ("Operative Complaint"), in the San Bernardino County Superior Court ("Court"), thereby commencing an action. Together, the LWDA Letter, the Original Complaint, and the Operative Complaint shall be referred to as the "Action."

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,

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of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he, the Class Members, and the PAGA Employees are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the Action since the Original Complaint was filed on May 29, 2020. On May 5, 2021 and on December 20, 2021, the Parties participated in formal mediations conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. <u>SUMMARY OF THE SETTLEMENT TERMS</u>

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid Opt Out (i.e., Settlement Class Members) and Released PAGA Claims of Plaintiff and PAGA Employees with respect to the Released Parties.[12] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount up to 35% of the Gross Settlement Amount (i.e.,$385,000.00) and reimbursement of costs and expenses in an amount not to exceed Thirty-Two Thousand Dollars ($32,000.00) to Class Counsel (collectively referred

[12] Settlement Agreement, ¶¶ 99 and 100.

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to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed Ten Thousand Dollars ($10,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Payment in the amount of Forty Thousand Dollars ($40,000.00), of which seventy-five percent (75%), or $30,000.00, will be paid to the LWDA ("LWDA Payment") and twenty-five percent (25%), or $10,000.00, will be distributed to PAGA Employees; and (4) payment in the amount of up to Ten Thousand Dollars ($10,000.00) to Plaintiff Jason Beinbrech ("Enhancement Award").[13] The Parties have agreed to retain Simpluris, Inc., ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount ("Individual Settlement Payment"), in accordance with the Settlement Agreement and as follows:

a. The Settlement Administrator will divide the Net Settlement Amount by the total number of Workweeks for all Settlement Class Members during the Class Period. The result of this division shall yield a Workweek Payment Rate. The gross amount of each Settlement Class Member's Individual Settlement Payment shall be calculated by multiplying the number of Workweeks applicable to that Class Member by the Workweek Payment Rate.[14]

The Parties have agreed that the Settlement Administrator will determine each PAGA Employees' *pro rata* share of the 25% of the PAGA Payments (i.e., PAGA Payment Share), in accordance with the Agreement and as follows:

a. The PAGA Payment Share to each PAGA Employee shall be determined based on the number of PAGA Workweeks worked by the PAGA Employee during the PAGA Period. The $10,000 allocated to the PAGA Employees shall be divided by the total number of PAGA Workweeks for all PAGA Employees during the PAGA Period. The result of this division shall yield a PAGA Workweek Payment Rate. The gross amount of each PAGA Employee's PAGA Payment Share shall be calculated by multiplying the number of PAGA Workweeks applicable to that PAGA Employee by the PAGA Workweek Payment Rate.[15]

Each Settlement Class Member's Individual Settlement Payment will be allocated as follows: fifty percent (50%) as wages, which will be reported on an IRS Form W-2; and the remaining fifty percent (50%) as non-wage penalties, interest, and damages, which will be

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[13] Settlement Agreement, ¶¶ 25, 86, 92, and 93.
[14] *Id.*, ¶ 77.
[15] *Id.*, ¶ 78.

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reported on an IRS Form 1099.[16] Each Individual Settlement Payment shall be paid net of all applicable employee's share of taxes, including any federal, state, and/or local in issue tax withholding requirements and the employee share of FICA taxes.[17] The Employer's Share of Payroll Taxes shall not be paid from the Gross Settlement Amount and shall remain the sole responsibility of Defendant.[18] PAGA Payment Shares will be allocated entirely as penalties and will be reported on an IRS Form 1099 to each PAGA Employee (if required).[19]

Individual Settlement Payment checks and PAGA Payment Share checks shall remain negotiable for one hundred and eighty (180) calendar days from the date of mailing.[20] Thereafter, the checks shall be void and the Settlement Administrator shall pay the funds represented by such un-redeemed checks to the California State Controller's Office as unclaimed property pursuant to the California Unclaimed Property Law, in the name of the individuals to whom the checks had originally been issued.[21] In such event, the Settlement Class Member shall nevertheless remain bound by the Class Settlement and PAGA Employees shall nevertheless remain bound by the PAGA Settlement.[22]

Any Class Member seeking to be excluded from the Class Settlement shall submit a written request to be excluded from the Class Settlement ("Opt Out") to the Settlement Administrator.[23] The Opt Out must: (1) contain the full name, address, and the last four digits of the Social Security number of the person requesting exclusion; (2) contain a reference to the Action (e.g., case title and/or case number); (3) state the Class Member's request to exclude himself or herself from the Class Settlement; (4) be signed by the Class Member or his or her lawful representative; and (5) be submitted to the Settlement Administrator by mail, at the specified address, postmarked by the end of the sixty (60) calendar day period following the date the Settlement Administrator mails the Notice of Class Action and PAGA Settlement to

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[16] Settlement Agreement, ¶ 82.
[17] *Ibid.*
[18] Settlement Agreement, ¶ 82.
[19] *Ibid.*
[20] *Id.*, ¶ 84.
[21] *Ibid.*
[22] *Ibid.*
[23] *Id.*, ¶¶ 22 and 67.

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Class Members ("Response Deadline").[24] Any Class Member, who submits a complete and timely Opt Out shall not be bound to, and shall be barred from, participating in the Class Settlement, shall be barred from objecting to the Class Settlement, and shall receive no benefit from the Class Settlement.[25] A valid Opt Out from the Class Settlement does not affect the PAGA Settlement, which shall be binding on all PAGA Employees regardless of the requested exclusion from the Class Settlement.[26]

Any Class Member wishing to object to the Class Settlement shall inform the Court, Class Counsel, and Defense Counsel in writing of their intent to object by following the procedure set forth in the Notice of Class Action and PAGA Settlement no later than the Response Deadline.[27] Any Objection must: (1) state the Class Member's full name, address, and the last four digits of his or her Social Security Number (for identification purposes only); (2) contain a reference to the Action (e.g., case title and/or case number); (3) state the grounds for the objection; (4) be signed by the Class Member or their lawful representative; and (5) be mailed to the Settlement Administrator, postmarked on or before the Response Deadline.[28]

If the Class Member or PAGA Employee wishes to contest the number of Workweeks and/or the number of PAGA Workweeks assigned to him or her by the Settlement Administrator, the Class Member or PAGA Employee, or his or her authorized representative in the case of the individual's death or incapacity, must present the dispute by submitting a timely and complete Proof of Work to the Settlement Administrator.[29] The Proof of Work shall: (1) contain the full name, address, and the last four digits of the Social Security Number of the person contesting their Workweeks or PAGA Workweeks; (2) contain a reference to the Action (e.g., case title and/or case number); (3) state the Class Member's dispute regarding the number of Workweeks and/or PAGA Workweeks assigned to him or her and attach documentation to support his or her position; (4) be signed by the Class Member or his or her lawful representative; and (5) be

[24] Settlement Agreement, ¶¶ 37 and 67.
[25] Settlement Agreement, ¶ 67.
[26] *Ibid.*
[27] *Id.*, ¶ 71.
[28] *Ibid.*
[29] *Id.*, ¶¶ 33 and 64.

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submitted to the Settlement Administrator by mail, at the specified address, postmarked by the Response Deadline.[30]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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

[30] Settlement Agreement, ¶ 64.

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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A. **<u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Discovery.</u>**

The Parties actively litigated the Action since it was commenced on May 29, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.[31]

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.[32] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a detailed sampling of Class Members' time and pay records, job descriptions, Defendant's internal memoranda and relevant policies (including, but not limited to policies regarding: timekeeping, clocking in and out, tardiness, California meal and rest periods, off-premises meals and rest breaks, company sponsored events, and overtime), and various agreements (including, *inter alia*, first and second meal break waivers and arbitration agreements), among other information and documents.[33] Class Counsel had the opportunity to interview Plaintiff and other Class Members to gather facts and to identify potential witnesses.[34] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings and the production of documents and data prior to each of the mediations.[35] Class Counsel also drafted Plaintiff's mediation briefs and prepared for and attended court proceedings, settlement negotiations, and the mediations, among other tasks.[36]

The Parties engaged in extensive settlement negotiations and participated in two formal mediations conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[37] Prior to and during the mediations and

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[31] Blanchard Decl., ¶¶ 11-13.
[32] *Id.*, ¶ 12.
[33] *Ibid.*
[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*
[37] *Id.*, ¶ 11.

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ongoing settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, meal waivers, arbitration agreements, alternative workweek schedules, rounding, wage-and-hour law and enforcement, and representative PAGA claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[38] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[39] Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its 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.[40] After conducting investigations, significant informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[41]

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 trial.[42] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[43] Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, representative PAGA actions, off-the-clock theory, meal and rest periods, meal waivers, arbitration agreements, rounding, alternative workweek schedules, wage-and-hour law and enforcement, Plaintiff's claims, and Defendant's defenses thereto, as

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[38] Blanchard Decl., ¶ 11.
[39] *Ibid.*
[40] *Id.*, ¶¶ 11, 16-18.
[41] *Id.*, ¶¶ 11, 16-18.
[42] *Ibid.*
[43] *Ibid*.

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well as facts discovered.[44] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[45]

B. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for a Gross Settlement Amount of One Million One Hundred Thousand Dollars ($1,100,000.00), represents a fair, adequate, and reasonable resolution of the matter.[46] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.[47] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[48] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[49]

Assuming that the Attorneys' Fees and Costs, Enhancement Award, PAGA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Six Hundred Twenty-Three Thousand Dollars ($623,000.00).[50] Additionally, the 25% of the PAGA Payment, which is $10,000 out of $40,000, will be distributed to PAGA Employees. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Agreement. The amount of each Settlement Class Member's Individual Settlement Payment and each PAGA Employee's PAGA Payment Share will be calculated based on his or her Workweeks and/or PAGA Workweeks, respectively.[51] There is no reason to doubt the fairness

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[44] Blanchard Decl., ¶¶ 11-13 & 16-18.
[45] *Id.*, ¶¶ 6-7.
[46] Blanchard Decl., ¶¶ 11, 13, 14 & 22.
[47] *Id.*, ¶¶ 11-13.
[48] *Id.*, ¶¶ 16-18.
[49] *Id.*, ¶¶ 11, 13, & 22.
[50] *Id.*, ¶ 14.
[51] Settlement Agreement, ¶¶ 76 and 78.

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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, PAGA Employees, and the State of California.[52] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[53] The discovery and information that Class Counsel obtained from Defendant, Plaintiff, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.[54] As outlined in the Declaration of Annabel Blanchard, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[55]

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.[56] California Code of Civil Procedure Section 382 "authorizes class actions when the question is

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[52] Blanchard Decl., ¶¶ 11, 13, & 22.
[53] Blanchard Decl., ¶¶ 11-13 & 18.
[54] *Id.*, ¶ 18.
[55] *Id.*, ¶¶ 11-13 & 16-18.
[56] Settlement Agreement, ¶ 58.

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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 plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. 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.

This action involves a class of approximately two hundred forty (240) individuals.[57] 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 Defendant to the Settlement Administrator through a review of Defendant's employment

[57] Blanchard Decl., ¶ 9.

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records regarding non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. <u>The Class Members Share a Well-Defined Community of Interest.</u>

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 Operative Complaint. Based on the documents and information obtained through informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.[58] Plaintiff's claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide

[58] Blanchard Decl., ¶ 16.

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complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[59]

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

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

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

Class Counsel has litigated the matter for over three years, and was actively preparing the matter for class certification and trial.[62] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations and informal discovery into the facts of the case. Class Counsel reviewed a large volume of documents and data[63] and also had the opportunity to interview and obtain information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to mediation.[64] Counsel for the Parties also undertook extensive settlement discussions, which included participating in two formal mediations.[65]

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[59] Blanchard Decl., ¶ 16.
[60] *Ibid*.
[61] *Ibid*.
[62] Blanchard Decl., ¶¶ 11-13.
[63] *Id.*, ¶ 12.
[64] *Ibid.*
[65] *Id.*, ¶ 11.

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

The Settlement establishes a Gross Settlement Amount of One Million One Hundred Thousand Dollars ($1,100,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., $385,000.00) and an amount not to exceed Thirty-Two Thousand Dollars ($32,000.00) for costs and expenses.[67] The attorneys' fees 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, PAGA Employees, and the State of California, 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 Notice provides Class Members and PAGA Employees with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[68]

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 a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee

[66] Blanchard Decl., ¶¶ 6-7.
[67] Settlement Agreement, ¶ 93.
[68] Settlement Agreement, Exh. 1.

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awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

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

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Attorneys' Fees and Costs and at the Final Approval Hearing.

[69] Blanchard Decl., ¶ 19.

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Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED NOTICE IS ADEQUATE

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

The proposed Notice[70] describes the Settlement, the deadlines and procedures to submit an Objection to the Class Settlement, Opt Out from the Class Settlement, and/or Proof of Work, and the date and time set for the Final Approval Hearing.[71]

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[72] The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.[73] The proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment, and if applicable, their PAGA Payment Share is calculated and the number of Workweeks and/or PAGA Workweeks credited to them.[74]

The proposed Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 ("The essentials of due process of law in class suits would appear to be afforded by fair representation

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[70] Settlement Agreement, Exh. 1.
[71] Settlement Agreement, Exh. 1.
[72] *Ibid.*
[73] *Ibid.*
[74] *Ibid.*

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in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Notice.

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

The Parties have selected Simpluris, Inc., to administer the Settlement.

The Settlement Administrator shall, within forty-five (45) calendar days of entry of the Preliminary Approval Order, translate the Notice of Class Action and PAGA Settlement into English and Spanish and mail the Notice to each Class Member and PAGA Employee by First-Class United States Mail.[75] Any Notice returned to the Settlement Administrator as non-delivered on or before the Response Deadline with a forwarding address from the U.S. postal service shall be remailed to the forwarding address affixed thereto within three (3) business days.[76] For any Notice returned to the Administrator as non-delivered on or before the Response Deadline without a forwarding address from the U.S. postal service, the Settlement Administrator shall promptly attempt to determine a correct address by the use of skip-tracing, or other automated search, and shall then perform a re-mailing to the Class Member whose Notice was returned as non-delivered, assuming another mailing address is identified by the Settlement Administrator, within three (3) business days.[77] In the case of a re-mailed Notice, a letter prepared by the Settlement Administrator will be included with the re-mailed Notice, stating that the recipient of the Notice has until the original Response Deadline set forth on the Notice, or ten (10) calendar days after the date of re-mailing of the Notice (whichever is later) (“Extended Response Deadline”).[78] The Settlement Administrator will receive and process Opt Outs, Objections, and Proof of Work.[79]

The Settlement Administrator shall administer the Settlement, including, but not limited to: (i) printing, mailing and re-mailing (if necessary), and emailing, the Notice and receiving Opt Outs and Objections from Class Members; (ii) posting the Notice on its website; (iii)

[75] Settlement Agreement, ¶ 61.
[76] Settlement Agreement, ¶ 61.a.
[77] *Ibid.*
[78] *Ibid.*
[79] *Id.*, ¶¶ 67, 71, and 64.

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preparing and submitting to Settlement Class Members and PAGA Employees and government entities all appropriate tax filings and forms; (iv) computing the amount of and distributing Individual Settlement Payments, PAGA Payment Shares, LWDA Payment, Enhancement Award, and Attorneys' Fees and Costs; (v) processing and validating Proofs of Work, Opt Outs, and Objections; (vi) establishing a QSF, as defined by the Internal Revenue Code; and (vii) calculating and remitting to the appropriate government agencies all employer and employee payroll tax obligations arising from the Settlement and preparing and submitting filings required by law in connection with the payments required by the Settlement.[80] The Settlement Administration Costs are currently estimated to be Ten Thousand Dollars ($10,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[81]

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Notice to the Class Members and PAGA Employees 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, in the form approved by the Court, to all known and reasonably ascertainable Class Members and PAGA Employees based on Defendant's records.[82]

Within thirty (30) calendar days after the Court enters the Preliminary Approval Order, Defendant will provide the Settlement Administrator with each Class Member and PAGA Employee's full name, most recent mailing address and telephone number, Social Security number, most recent e-mail address, number of Workweeks during the Class Period, number of PAGA Workweeks during the PAGA Period, and number of Workweeks during the period May 29, 2016 through March 20, 2022 (collectively, "Class Data").[83]

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[80] Settlement Agreement, ¶ 85.; Blanchard Decl., ¶ 15.
[81] Settlement Agreement, ¶ 86.
[82] Settlement Agreement, ¶ 59.
[83] *Id.*, ¶¶ 87 and 88.

The Settlement Administrator shall, within forty-five (45) calendar days of entry of the Preliminary Approval Order, translate the Notice of Class Action and PAGA Settlement into English and Spanish and mail the Notice to each Class Member and PAGA Employee by First-Class United States Mail.[84] Any Notice returned to the Settlement Administrator as non-delivered on or before the Response Deadline with a forwarding address from the U.S. postal service shall be re-mailed to the forwarding address affixed thereto within three (3) business days.[85] For any Notice returned to the Administrator as non-delivered on or before the Response Deadline without a forwarding address from the U.S. postal service, the Settlement Administrator shall promptly attempt to determine a correct address by using a skip-tracing, or other automated search, and shall perform a re-mailing to the Class Member whose Notice was returned as non-delivered, assuming another mailing address is identified by the Settlement Administrator, within three (3) business days.[86] The Settlement Administrator will receive and process Opt Outs, Objections, and Proof of Work.[87]

Within fourteen (14) business days after the Effective Date (as that date is defined in the Settlement Agreement at ¶12), Defendant shall transmit the Gross Settlement Amount and Employer's Share of Payroll Taxes to the Settlement Administrator.[88] Within twenty-one (21) business days after the Effective Date, the Settlement Administrator shall transmit the following payments in accordance with the Court's order granting final approval of the Settlement: (1) Attorneys' Fees and Costs to Class Counsel; (2) Enhancement Award to the Class Representative; (3) LWDA Payment to the LWDA; (4) Individual Settlement Payments to each Settlement Class Member; and (5) PAGA Payment Shares to each PAGA Employee.[89]

Individual Settlement Payment checks and PAGA Payment Share checks shall remain negotiable for one hundred and eighty (180) calendar days from the date of mailing.[90] Thereafter, the checks shall be void and the Settlement Administrator shall pay the funds

[84] Settlement Agreement, ¶ 61.
[85] *Id.*, ¶ 61.a.
[86] Settlement Agreement, ¶ 61.a.
[87] *Id.*, ¶¶ 67, 71, and 64.
[88] *Id.*, ¶ 79.
[89] *Id.*, ¶ 80.
[90] *Id.*, ¶ 84.

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represented by sun un-redeemed checks to the California State Controller's Office as unclaimed property pursuant to the California Unclaimed Property Law, in the name of the individuals to whom the checks had originally been issued.[91]

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT AWARD

Plaintiff Jason Beinbrech respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Award in an amount up to Ten Thousand Dollars ($10,000.00) to Plaintiff Jason Beinbrech.[92] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Enhancement Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[93] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.[94] 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 Payment and PAGA Payment Share.

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[91] Settlement Agreement, ¶ 84.

[92] *Id.*, ¶ 92.

[93] Blanchard Decl., ¶ 20; Declaration of Jason Beinbrech in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Beinbrech Decl."), ¶ 4.

[94] Blanchard Decl., ¶ 20; Beinbrech Decl., ¶¶ 3-6.

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

Dated: November 17, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________________

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