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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 MARTINA AVERY, an individual, on behalf
16 of herself, and on behalf of all persons
17 similarly situated,

18 Plaintiff,

19 vs.

20 SLEEP DATA SERVICES LLC, a California
21 Limited Liability Company; and Does 1
22 through 50, inclusive,

23 Defendants.

Case No. 37-2020-00032747-CU-OE-CTL

**DECLARATION OF KYLE
NORDREHAUG IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: June 3, 2022

Hearing Time: 8:30 a.m.

Reservation No. 2486076

Dept.: C-74

Judge: Hon. Keri Katz

Action Filed: September 17, 2020

Trial Date: Not Set

1 I, Kyle Nordrehaug, declare as follows:

2 1. I am a partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP,
3 counsel of record for Plaintiff Martina Avery("Plaintiff") in this matter. As such, I am fully
4 familiar with the facts, pleadings and history of this matter. The following facts are within my own
5 personal knowledge, and if called as a witness, I could testify competently to the matters stated
6 herein.

7 2. This declaration is being submitted in support of the motion for preliminary approval
8 of the proposed class action settlement with Defendant Sleep Data Services LLC ("Defendant"),
9 and seeks entry of an order: (1) preliminarily approving the proposed settlement of this class action
10 with Defendant; (2) for settlement purposes only, conditionally certifying the Class, which is
11 comprised of "all individuals who worked for Defendant in California as non-exempt employees at
12 any time during the Class Period " of April 22, 2019 to September 22, 2021; (3) provisionally
13 appointing Plaintiff as the representatives of the Class; (4) provisionally appointing Norman B.
14 Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Piya Mukherjee, and Charlotte James of
15 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the
16 form and method for providing class-wide notice; (6) directing that notice of the proposed
17 settlement be given to the class; (7) appointing Simpluris as Settlement Administrator, and (8)
18 scheduling a final approval hearing date to consider Plaintiff's motion for final approval of the
19 settlement and entry of the Judgment, and Plaintiff's motion for approval of attorneys' fees and
20 expenses. Attached hereto as Exhibit #1 is a copy of the fully executed Class Action Settlement
21 Agreement ("Agreement") along with exhibits thereto. This Declaration incorporates by reference
22 the definitions in the Agreement, and all terms defined therein shall have the same meaning as set
23 forth in the Agreement.

24
25 Fairness of Settlement

26 3. As consideration for this Settlement, the Gross Settlement Amount is Two Hundred
27 Seventy-Seven Thousand and Five Hundred Dollars (\$277,500) to be paid by Defendant, as set
28 forth in the Agreement. The Gross Settlement Amount is all-inclusive of all payments

1 contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the
2 Settlement Shares allocated to wages which shall be separately paid by Defendant to the Settlement
3 Administrator. The Settlement is all-in with no reversion to Defendant and no need to submit a
4 claim form.

5 4. The relief provided in the Settlement will benefit all members of the Class. The
6 Settlement does not grant preferential treatment to Plaintiff or segments of the Class in any way.
7 Payments to the Class Members are all determined under a neutral methodology. Each
8 Participating Class Member will receive the same opportunity to participate in and receive payment
9 through a neutral formula that is based upon the weeks worked by that individual.

10 5. On June 9, 2021, the Parties participated in an all -day mediation presided over by
11 Hon. Louis Meisinger (Ret.), a respected jurist and mediator of wage and hour representative and
12 class actions. In preparation for the mediation, Defendant provided Class Counsel with necessary
13 information for the members of the Class, including time data, payroll data and data concerning the
14 composition of the Class. Class Counsel analyzed the data with the assistance of damages expert,
15 Berger Consulting, and prepared and submitted a mediation brief and damage valuation to the
16 Mediator. At the conclusion of the all-day mediation, the Parties agreed to this Settlement.
17 Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and
18 adequate.

19 6. The Gross Settlement Amount provides an average value of \$928 per Class Member
20 and \$17.80 per workweek, and after deductions, the Net Settlement Amount provides an average
21 recovery of \$384 per Class Member and \$7.37 per work week. The calculations to compensate for
22 the amount due to the Class Members at the time this Settlement was negotiated were calculated by
23 Plaintiff's expert, Berger Consulting, in advance of mediation. For the individuals whose claims are
24 at issue in this Actions, Plaintiff analyzed the data for putative class members and determined the
25 potential maximum damages for the class claims. For the Class, Plaintiff determined that the
26 unpaid wages due to the alleged failure to pay overtime wages based on the regular rate
27 miscalculation to be \$46,785, maximum potential off-the-clock damages to be \$308,114, maximum
28 potential rest period damages were estimated to be \$366,663, maximum meal period damages at a

1 25% violation rate were estimated to be \$364,453, and the maximum damages for unreimbursed
2 expenses were estimated to be \$228,200 at a rate of \$200 of unreimbursed expenses incurred each
3 month. In total, the damages for the Class were calculated to have a maximum total value of
4 \$1,314,215. In addition, Plaintiff calculated that the maximum value of the waiting time penalties
5 were \$683,950 and the maximum value of the wage statement penalties to be \$428,100, however,
6 these wage statement and waiting time penalties claims potentially have a much smaller value, even
7 if damages were awarded, to the extent that they are only derivative of the meal and rest break
8 claims.¹ Consequently, the Gross Settlement Amount represents more than 21% of the value of the
9 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
10 proven in full at trial.² The above maximum calculations should then be adjusted in consideration
11 for both the risk of certification and the risk of establishing class-wide liability on all claims.
12 Defendant disputes Plaintiff's estimates and believes the amount Plaintiff can recover for the Class,
13 if anything at all, is actually much lower. Given the amount of the Settlement as compared to the
14 potential value of the claims, the Settlement is most certainly fair and reasonable.

15 16 Procedural History of the Litigation

17 7. On April 22, 2020, Plaintiff serve a PAGA notice on Defendant and the Labor
18 Workforce Development Agency pursuant to PAGA to identify the alleged violations of the Labor

19
20 ¹ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
21 226, Plaintiff recognized that these claims were subject to various defenses asserted by Defendant,
22 including, but not limited to, a good faith dispute defense as to whether any premium wages for
23 meal or rest periods or other wages were owed given Defendant's position that Plaintiff were
24 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010)
25 ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as
26 to whether and when the wages were due."). Additionally, Courts have held that violations of the
27 meal and rest period regulations, which require payment of a "premium wage" for each improper
28 meal period, do **not** give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang's China*
Bisto, Inc., 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.
App. 5th 1308, 1336 (2018). As a result, the viability of Plaintiff's claims on these theories is
uncertain.

² Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included
the PAGA claim in this discussion. The PAGA claim is addressed below at ¶ 33.

1 Code by the Defendant.

2 8. On September 17, 2020, Plaintiff filed a Complaint against Defendant in the
3 Superior Court of the State of California, County of San Diego. Plaintiff asserted claims that
4 Defendant: (1) engaged in unfair competition in violation of Cal. Bus & Prof. Code §§ 17200, et
5 seq.; (2) failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and
6 1197.1; (3) failed to pay overtime wages in violation of Cal. Labor Code § 510; (4) failed to provide
7 required meal periods in violation of Cal. Labor Code §§ 226.7 and 512; (5) failed to provide
8 required rest periods in violation of Cal. Labor Code §§ 226.7 and 512; (6) failed to provide
9 accurate itemized wage statements in violation of California Labor Code § 226; (7) failed to provide
10 wages at termination in violation of Cal. Lab. Code § 201, 202, and 203; (8) wrongful termination
11 in violation on public policy; and (9) violated the the Private Attorney General Act, Cal. Labor
12 Code §§ 2698, *et seq.* (“PAGA”) based upon the alleged violations.

13 9. On November 13, 2020, Defendant filed a general denial along with 62 affirmative
14 defenses to the Complaint.

15 10. Over the course of litigation, the Parties engaged in the investigation of the claims,
16 including production of documents, class data, and other information, allowing for the full and
17 complete analysis of liabilities and defenses to the claims in the Action. The information for
18 mediation obtained by Plaintiff included: (1) data showing employees and their employment dates;
19 (2) Payroll information for employees; (3) time punch data for 255 employees; (4) Defendant’s
20 employee wage and hour policies; (5) the employment file for the Plaintiff; and, (6) samples of
21 wage statements provided by Defendant. Plaintiff and Defendant agreed to discuss resolution of the
22 Action through a mediation.

23 11. Prior to mediation, the Parties engaged in the above investigation and the exchange
24 of documents and information in connection with the Action. On June 6, 2021, the Parties
25 participated in an all-day mediation presided over by Hon. Louis Meisinger (Ret.), a respected jurist
26 and experienced mediator of wage and hour class actions. Following the mediation, each side,
27 represented by its respective counsel, were able to agree to settle the Action based on a mediator’s
28 proposal which was memorialized in the form of a Memorandum of Understanding. At all times,

1 the negotiations were arm's length and contentious.

2 12. The Parties continued to negotiate the terms of the settlement and prepared the final
3 Agreement which was signed by the Parties and is now presented to this Court for preliminary
4 approval. Accordingly, for purposes of this Settlement, the "Class" is defined as "all individuals
5 who worked for Defendant in California as non-exempt employees at any time during the Class
6 Period." (Agreement at ¶ I(C).) The Class Period is from April 22, 2019 to September 22, 2021.
7 The Class consists of 299 Class Members who worked 15,587 workweeks. These final figures were
8 verified by Defendant's declaration as required by the Agreement.

9 13. Although a settlement has been reached, Defendant denies any liability or
10 wrongdoing of any kind associated with the claims alleged in the Action and further deny that, for
11 any purpose other than settlement, the Action is appropriate for class treatment. Defendant
12 contends, among other things, that it has correctly compensated the Class Members and complied at
13 all times with the California Labor Code, applicable Wage Order, and all other laws and
14 regulations. Further, Defendant contends that class certification would be inappropriate for any
15 reason other than for settlement. Plaintiff contends that Defendant violated California wage and
16 hour laws. Plaintiff further contends that the Action is appropriate for class certification on the
17 basis that the claims meet the requisites for class certification. Without admitting that class
18 certification is proper, Defendant has stipulated that the above Class may be certified for settlement
19 purposes only. (Agreement at ¶ II(D).) The Parties agree that certification for settlement purposes
20 is not an admission that class certification would be proper if the class certification issue were
21 litigated. Further, the Agreement is not admissible in this or any other proceeding as evidence that
22 the Class could be certified absent a settlement. Solely for purposes of settling the Action, the
23 Parties stipulate and agree that the requisites for establishing class certification with respect to the
24 Class are satisfied.

25 14. Class Counsel has conducted a thorough investigation into the facts of the class
26 action. Over the course of nearly two years, Class Counsel has diligently evaluated the Class
27 Members' claims against Defendant. Prior to the settlement negotiations, counsel for Defendant
28 provided Class Counsel with access to necessary information for the Class. In addition, Class

1 Counsel previously negotiated settlements with other employers in actions involving nearly
2 identical issues and analogous defenses. Based on the foregoing data and their own independent
3 investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant
4 on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of
5 the Class in light of all known facts and circumstances, including the risk of significant delay,
6 defenses asserted by Defendant, and potential appellate issues.

7
8 Settlement Terms and Plan of Allocation

9 15. The Gross Settlement Amount is Two Hundred Seventy-Seven Thousand and Five
10 Hundred Dollars (\$277,500) (Agreement at ¶¶ I(S) and III(B).) Under the Settlement, the Gross
11 Settlement Amount consists of the following elements: (1) Settlement Shares to the Participating
12 Class Members, (2) Settlement Administration Expenses, (3) Class Counsel Fees Payment, Class
13 Counsel Litigation Expenses Payment, (4) Class Representative Service Payment, and (5) the
14 PAGA Payment, and excluding any employer payroll taxes, if any, due on the portion of the
15 Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be
16 the separate additional obligation of Defendant.. (Agreement at ¶¶ I(S) and III(B).) The Gross
17 Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶¶ I(S) and
18 III(B).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement
19 at ¶¶ I(S) and III(B).)

20 16. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
21 Defendant's share of payroll taxes within thirty (30) days of the Effective Date. (Agreement at ¶
22 III(F)(9).) Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the
23 Settlement Administrator will make payment of all Class Settlement Shares to Participating Class
24 Members. (Agreement at ¶ III(F)(9).)

25 17. The Net Settlement Amount shall equal the Gross Settlement Amount less the Court
26 approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment,
27 Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement
28 Administration Expenses. (Agreement at ¶ I(U).) The Net Settlement Amount will be distributed as

1 the Settlement Shares to the Class Members who do not timely request exclusion ("Participating
2 Class Member"). (Agreement at ¶¶ III(D)(1).) The Settlement Share will be calculated as follows:
3 (a) the Settlement Administrator shall then divide the Net Settlement Amount by the total number
4 of workweeks to determine a dollar amount per week ("Weekly Rate"); and (b) the Settlement
5 Administrator shall then take the number of weeks worked by each Participating Class Member and
6 multiply it by the Weekly Rate to calculate their Settlement Share. (Agreement at ¶ III(D)(2).)
7 Workweeks will be based on Defendant's records, however Class Members will have the right to
8 challenge the number of workweeks.

9 18. Class Members may choose to opt-out of the Settlement by following the directions
10 in the Class Notice. (Agreement at ¶ III(F)(2)), Ex. A.) All Class Members who do not "opt out"
11 will be deemed Participating Class Members who will be bound by the Settlement and will be
12 entitled to receive a Settlement Share. An Aggrieved Employee who opts out the Settlement will
13 still be paid their allocation of the PAGA Payment and will remain subject to the release of the
14 PAGA Released Claims, regardless of their request for exclusion. (Agreement at ¶ III(F)(3)(c).)
15 Finally, the Class Notice will also advise the Class Members of their right to object to the
16 Settlement and/or dispute their workweeks. (Agreement at ¶ III(F)(3)), Ex. A.)

17 19. A Participating Class Member must cash his or her Settlement Share check within
18 180 days after it is mailed. (Agreement at ¶ III(F)(10).) The Settlement Administrator will send a
19 reminder to Participating Class Members who have not cashed their checks within 120 days after its
20 last mailing to the affected individual. (Agreement at ¶ III(F)(10).) Any settlement checks not
21 cashed within 180 days will be voided and any the funds from such uncashed checks will be paid to
22 the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the
23 individual who did not cash their check. (Agreement at ¶ III(F)(10).)

24 20. The Parties have agreed to use Simpluris as the Settlement Administrator.
25 (Agreement at ¶ III(E).) From the Gross Settlement Amount, the Settlement Administrator shall be
26 paid for the expenses of administering the Settlement in an amount not to exceed \$10,000.
27 (Agreement at ¶ III(C)(4).) The estimate from Simpluris is a capped fee of \$8,250.

28 21. Subject to Court approval, the Agreement provides for Class Counsel to be awarded

1 a sum not to exceed one-third (1/3) of the Gross Settlement Amount, as the Class Counsel Fees
2 Payment. (Agreement at ¶ III(C)(2).) Class Counsel will also be allowed to apply separately for an
3 award of Class Counsel Litigation Expenses Payment in an amount not to exceed \$25,000.
4 (Agreement at ¶ III(C)(2).) Subject to Court approval, the Agreement provides for a payment of no
5 more than \$10,000 to the Plaintiff as the Class Representative Service Payment. (Agreement at ¶
6 III(C)(1).)

7 22. The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out
8 of the Gross Settlement Amount, which shall be allocated 75% (\$18,750) to the LWDA as the
9 LWDA's share of the PAGA Payment pursuant to PAGA and 25% (\$6,250) will be distributed to
10 the Aggrieved Employees based on their respective pay periods worked during the PAGA Period.
11 (Agreement at ¶ III(C)(3).) All Aggrieved Employees will be sent their share of the PAGA
12 Payment and will be subject to the release of the PAGA Released Claims, whether or not they opt
13 out of the Settlement. (Agreement at ¶ III(C)(3).) As set forth in the accompany proof of service,
14 the LWDA has been served with this motion and the Agreement.

15
16 Risks of Continued Litigation and Standards for Approval

17 23. Plaintiff and Class Counsel recognize the expense and length of continuing to litigate
18 and trying these Action against Defendant through possible appeals which could take several years.
19 Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in
20 complex class actions such as these Action. Class Counsel is also mindful of and recognize the
21 inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based
22 upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in
23 the Agreement is in the best interest of the Class Members.

24 24. Here, a number of defenses asserted by Defendant present serious threats to the
25 claims of the Plaintiff and the other Class Members, including that there would be no class without
26 settlement given that the Plaintiff and the Class Members signed arbitration agreements. Defendant
27 also asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued
28 that all work time was paid for and that the regular rate was properly calculated. Defendant

1 contended that their meal and rest period policies fully complied with California law and that
2 although Defendant's timekeeping system recorded meal periods, all meal periods were provided.
3 Further, Defendant argued that Defendant was not required to record rest periods. Finally,
4 Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th
5 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal
6 and rest period claims. Defendant also argues that based on their facially lawful practices, they
7 acted in good faith and without willfulness, which if accepted would negate the claims for waiting
8 time penalties and/or inaccurate wage statements. In fact, under the current state of the law, it is
9 questionable whether these penalties could be awarded at all based upon the alleged meal and rest
10 period violations. If successful, Defendant's defenses could eliminate or substantially reduce any
11 recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant
12 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.

13 25. There was also a significant risk that, if the Action was not settled, Plaintiff would be
14 unable to move for class certification given the existence of an arbitration agreement and thereby
15 not recover on behalf of any employees other than herself. Even if Plaintiff could move for class
16 certification, Defendant argued that the individual experience of each putative class member varied
17 with respect to the claims. Defendant could also contest class certification by arguing injury and
18 good faith were case by case determinations that precluded class certification. Plaintiff is aware of
19 cases where class certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43
20 Cal. App. 5th 885, 256 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break
21 claims). Defendant also contended that individual differences in work experiences not only
22 impacted damages but would also impact certification. Finally, even if class certification was
23 successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank*
24 *National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide
25 recovery even where the class has been certified. While other cases have approved class
26 certification in wage and hour claims, class certification in this action would have been hotly
27 disputed and was by no means a foregone conclusion.

28 26. This settlement is therefore certainly entitled to preliminary approval. Were this

1 case to go to trial, the Plaintiff and the other class members would need to prove, among other
2 things, that wages were owed on a class-wide basis. This was and is a substantial risk.

3 27. Plaintiff will apply to the Court for a Class Representative Service Payment in
4 consideration for the service and for the risks undertaken on behalf of the class. (Agreement at ¶
5 III(C)(1).) Plaintiff performed her duty admirably by working with Class Counsel. At this stage,
6 the requested service award of \$10,000 is well within the accepted range of awards for purposes of
7 preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386
8 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v.*
9 *Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000
10 service award where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007
11 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class
12 member recoveries were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL
13 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in
14 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
15 (awarding \$25,000 service award in overtime class action and a pool of \$100,000.00 in
16 enhancements). As explained in *Glass*, service awards are routinely awarded to class
17 representatives to compensate the employees for the time and effort expended on the case, for the
18 risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an
19 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

20 28. The stage of the proceedings at which this Settlement was reached also militates in
21 favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has
22 conducted a thorough investigation into the facts of the class action. Class Counsel began
23 investigating the Class Members' claims before the Action was filed. Class Counsel conducted a
24 review and analysis of the relevant documents and data. Class Counsel was also experienced with
25 the claims at issue here, as Class Counsel previously litigated and settled similar claims in other
26 actions. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient
27 information to make an informed judgment regarding the likelihood of success on the merits and the
28 results that could be obtained through further litigation.

1 29. Based on the foregoing data and their own independent investigation and evaluation,
2 Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the
3 terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the
4 Class in light of all known facts and circumstances, including the risk of significant delay, defenses
5 asserted by Defendant, and numerous potential appellate issues. There can be no doubt that
6 Counsel for both parties possessed sufficient information to make an informed judgment regarding
7 the likelihood of success on the merits and the results that could be obtained through further
8 litigation.

9
10 Class Certification Issues

11 30. Plaintiff contends that the proposed settlement meet all of the requirements for class
12 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
13 the Court may appropriately approve the Class as defined in the Agreement. This Court should
14 conditionally certify the Class for settlement purposes only, defined as follows:

15 All individuals who worked for Defendant in California as nonexempt employees at
16 any time during the Class Period.

17 (Agreement at ¶ I(C).)

18 The “Class Period” is from April 22, 2019 to September 22, 2021. (Agreement at ¶ I(J).)

19 a. **Numerosity** - Here, Plaintiff asserts that the 299 current and former
20 employees that comprise the Class can be identified based on Defendant’s records and are
21 sufficiently numerous for class certification.

22 b. **Common Issues Predominate** - Here, Plaintiff contends that common
23 questions of law and fact are present, and specifically the common questions of whether Defendant
24 miscalculated the regular rate, whether Defendant properly paid wages for all hours worked,
25 whether the Defendant failed to provide meal and rest periods, whether Defendant failed to provide
26 required expense reimbursement, and whether Class Members are entitled to damages and penalties
27 as a result of these practices.

28 c. **Typicality** - In the instant case, Plaintiff contends that there can be little

1 doubt that the typicality requirement is satisfied. The Plaintiff, like every other member of the
2 Class, worked for Defendant as non-exempt employees during the Class Period. Plaintiff contends
3 that, like every other member of the Class, she was subject to the same practices and policies of
4 Defendant and are subject to the same defenses. Thus, Plaintiff asserts that the claims of the
5 Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve
6 the same employment policies and practices of Defendant, and are based on the same legal theories.

7 d. **Adequacy** - Plaintiff contends that the Class Members are adequately
8 represented here because Plaintiff and representing counsel (a) do not have any conflicts of interest
9 with other class members, and (b) will prosecute the case vigorously on behalf of the class. This
10 requirement is met here. First, Plaintiff is well aware of her duties as the representative and has
11 actively participated in the prosecution of this case to date. She effectively communicated with
12 counsel, provided documents to counsel and participated in the investigation and negotiations in the
13 Action. Second, Plaintiff retained competent counsel who are experienced in employment class
14 actions and who have no conflicts. Third, there is no antagonism between the interests of the
15 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief
16 under the same set of facts and legal theories.

17 31. Blumenthal Nordrehaug Bhowmik De Blouw LLP is experienced in prosecuting
18 class action lawsuits and can competently represent the Class. Other lawyers at my firm and I have
19 extensive class litigation experience. We have handled a number of class actions and complex
20 cases and have acted both as counsel and as lead and co-lead counsel in a variety of these matters.
21 We have successfully prosecuted and obtained significant recoveries in numerous class action
22 lawsuits and other lawsuits involving complex issues of law and fact. My firm is particularly
23 experienced in wage and hour employment law class actions, including claims for overtime,
24 expense reimbursement, unlawful deduction of wages, and missed rest and meal periods.
25 Blumenthal Nordrehaug Bhowmik De Blouw LLP has been involved as class counsel in over
26 hundreds of wage and hour class actions. Blumenthal Nordrehaug Bhowmik De Blouw LLP has
27 been found to be adequate counsel by the courts throughout California. We have been approved as
28 experienced class counsel by both state and federal courts in California in contested class

1 certification proceedings. A true and correct copy of the resume of my firm is attached hereto as
2 Exhibit #2. Thus, the adequacy requirement is satisfied.

3 32. The Class Notice, drafted jointly and agreed upon by the Parties through their
4 respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit
5 "A" to the Agreement.) The Class Notice will include, among other information: (i) information
6 regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii)
7 information to the Class Members regarding how to opt out and how to object to the Settlement;
8 (iv) the estimated Settlement Share for each of the Class Members; (iii) the amount of attorneys'
9 fees and expenses to be sought; (v) the amount of the Plaintiff's service award request; and (vi) the
10 anticipated expenses of the Settlement Administrator. The Parties agree that the Class Notice
11 Packet will also include a Spanish translation of the Class Notice. The Class Notice will state that
12 the Class Members shall have forty-five (45) days from the date that the Notice is mailed to them to
13 request exclusion (opt-out) or to submit an objection. (Agreement at ¶ III(F)(3)(c).) In the event of
14 a re-mailing, the Response Deadline will be extended by an additional 15 days. (Agreement at ¶
15 III(F)(3)(c).) Class Members shall be given the opportunity to object to the Settlement and/or
16 requests for attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement
17 at ¶ III(F)(3)(a).) Class Members who do not submit a timely and proper request to opt-out will
18 automatically receive a payment of their Settlement Share. This notice program was designed to
19 meaningfully reach the Class Members and it advises them of all pertinent information concerning
20 the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due
21 process, and is the best notice practicable under the circumstances and constitutes due and sufficient
22 notice to all persons entitled thereto.

23
24 33. The PAGA Claims -

25 a. **Approval of PAGA Settlements.** The decision in *O'Connor v. Uber*, 201
26 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), and the LWDA's Response therein is illustrative. The
27 LWDA first states that "when viewing the monetary relief allocated to PAGA claims under a
28 settlement, the LWDA recognizes that the PAGA sum need not necessarily be viewed through the

1 same lens as the relief obtained by absent class members on other claims (i.e., the percentage of
2 recovery-to-exposure on the PAGA claims need not necessarily equal the percentage of recovery on
3 the other claims)." (LWDA Response at p.3). The LWDA also indicated that the payment of
4 money to the aggrieved employees furthers the purposes of PAGA and that the Court considers that
5 primary consideration. "The LWDA recognizes that this Court does not review the PAGA
6 allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is
7 fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent
8 class members." (LWDA Response at p.4).

9 b. **Valuation of the PAGA Claim.** For mediation, Plaintiff calculated the
10 value of the alleged PAGA claim as to Aggrieved Employees for civil penalties to be between
11 \$232,500 and \$495,000 for a single violation in every one of the 4,950 pay periods at issue in the
12 PAGA Period, depending on whether the violation was \$50 per pay period as in the case of Labor
13 Code § 558(a)(1) or the standard amount of \$100 per pay period for violation of Labor Code §
14 1198. This valuation assumed that PAGA civil penalties would be awarded at the maximum rate
15 per pay period but without stacking. The PAGA allocation in the Settlement is the amount of
16 \$25,000. This allocation is justified by several important considerations. First, the PAGA claim
17 was subject to the same risks as the underlying class claims. Second, Defendant asserted additional
18 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.
19 Defendant could also argue that no penalties prior to the PAGA notification should be awarded, and
20 I am aware of one Court which has so ruled. These additional defenses present a risk to the PAGA
21 claim and the potential that some or all of the PAGA penalties sought may not be awarded. Third,
22 civil penalties may not be awarded at the maximum rate. In *Carrington v. Starbucks Corp.*, 30 Cal.
23 App. 5th 504 (2018), the court affirmed a judgment which only provided for a PAGA penalty of \$5
24 per violation. Therefore, at trial, any PAGA penalties awarded could be significantly less than
25 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. Even if we assume that
26 violations for all 4,950 pay periods were established, using the valuation from *Carrington* results in
27 a more realistic recovery of \$23,250 for PAGA civil penalties. This means that the PAGA allocation
28 is a reasonable percentage of this potential PAGA recovery. Fourth, the interests of PAGA are also

1 served by the Class recovery under the reasoning of the LWDA in *O'Connor v. Uber*.

2 c. **Similar PAGA Settlements.** In reaching the settlement of the PAGA claim,
3 Class Counsel was also aware of what allocations other Courts have approved for similar PAGA
4 settlements as compared to the total settlement amount. A class settlement that allocates \$25,000 to
5 resolve the PAGA claims applicable to the class is also supported by what has been approved in
6 other wage-and-hour class settlements. See *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS
7 149010 (E.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$1.5 million class settlement); *Zamora v.*
8 *Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment
9 to LWDA for PAGA on a \$1.5 million class settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist.
10 LEXIS 42637 (N.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$500,000 class settlement); *Cruz v.*
11 *Sky Chefs, Inc.*, 2014 U.S. Dist Lexis 17693 (N.D. Cal. 2014) (approving payment of \$10,000 to the
12 LWDA for PAGA out of \$1,750,000 class settlement); *Chu v. Wells Fargo Investments, LLC*, 2011
13 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to the LWDA out of \$6.9
14 million common-fund settlement); *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, *13
15 (E.D. Cal. 2012) (approving PAGA payment of \$7,500 to the LWDA out of \$2.5 million
16 common-fund settlement); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. 2009)
17 (approving PAGA allocation that was .49% of \$408,420.32 gross settlement); *Garcia v. Gordon*
18 *Trucking, Inc.*, 10-cv-00324-AWI-SKO, Dkt. 149-3, 165 (E.D. Cal.) (approving a class settlement
19 of \$3,700,000, with \$10,000 allocated to the PAGA claim); *McKenzie v. Federal Express Corp.*,
20 CV 10-02420 GAF (PLAx), Dkt. 139 & 141 (C.D. Cal.) (court approved a settlement in an amount
21 of \$8.25 million, with \$82,500 allotted to the PAGA claim); *DeStefan v Frito-Lay*,
22 8:10-cv-00112-DOC (C.D. Cal.) (court approved a class settlement of \$2 million, with \$10,000
23 allocated to PAGA); *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted
24 as PAGA penalties or 0.48% of \$21,000,000 settlement amount); *East v. Comprehensive*
25 *Educational Services Inc.*, Fresno Superior Court Case No. 11-CECG-04226 (2015) (\$10,000
26 allotted as PAGA penalties or 0.13% of \$7,595,846 settlement amount); *Bararsani v. Coldwell*
27 *Banker Residential Brokerage Company*, Los Angeles Superior Court Case No. BC495767 (2016)
28 (\$10,000 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount); *Moppin v. Los*

1 *Robles Medical Center*, No. 5:15CV01551 (C.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or
2 0.40% of \$3,775,000 settlement amount); *Scott-George v. PVH Corporation*. No., 2:13CV00441
3 (E.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.46% of \$3,250,000 settlement amount);
4 *Nehrlich v. RPM Mortgage Inc.*, Orange County Superior Court Case No.
5 30-2013-00666783-CU-OE-CXC (2017) (\$10,000 allotted as PAGA penalties or 0.40% of
6 \$2,500,000 settlement amount); *Rubio v. KTI Incorporated*, San Bernardino Superior Court Case
7 No. CIVDS-14-06132 (2015) (\$1,000 allotted as PAGA penalties or 0.18% of \$550,000 settlement
8 amount); *Gray v. Mountain View Child Care Inc.*, San Bernardino Superior Court Case No.
9 CIVDS-14-02285 (2016) (\$2,500 allotted as PAGA penalties or 0.37% of \$675,000 settlement
10 amount); *Perez v. West Coast Liquidators Inc. d/b/a Big Lots*, San Bernardino Superior Court Case
11 No. CIVDS-14-17863 (2016) (\$3,000 allotted as PAGA penalties or 0.33% of \$900,000 settlement
12 amount); *Penaloza vs. PPG Industries Inc.*, Los Angeles Superior Court No. BC471369 (2013)
13 (\$5,000 allotted as PAGA penalties or 0.38% of \$1,300,000 settlement amount); *Mejia v. DHL*
14 *Express (USA) Inc.*, No. 2:15CV00890 (C.D. Cal. 2017) (\$5,000 allotted as PAGA penalties or
15 0.34% of \$1,450,000 settlement amount).

16 34. Attorneys' Fees - The Class Counsel Fees Payment is capped at one-third of the
17 Gross Settlement Amount. A fee award that is capped at one-third of the common fund is fair and
18 reasonable, and at the time of final approval, my firm will present lodestar to further support the
19 reasonableness of the requested fee award. My firm has been regularly awarded attorney's fees
20 equal to one-third of the common fund in Court-approved wage and hour class settlements. Some
21 of the class action awards obtained by Class Counsel in similar employment actions throughout the
22 state bear out the reasonableness of a fee and costs award equivalent to one-third (1/3) of the total
23 settlement value: On June 14, 2017, in *Smith v. Space Exploration* (Los Angeles Superior Court
24 Case No. BC554258), Judge Elihu Berle awarded Class Counsel a 1/3 fee award in a wage and hour
25 class settlement. On March 23, 2018, in *Bailey v. Redfin*, (Los Angeles Superior Court, Case No.
26 BC512191, the Court awarded a 1/3 fee award in a wage and hour class settlement. On July 10,
27 2018, in *Zirpolo v. UAG Stevens Creek II* (Santa Clara Superior Court Case No. 17CV313457,
28 Judge Brian Walsh awarded Class Counsel a one-third fee award in a wage and hour class

1 settlement. On July 19, 2018, in *Metrow v. Liberty Mutual*, (U.S.D.C. Central District of California
2 Case No. EDCV 16-01133-JGB), the District Court awarded Class Counsel a one-third fee award in
3 a wage and hour class settlement. On December 4, 2018, in *Panda Express Wage and Hour Cases*
4 (Los Angeles Superior Court, Case No. JCCP 4919) Judge Carolyn Kuhl awarded Class Counsel a
5 one-third fee award in a wage and hour class settlement. On February 1, 2019, in *Solarcity Wage*
6 *and Hour Cases* (San Mateo Superior Court, Case No. JCCP 4945) Judge Marie Weiner awarded
7 Class Counsel a one-third fee award in a wage and hour class settlement. On July 30, 2019, in
8 *Erickson v. John Muir Health*, (Contra Costa Superior Court Case No. MSC18-00307) Judge
9 Edward Weil awarded Class Counsel a one-third fee award in a wage and hour class settlement. On
10 December 18, 2019, in *Velasco v. Lemonade Restaurant Group*, (Los Angeles Superior Court Case
11 No. BC672235) Judge William Highberger awarded Class Counsel a one-third fee award in a wage
12 and hour class settlement. On January 31, 2020, in *El Pollo Loco Wage and Hour Cases* (Orange
13 County Superior Court Case No. JCCP 4957) Judge William Claster awarded Class Counsel a one-
14 third award in a wage and hour class settlement. On February 11, 2020, in *Singh v. Total Renal*
15 *Care* (San Francisco Superior Court Case No. CGC-16-550847) Judge Ethan Schulman awarded
16 Class Counsel a one-third award in a wage and hour class settlement. On October 23, 2020, in
17 *Ontiveros v. Baker Concrete*, (Santa Clara Superior Court Case No. 18CV328679) Judge Brian
18 Walsh awarded Class Counsel a one-third fee award in a wage and hour class settlement. On
19 December 3, 2020, in *Blackshear v. California Fine Wine & Spirits* (Sacramento Superior Court
20 Case No. 34-2018-00245842) Judge Christopher Krueger awarded BNBD a one-third fee award in a
21 wage and hour class settlement. On April 15, 2021, *Walker v. Brink's Global Services USA* (Los
22 Angeles County Superior Court Case No. BC564369) Judge Amy Hogue awarded Class Counsel a
23 one-third award in a wage and hour class settlement. On June 2, 2021, in *Pacia v. CIM Group, L.P.*
24 (Los Angeles Superior Court Case No. BC709666), Judge Amy D. Hogue awarded Class Counsel a
25 one-third fee award in a wage and hour class settlement. On September 13, 2021, in *Smith v.*
26 *California Protection and Investigation Services* (Los Angeles Superior Court Case No.
27 19STCV14719), Judge Daniel Buckley awarded a one-third fee award in a wage and hour class
28 settlement. On November 8, 2021, in *Securitas Wage and Hour Cases* (Los Angeles Superior Court

1 Case No. JCCP4837) Judge David Cunningham awarded a one-third fee award in a wage and hour
2 class settlement. On November 17, 2021, in *Leon v. Sierra Aluminum Company* (San Bernardino
3 Superior Court Case No. CIVDS2010856) Judge David Cohn awarded a one-third fee award in a
4 wage and hour class settlement. A fee award equal to one-third of the common fund is therefore
5 reasonable in light of the fees that have been awarded in other similar cases.

6 35. Class Representative Service Payments - The reasonableness of the requested service
7 award is also established by reference to the amounts that other California courts have found to be
8 reasonable in wage and hour class action settlements: *Zamora v. Balboa Life & Casualty, LLC*,
9 Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding \$25,000 service
10 award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17,
11 2011)(awarding \$14,767 service award); *Magee v. American Residential Services, LLC*, Case No.
12 BC423798, Los Angeles County Superior Court (Apr. 21, 2011)(awarding \$15,000 service award);
13 *Mares v. BFS Retail & Commercial Operations, LLC*, Case No. BC375967, Los Angeles County
14 Superior Court (June 24, 2010)(awarding \$15,000 service award); *Baker v. L.A. Fitness Int'l, LLC*,
15 Case No. BC438654, L.A. County Superior Court (Dec. 12, 2012)(awarding \$10,000 service
16 awards to three named plaintiffs); *Blue v. Coldwell banker Residential Brokerage Co.*, Case No.
17 BC417335, Los Angeles County Superior Court (Mar. 21, 2011)(awarding \$10,000 service award);
18 *Buckmire v. Jo-Ann Stores, Inc.*, Case No. BC394795, Los Angeles County Superior Court (June,
19 11, 2010)(awarding \$10,000 service awards); *Coleman v. Estes Express Lines, Inc.*, Case No.
20 BC429042, Los Angeles County Superior Court (Oct. 3, 2013)(awarding \$10,000 service award);
21 *Ethridge v. Universal Health Services, Inc.*, Case No. BC391958, Los Angeles County Superior
22 Court (May 27, 2011)(awarding \$10,000 service award); *Hickson v. South Coast Auto Ins.*
23 *Marketing, Inc.*, Case No. BC390395, Los Angeles County Superior Court (Mar. 27,
24 2012)(awarding \$10,000 service award); *Hill v. sunglass Hut Int'l, Inc.*, Case No. BC422934, Los
25 Angeles County Superior Court (July 2, 2012)(awarding \$10,000 service award); *Kambamba v.*
26 *Victoria's Secret Stores, LLC*, Case No. BC368528, Los Angeles County Superior Court, (Aug. 19,
27 2011)(awarding \$10,000 service award together with additional compensation for their general
28 release); *Nevarez v. Trader Joe's Co.*, Case No. BC373910, Los Angeles County Superior Court

(Jan. 29, 2010)(awarding \$10,000 service award); *Ordaz v. Rose Hills Mortuary, L.P.*, Case No. BC386500, Los Angeles County Superior Court, (Mar. 19, 2010)(awarding \$10,000 service award); *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los Angeles County Superior Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva v. Catholic Mortuary Services, Inc.*, Case No. BC408054, Los Angeles County Superior Court (Feb. 8, 2011)(awarding \$10,000 enhancement award); *Weisbarth v. Banc West Investment Services, Inc.*, Case No. BC422202, Los Angeles County Superior Court (May 24, 2013)(awarding \$10,000 service award); *Lazar v. Kaiser Foundation Health Plan*, Case No. 14-cv-273289, Santa Clara County Superior Court (Dec. 28, 2015) (awarding \$10,000 service award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa Clara County Superior Court (Sept. 13, 2011)(awarding \$10,000 service award); *Bejarano v. Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL (Opx)(C.D. Cal. June 22, 2010)(awarding \$10,000 service award); *Carbajal v. Sally Beauty Supply LLC*, Case No. CIVVS 1004307, San Bernardino County Superior Court (Aug. 6, 2012)(awarding \$10,000 service award); *Contreras v. Serco Inc.*, Case No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding \$10,000 service award); *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside County Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT Security Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10, 2011)(awarding \$10,000 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, Case No. JCCP 4582, Orange County Superior Court (Jan. 24, 2013)(awarding \$10,000 service award); *Barrett v. Doyon Security Services, LLC*, Case No. BS900199, BS900517, San Bernardino County Superior Court (Apr. 23, 2010)(awarding \$10,000 service award); *Zirpolo v. UAG Stevens Creek II*, Santa Clara Superior Court Case no. 17CV313457 (July 10, 2018) (awarding \$10,000 service award); *Taylor v. TIC - The Industrial Company*, U.S.D.C. Central District of California Case No. EDCV 16-186-VAP (Aug. 1, 2018) (awarding \$10,000 service award).

36. Settlement Administration - After seeking bids from qualified administrators, the estimate from Simpluris was selected, as it provided for a capped estimate of \$8,250 to perform the settlement administration for an estimate of 350 individuals, so the actual expense will be lower in this case. A true and correct copy of the estimate from Simpluris is attached hereto as Exhibit #3.

1 I have used Simpluris successfully as the administrator in more than twenty class settlements in the
2 last several years and know them to be competent and experienced.

3

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct. Executed this 17th day of February, 2021, at La Jolla, California.

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By: /s/ Kyle Nordrehaug
Kyle Nordrehaug

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CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between plaintiff Martina Avery (“Plaintiff”) and defendant Sleep Data Services LLC (“Defendant”). Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the Class Action Complaint that was filed in California state court and any amendments thereto, which is captioned *Avery v. Sleep Data Services LLC*, Case No. 37-2020-00032747-CU-OE-CTL, pending in Superior Court of the State of California, County of San Diego.
- B. “Aggrieved Employees” means all individuals who worked for Defendant in California as non-exempt employees at any time during the PAGA Period.
- C. “Class” means all individuals who worked for Defendant in California as non-exempt employees at any time during the Class Period.
- D. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Piya Mukherjee, Victoria Rivapalacio and Charlotte James of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- F. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her employee identification number; his or her email address (if known); and his or her weeks worked during the Class Period as a Class Member and pay periods worked during the PAGA Period.
- G. “Class Member” is a member of the Class.
- H. “Class Notice” means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval substantively in the form attached hereto as Exhibit A to this Agreement and incorporated by reference into this Agreement.
- I. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to

this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

- J. “Class Period” means the period of time from April 22, 2019 to September 22, 2021, the date of Preliminary Approval of the Settlement, or the date the Class grows to 10% of 19,981 (21,979) workweeks, whichever occurs first.
- K. “Class Representative Service Payment” means the service payment made to the Plaintiff in their capacity as Class Representative in order to compensate her for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiff.
- L. “Court” means the Superior Court of California, County of San Diego.
- M. “Defendant” means Sleep Data Services LLC.
- N. “Defendant’s Counsel” means Travis K. Jang-Busby, Lindsay C. David and Janna L. Jamil of Gordon Rees Scully Mansukhani, LLP.
- O. “Effective Date” means the date by which all of the following have occurred:
 - 1. This Agreement is approved by the Court; and
 - 2. The Judgment becomes Final as defined in Section I(Q) of this Agreement.
- P. “Election Not to Participate in Settlement” means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- Q. “Final” means the last of the following dates, as applicable:
 - 1. If no objection to the Settlement is made, the date the Judgment is entered.
 - 2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.
 - 3. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- R. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- S. “Gross Settlement Amount” means Two Hundred Seventy-Seven Thousand and Five Hundred Dollars (\$277,500) to be paid by Defendant as provided by this Agreement. This Gross Settlement Amount is an all-in amount without any

reversion to Defendant and shall be inclusive of all payments of Settlement Shares to the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment, and excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant. The Gross Settlement Amount is all in with no reversion to Defendant and shall be paid without the need to submit a claim form.

- T. “Judgment” means the Final Approval Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- U. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses.
- V. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- W. “PAGA Period” means the period of time from April 22, 2019 to September 22, 2021, the date of Preliminary Approval of the Settlement, or the date the class grows to 10% of 19,981 (21,979) workweeks, whichever occurs first.
- X. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- Y. “Pay Periods” means the number of pay periods worked by a Class Member for Defendant during the Class Period.
- Z. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- AA. “Released Parties” collectively mean: Defendant, Defendant’s respective past, present and future parents, subsidiaries, corporations, divisions, and successors and assigns, and the past, present and future shareholders, managers, officers, partners, members, directors, agents, employees, attorneys, insurers, predecessors, successors and assigns of Defendant.
- BB. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
- CC. “Settlement Administrator” means the third party settlement administrator proposed by the Parties, as approved by the Court.

- DD. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.
- EE. “Workweeks” means the number of weeks worked by a Class Member for Defendant during the Class Period.

II. RECITALS

- A. On September 17, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Diego. Plaintiff asserted claims that Defendant:
1. Violated California Business and Professions Code § 17200 *et seq.*;
 2. Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1;
 3. Failed to pay overtime wages in violation of California Labor Code § 510, *et seq.*;
 4. Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 5. Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 6. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226; and,
 7. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203;
 8. Wrongful termination in violation of public policy; and,
 9. Violated the Private Attorney General Act, Cal. Labor Code §§ 2698, *et seq.* (“PAGA”).
- B. On November 13, 2020, Defendant filed a general denial along with 62 affirmative defenses to the Complaint.
- C. On June 9, 2021, the Parties participated in an all-day mediation presided over by Hon. Louis Meisinger (Ret.), a respected jurist and mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based upon a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties

- D. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.
- E. The Parties further agree that this Agreement, the fact of this Settlement, any of the terms of this Agreement, and any documents filed in connection with the Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any Released Parties, (iv) any waiver of Defendant's right to arbitration or the enforceability of any arbitration agreement, or (v) the propriety of certifying a class or pursuing representative relief under the PAGA in the Action or any other civil or administrative proceeding; and this Agreement shall not be used by any person for any purpose whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of the Agreement.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Amendment to Complaint:** The Parties agree to the filing by stipulation of an amended complaint to conform the definition of the Class and PAGA Period to be consistent with the terms of this Settlement Agreement.
- B. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is Two Hundred Seventy-Seven Thousand and Five Hundred Dollars (\$277,500). This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which shall be separately paid by Defendant to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.
- C. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:
1. **To Plaintiff:** In addition to the Settlement Shares to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$10,000 as the Class Representative Service Payment. Defendant will not oppose

Class Representative Service Payment of no more than \$10,000 for the Plaintiff. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$10,000, for the Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment and instead a Form 1099 will be issued to the Plaintiff with respect to the payment who will assume full responsibility and liability for the taxes due on her Class Representative Service Payment. In addition, Plaintiff is separately settling her wrongful termination claim as alleged in the operative complaint as cause of action number eight. The payment for the settlement of the wrongful termination claims is not being made in consideration of the settlement and dismissal of the class claims, PAGA claims, and related individual claims.

2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than One-Third of the Gross Settlement Amount, which is presently \$92,500, as their Class Counsel Fees Payment and an amount not more than \$25,000 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses Payment. Defendant will not oppose their request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, which are presently \$92,500, and \$25,000 respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment shall be made to Class Counsel.
3. **The PAGA Payment.** The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out of the Gross Settlement Amount, which shall be allocated 75% (\$18,750) to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$6,250) will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period. If the Court approves a PAGA Payment of less than \$20,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the Settlement. One hundred percent (100%) of the PAGA

Payment is in settlement of claims for penalties and not be subject to wage withholdings, and shall be reported on IRS Form 1099.

4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$10,000 (“Settlement Administration Expenses”). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$10,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

D. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** Each Participating Class Member will be entitled, provisionally, to a share or shares of the Net Settlement Amount. The Settlement Share for each Participating Class Member will be calculated as follows: (i) Defendant shall provide the Settlement Administrator with the workweeks for all Participating Class Members during the Class Period; (ii) the Settlement Administrator shall then divide the Net Settlement Amount by the total number of workweeks to determine a dollar amount per week (“Weekly Rate”); and (iii) the Settlement Administrator shall then take the number of weeks worked by each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement Share.
3. **Withholding.**
 - a. Subject to approval by the Court, One-Third of each Participating Class Member’s Settlement Share is in settlement of wage claims (the “Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount. The Settlement Administrator shall be responsible for remitting to the tax authorities employees’ and employer’s share of all payroll taxes on the Wage Portion.
 - b. Subject to approval by the Court, One-Third of each Participating Class Member’s Settlement Share is in settlement of claims for interest and One-Third of each Participating Class Member’s Settlement Share is in settlement of claims for penalties allegedly

due to employees (collectively the “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.

- c. The Participating Class Members agree to hold harmless Defendant, Class Counsel, and Defendant’s Counsel for any tax liability, including penalties and interest, arising out of or relating to the Participating Class Members’ failure to pay taxes on any amounts paid pursuant to this Settlement.
- 4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares.
- 5. **Class Size Modification.** Defendant has represented that the class consists of an estimated total of 331 Class Members who worked at any time during the Class Period. In regard hereto, Defendant will provide a declaration under oath prior to the filing of the motion for preliminary approval confirming the number of Class Members and workweeks they worked during the Class Period. If prior to preliminary settlement approval and/or prior to September 22, 2021, the class exceeds 19,981 workweeks the class period will end on the date the class grows to 10% of 19,981 (21,979), whichever occurs first.
- E. **Appointment of Settlement Administrator.** After obtaining a quote from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint Simpluris as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator’s duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member’s new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member’s Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The

Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

F. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval"). Plaintiff will provide a copy of all moving papers to Defendant for review and comment no later than 5 days prior to filing. Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution. The proposed preliminary approval orders, at a minimum, shall:
 - (i) Conditionally certify the Settlement Class for settlement purposes;
 - (ii) Preliminarily appoint Plaintiff as representative of the proposed Settlement Class;
 - (iii) Preliminarily approve Class Counsel to represent the Settlement Class;
 - (iv) Appoint Simpluris Settlement Administrator, and order the Settlement Administrator to provide notice of the Settlement as out-lined below; and
 - (v) Stay all litigation of the Action pending the Final Approval Hearing, except as necessary to implement and effectuate the Settlement; and
 - (vi) Order that the preliminary approval of the Settlement, conditional certification of the Settlement Class, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is disapproved in whole or in part by the

Court, or any appellate court and/or other court of review in which event the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a representative action.

- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
 - c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.
- 2. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Settlement Share) as follows:
 - a. No later than 14 days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.F.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if additional disclosures are necessary, Class Counsel will obtain written authorization of Defendant and/or an order from the Court.

- b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the response date for written objections, disputes and opt-outs will be extended an additional 15 days, and the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.
- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than 10 days before the date by which the Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of

valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Workweeks allocated to Class Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to workweeks allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:
 - a. **Objections to Settlement.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator, postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. If a Class Notice Packet is re-mailed, the response date for written objections will be extended an additional 15 days. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.
 - b. **Disputes as to Workweeks.** Each Class Member shall also have forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets in which to dispute the workweeks the Class Notice allocates to them during the Class Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendant's Counsel, where applicable. If a Class Notice Packet is re-mailed, the response date for disputes will be extended an additional 15 days.
 - c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator postmarked not later than forty-five (45) calendar days after the

Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. If a Class Notice Packet is re-mailed, the response date for opt-outs will be extended an additional 15 days. To be valid, an Election Not to Participate in Settlement must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that an Aggrieved Employee will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of their request for exclusion. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above and in the Class Notice will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

- d. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administration will provide Class Counsel and Defendant's Counsel with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.

- 4. **Right of Defendant to Reject Settlement.** If the number of Class Members who timely submit valid Elections Not to Participate in Settlement exceeds five percent (5%) of the Class, Defendant, at its sole discretion, shall have the right but not the obligation to revoke the Settlement. Defendant shall exercise its revocation rights, if at all, within

fifteen (15) court days of the deadline for submission of Elections Not to Participate in Settlement by providing written notice, either email or fax will suffice, to Class Counsel. If Defendant exercises its revocation rights, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Settlement Administration Expenses as of the date that Defendant exercises the right to void the Settlement pursuant to this Paragraph will be paid by Defendant.

5. **No Solicitation.** The Parties and their respective counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
6. **Additional Briefing and Final Approval.**
 - a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date Plaintiff files the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.
 - b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses. Drafts of the motion for final approval of the Settlement and proposed final approval order will be provided to Defendant's counsel at least five (5) court days before the documents are filed and approved of in writing before it is filed. The final approval order shall adjudge that, among other things:
 - (i) The Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement and that the Class Notice (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, and their right to exclude themselves from or object to the proposed Settlement and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of due process, and any other applicable rules or law;
 - (ii) The Settlement is fair, reasonable, and adequate;

- (iii) Plaintiff and Class Counsel may adequately represent the Settlement Class for the purpose of entering into and implementing the Agreement;
 - (iv) The Settlement Administrator is to execute the distribution of proceeds pursuant to the terms of this Agreement;
 - (v) The final approval order and judgment shall be final and entered forthwith;
 - (vi) Without affecting the finality of the final approval order and judgment, the Court retains continuing jurisdiction over Plaintiff, Defendant, and Participating Class Members, as to all matters concerning the administration, consummation, and enforcement of this Settlement Agreement;
 - (vii) As of the Effective Date, Plaintiff and Participating Class Members compromised, settled, discharged, and provided the release of the Released Class Claims during the applicable time period, against Defendant and the Released Parties, and are bound by the provisions of this Settlement Agreement;
 - (viii) Notwithstanding the submission of a timely request for exclusion, Aggrieved Employees are still bound by release of the Released PAGA Claims in the Settlement and the State's Released PAGA Claims for civil penalties pursuant to PAGA are also extinguished.
 - (ix) This Settlement Agreement and the Final Approval Order and Judgment to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that encompass Plaintiff's and Participating Class Members' claims released herein, and that are maintained by or on behalf of Plaintiff and Participating Class Members;
 - (x) The Settlement provided for herein, and any proceedings undertaken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of a litigation class or collective, or that PAGA representative claims may validly be pursued;
- c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service

Payments, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval, and Plaintiff and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payments, and the Class Counsel Litigation Expenses Payment.

- d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payments, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph. In the event: (i) the Court denies preliminary approval of the Settlement and the Parties are unable to propose a revised Settlement for the Court's approval; (ii) the Court denies final approval of the Settlement and the Parties are unable to propose a revised Settlement for the Court's approval; (iii) the Court refuses to enter a Judgment as provided herein; or (iv) the Settlement does not become Final for any other reason, this Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning.
- e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

- 7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff, plaintiff's counsel, and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver

of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payments or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.
9. **Timing of Settlement Funding and Provision of Settlement Shares and Other Payments.** Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within thirty (30) days of the Effective Date. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payments and the PAGA Payment in accordance with this Agreement.
10. **Uncashed Settlement Share Checks.** A Participating Class Member or Aggrieved Employee must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator or not cashed within 120 days after the last mailing, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected individual at his or her correct address by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Settlement Administrator will also

send the individual a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60 day period after this notice, the funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check, and the Participating Class Member or Aggrieved Employee will remain bound by the Settlement. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members or Aggrieved Employees, whether or not they all cash their Settlement Share checks.

11. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

G. Release of Claims.

1. **Participating Class Members.** As of the Effective Date, Defendant shall receive a release from the Participating Class Members of all claims alleged in the operative complaint, or which could have been asserted in the operative complaint premised on the facts asserted therein, which arose during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, and workers' compensation, and class claims outside of the Class Period ("Released Class Claims").
2. **Aggrieved Employees.** As of the Effective Date, Defendant shall receive a release from the State of California of all PAGA claims for civil penalties alleged in the operative complaint, or which could have been asserted in the operative complaint premised on the facts asserted therein, which arose during the PAGA Period ("Released PAGA Claims"). The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request for an exclusion from the Class for all Released PAGA Claims that occurred during the PAGA Period.
3. **Plaintiff.** As of the Effective Date, Plaintiff generally, releases and discharges the Released Parties from any and all claims, transactions or occurrences between them that occurred during the Class Period ("Plaintiff's Released Claims"). This release of Plaintiff's Released Claims releases the Released Parties from any claim that Plaintiff could maintain in any action against any Released Party that occurred during the Class Period. Notwithstanding the foregoing, this waiver and release of claims does not extend to any rights which as a matter of law cannot be

waived and released by private agreement, including rights to sue to enforce this Agreement and rights to vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits, claims outside the Class Period, and Plaintiff's wrongful termination claims as alleged in the operative complaint which are being separately settled.

Plaintiff acknowledges that she may discover facts or law different from, or in addition to the facts or law that she knows or believes to be true with respect to the claims and matters released by way of this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete.

4. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payments, the Plaintiff's Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that she now knows or believes to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

5. **Plaintiff's Other Claims.** Plaintiff represents that she does have an additional claim against Defendant other than the Class claims and PAGA claims. This other claim consists of a wrongful termination claim which Plaintiff is separately settling pursuant to California Rules of Court, rule 3.770. To the extent required by the Court, Plaintiff will provide the Court with a declaration disclosing the facts concerning the individual settlement for in camera review by the Court.
6. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.

- H. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- I. **Limitation on Public Statements About Settlement.** Neither Class Counsel nor Defendant's Counsel shall publicize the Settlement prior to the Court granting preliminary approval, other than filing documents with the Court. Plaintiff and Class Counsel and Defendant and Defendant's Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement. If Plaintiff or Class Counsel or Defendant or Defendant's Counsel receives an inquiry about the Settlement from the media, they may respond only after the Motion for Preliminary Approval has been filed and only by confirming the accurate terms of the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members after preliminary approval. Nothing in this provision shall prevent Defendant or Plaintiff from making any required disclosures.
- J. **Miscellaneous Terms.**
1. **No Admission of Liability or Class Certification for Other Purposes.**
- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate. The Parties have entered into this settlement with the

intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff that Plaintiff's claims do not have merit or that class action is inappropriate.

- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may only be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

- 2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.

4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in section III.J.3 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Effective Date, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Travis K. Jang-Busby
Lindsay C. David
Janna I. Jamil
Gordon Rees Scully Mansukhani, LLP
101 West Broadway, Suite 2000
San Diego, CA 92101
Tel.: (619) 544-7226
Fax: (619) 696-7124
E-Mail: tjang-busby@grsm.com
ldavid@grsm.com
jjamil@grsm.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation with Hon. Louis Meisinger (Ret.) on June 9, 2021 until the earlier of the Effective Date or the date this Agreement shall not longer be of any force or effect.

16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Nov 10, 2021


Martina Avery (Nov 10, 2021 22:39 PST)
Plaintiff Martina Avery

Dated: _____

[name]
For Defendant Sleep Data Services LLC

Dated: 11/15/21


Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: _____

Travis K. Jang-Busby
Gordon Rees Scully Mansukhani, LLP
Attorney for Defendant

16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____

Plaintiff Martina Avery

Dated: 12/06/2021

Julie Gorich
Julie Gorich [name]
For Defendant Sleep Data Services LLC

Dated: _____

Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: 12/7/2021

Travis K. Jang-Busby
Travis K. Jang-Busby
Gordon Rees Scully Mansukhani, LLP
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

**(Avery v. Sleep Data Services LLC, Superior Court of the State of California,
County of San Diego, Case No. 37-2020-00032747-CU-OE-CTL)**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<__>>. See the explanation in Section 5 below. If you do nothing, you will be considered a Participating Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the Settlement Share payment, you will release the Released Class Claims as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement and you will not be bound by the Settlement. However, if you are an Aggrieved Employee who opts out, you will still be paid your allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion. If you choose to do so, you must notify the Settlement Administrator as explained in Section 7 below.
Object	Write to the Court about why you do not agree with the settlement or appear at the Final Approval Hearing to make an oral objection. Instructions are provided in Section 8 below.

Your options are further explained in this Class Notice. To exclude yourself from, or object to, the settlement you must take action by certain deadlines. If you want the Settlement as proposed, you don't need to do anything to obtain your share of the Settlement. Defendant will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of the above-captioned action pending in the Superior Court of the State of California, in and for the County of San Diego (the "Court") has been reached between Plaintiff Martina Avery ("Plaintiff") and Defendant Sleep Data Services LLC ("Defendant") and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All individuals who worked for Defendant in California as non-exempt employees at any time during the Class Period.

The Class Period is April 22, 2019 to [insert date].

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On September 17, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Diego (the “Complaint”), alleging the following class claims against the Defendant: unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to provide accurate itemized wage statements, failure to timely pay wages at termination, and recovery of civil penalties pursuant to the Private Attorney General Act (Labor Code §§ 2698, *et seq.*) (“PAGA”) based upon the above alleged violations. This lawsuit is referred to as the “Action”.

Defendant denies and disputes all such claims. Specifically, Defendant contends that Plaintiff and the Class Members were properly compensated for wages under California law; that Plaintiff and the Class Members were provided with meal and rest periods in compliance with California law; that Defendant complied with California wage statement requirements; that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action; and that this Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Two Hundred Seventy-Seven Thousand Five Hundred Dollars (\$277,500) (the “Gross Settlement Amount”) to fund the settlement of this Action. The Gross Settlement Amount includes all payments of Settlement Shares to Class Members, the Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment for civil penalties. Any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages shall be separately paid by Defendant.

Within thirty (30) days of the Effective Date, Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. The “Effective Date” the date the Judgment is entered, or if there are objections or any appeal, the date the Judgment is no longer subject to appeal. Fifteen (15) days after the settlement is funded, the Settlement Administrator will mail checks for the Settlement Shares to Participating Class Members.

Amounts to be Paid From the Gross Settlement Amount. The proposed payments subject to Court approval will be deducted from the Gross Settlement Amount before Settlement Shares are made to Class Members who do not request exclusion (“Participating Class Members”):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$10,000, for expenses, including without limitation expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing Settlement Shares and tax forms, and handling inquiries and uncashed checks.
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount, which is presently \$92,500 and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$25,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- Class Representative Service Payments. Class Representative Service Payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to the Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook. The amount stated is what Plaintiff will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Payment. A payment of \$25,000 relating to the claim for penalties under the Private Attorney Generals Act (“PAGA”), \$18,750 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA Payment”). The remaining \$6,250 will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period (April 22, 2019 to [REDACTED]). “Aggrieved Employees” mean all individuals who worked for Defendant in California as non-exempt employees at any time during the PAGA Period. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the Settlement.

Calculation of Payments to Class Members. After all of the payments of the Court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount”, shall be distributed as Settlement Shares to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$ [REDACTED], based upon the above proposed deductions. Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member, which shall be calculated as follows: (a) the Settlement Administrator shall then divide the Net Settlement Amount by the total number of workweeks to determine a dollar amount per week (“Weekly Rate”); and (b) the Settlement Administrator shall then take the number of weeks worked by each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement Share.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. One-third (1/3) of each Participating Class Member's Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. One-third (1/3) of each Participating Class Member's Settlement Share is in settlement of claims for interest and one-third (1/3) of each Participating Class Member's Settlement Share is in settlement of claims for penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date, Defendant shall receive a release from the Participating Class Members of all claims alleged in the operative complaint, or which could have been asserted in the operative complaint premised on the facts asserted therein, which arose during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, and workers' compensation, and class claims outside of the Class Period ("Released Class Claims").

This means that, if you do not timely exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any other Released Party about Released Class Claims resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released PAGA Claims. As of the Effective Date, Defendant shall receive a release from the State of California of all PAGA claims for civil penalties alleged in the operative complaint, or which could have been asserted in the operative complaint premised on the facts asserted therein, which arose during the PAGA Period ("Released PAGA Claims"). The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request for an exclusion from the Class for all Released PAGA Claims that occurred during the PAGA Period.

5. How much will my payment be?

The Weekly Rate is estimated to be <<\$_____>>. Defendant's records reflect that you have worked <<_____>> weeks for Defendant during the Class Period (April 22, 2019 to _____).

Based on this information, your estimated Settlement Share from the Net Settlement Amount is <<_____>>.

If you wish to challenge the information set forth above, then you must submit a written and signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [forty-five (45) days after the mailing of the Class Notice or 60 days after the Class Notice in the case of re-mailing].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your Settlement Share will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator can be contacted at: _____ or (800) _____.

The Court will hold a Final Approval Hearing on _____, 2022, at _____ to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as a service award to the Plaintiff. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately two months after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will not receive a Settlement Share from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendant for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless whether they submit a request for exclusion.

To opt out, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than _____ [forty-five (45) days after the date of the Class Notice or 60 days after the Class Notice in the case of re-mailing]. The request to opt-out must be postmarked or received by the Settlement Administrator by this deadline and should: (1) contain a clear statement that you are requesting to opt out of, or be excluded from the Class and Released Class Claims in the *Avery v. Sleep Data Services LLC* lawsuit; (2) contain the name, address, and the last four digits of the Social Security Number of the person requesting exclusion; (3) state the Class Member's request to exclude himself or herself from the Settlement and to opt out of the Settlement; and (4) be signed by the Class Member or his or her lawful representative. Please include the name and number of the case, which is *Avery v. Sleep Data Services LLC*, Case No. 37-2020-00032747. The request to opt-out must be signed by you. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned may be rejected; and if so, those Class Members will remain bound by the Settlement and the Released Class Claims described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys' fees, the costs and/or the service awards, either in writing or in person. Objections that are in writing should state the Class Member's name, current address, telephone number, and the dates of employment in California by Defendant, and describe why you believe the Settlement is unfair. All written objections or other correspondence should also state the name and number of the case, which is *Avery v. Sleep Data Services LLC*, in the Superior Court of the State of California, County of San Diego, Case No. 37-2020-00032747.

All written objections must be mailed to the Settlement Administrator at _____, no later than _____ [forty-five (45) days after the date of the Class Notice or 60 days after the Class Notice in the case of re-mailing].

Alternatively, Class Members may appear remotely at the Final Approval Hearing on _____ at _____ to make an oral objection without submitting a written objection or to otherwise participate in the Final Approval Hearing. Check the Court's website for the most current information concerning appearances and procedures at the Court - <https://www.sdcourt.ca.gov/sdcourt/generalinformation/covid-19info>. For assistance in making an appearance at the Final Approval Hearing, please contact Class Counsel below.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Settlement Share.

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

Travis K. Jang-Busby
Gordon Rees Scully Mansukhani, LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, at the San Diego County Superior Court, located at 330 West Broadway, San Diego, CA 92101, in Department 74 before Judge Keri Katz. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payments to Plaintiff. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating in the Final Approval Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required**

to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Avery v. Sleep Data Services LLC*. In addition, hearing dates are posted on the Internet via the Register of Actions page for the California Superior Court for the County of San Diego (<https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>) and entering the Case No. 37-2020-00032747.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Avery v. Sleep Data Services LLC* Settlement Administrator, c/o _____; or contact Class Counsel at 1-858-551-1223.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service award, the motion for final approval, or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Avery v. Sleep Data Services LLC*. You may also get more details by examining the Court's file on the Internet via the Register of Actions for the San Diego County Superior Court (<https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>) and entering the Case No. 37-2020-00032747. If you wish to view the Court files in person, you must make an appointment with the Clerk's Office at the Hall of Justice, 330 West Broadway, San Diego, CA 92101.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date will be printed on the check. In such event, the Settlement Administrator shall pay all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check where the funds may be claimed.
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MARTINA AVERY, an individual, on behalf
of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

SLEEP DATA SERVICES LLC a California
Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

CASE NO.: **37-2020-00032747-CU-OE-CTL**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date:
Hearing Time:

Judge: Hon, Keri Katz
Dept.: 74

Action Filed: September 17, 2020
Trial Date: None Set

PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable Keri Katz of the Superior Court of the
2 State of California, in and for the County San Diego, on _____[DATE], for the motion by
3 Plaintiff Martina Avery (“Plaintiff”) for preliminary approval of the class settlement with
4 Defendant Sleep Data Services LLC (“Defendant”). The Court, having considered the briefs,
5 argument of counsel and all matters presented to the Court and good cause appearing, hereby
6 GRANTS Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

7
8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action Settlement Agreement
10 (“Agreement”) attached as Exhibit ____ to the Declaration of Kyle Nordrehaug in Support of
11 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This is based on the
12 Court’s determination that the Settlement set forth in the Agreement is within the range of possible
13 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
14 and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. The Gross Settlement Amount is Two Hundred Seventy-Seven Thousand Five
18 Hundred Dollars (\$277,500). It appears to the Court on a preliminary basis that the settlement
19 amount and terms are fair, adequate and reasonable as to all potential Class Members when
20 balanced against the probable outcome of further litigation and the significant risks relating to
21 certification, liability and damages issues. It further appears that investigation and research have
22 been conducted such that counsel for the Parties are able to reasonably evaluate their respective
23 positions. It further appears to the Court that settlement at this time will avoid substantial
24 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
25 further prosecution of the Action. It further appears that the Settlement has been reached as the
26 result of serious and non-collusive, arms-length negotiations. The Court therefore preliminarily
27 finds that the Settlement is fair, adequate, and reasonable when balanced against the probable
28

1 outcome of further litigation and the significant risks relating to certification, liability, and
2 damages issues.

3 4. The Agreement specifies for an attorneys' fees award not to exceed one-third (1/3)
4 of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$25,000,
5 and proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
6 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
7 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
8 supporting these requests, including lodestar, at the time of final approval.

9 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
10 certification of a class for settlement purposes only. This stipulation will not be deemed
11 admissible in this or any other proceeding should this Settlement not become final. For settlement
12 purposes only, the Court conditionally certifies the following Class: "all individuals who worked
13 for Defendant in California as non-exempt employees at any time during the Class Period." The
14 Class Period is April 22, 2019 to _____.

15 6. The Court concludes that, for settlement purposes only, the Class meets the
16 requirements for certification under section 382 of the California Code of Civil Procedure in that:
17 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
18 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
19 community of interest amongst the members of the Class with respect to the subject matter of the
20 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
21 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
22 action is superior to other available methods for the efficient resolution of this controversy; and (f)
23 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff are adequate
24 representatives of the Class.

25 7. The Court provisionally appoints Plaintiff as the representative of the Class. The
26 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
27 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

1 8. The Court hereby approves, as to form and content, the Notice of Proposed
2 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
3 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
4 accurately inform the Class of all material elements of the proposed Settlement, of the Class
5 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
6 member’s right and opportunity to object to the Settlement. The Court further finds that the
7 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
8 and this Order meets the requirements of due process, is the best notice practicable under the
9 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
10 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
11 the Agreement.

12 9. The Court hereby appoints Simpluris as Settlement Administrator. No later than
13 fourteen (14) calendar days after preliminary approval of the Settlement by the Court, Defendant
14 shall provide to the Settlement Administrator an electronic spreadsheet with the Class Data. The
15 Settlement Administrator will perform address updates and verifications as necessary prior to the
16 mailing of the Class Notice. Using best efforts to mail it as soon as possible, and in no event later
17 than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class
18 Notice to all Class Members via first-class U.S. Mail.

19 10. The Court hereby preliminarily approves the proposed procedure for exclusion
20 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
21 from the Class as provided in the Class Notice by following the instructions for requesting
22 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
23 postmarked by no later than forty-five (45) calendar days after the date of the mailing of the Class
24 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
25 response date for requests for exclusion will be extended an additional 15 days. Any such person
26 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
27 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
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comment thereon. Class Members who have not requested exclusion shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for exclusion may only opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass of individuals is not permitted and will be deemed invalid. Subject to the Court's final approval of the Settlement, those Aggrieved Employees that worked during the PAGA Period of April 22, 2019 to _____, will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims in the Agreement regardless of their request for exclusion from the Class.

11. Any Class Member who has not opted out may appear at the final approval hearing and may object or express the Member's views regarding the Settlement, and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice. Class Members will have forty-five (45) calendar days from the date of the mailing of the Class Notices to submit their written objections to the Settlement Administrator in accordance with the instructions in the Class Notice. If the Class Notice Packet is re-mailed, the response date for written objections will be extended an additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to make oral objections.

12. A Final Approval Hearing shall be held before this Court on _____ at _____ in Department 74 at the San Diego County Superior Court to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether the Final Approval Order and Judgment should be entered herein; whether the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys' fees and costs, the service awards, and the expenses of the Settlement Administrator. All papers in support of the motion for final approval and the motion for attorneys' fees, costs and service awards shall be filed with the Court and served on all counsel no later than

1 sixteen (16) court days before the hearing and both motions shall to be heard at the Final Approval
2 Hearing.

3 13. Neither the Settlement nor any exhibit, document, or instrument delivered
4 thereunder shall be construed as a concession or admission by Defendant in any way that the
5 claims asserted have any merit or that this Action was properly brought as a class or representative
6 action, and shall not be used as evidence of, or used against Defendant as, an admission or
7 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
8 omission by Defendant or with respect to the truth of any allegation asserted by any person.
9 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
10 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
11 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
12 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
13 evidence of a presumption, concession, indication or admission by Defendant of any liability,
14 fault, wrongdoing, omission, concession or damage.

15 14. In the event the Settlement does not become effective in accordance with the terms
16 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
17 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
18 and the Parties shall revert to their respective positions as of before entering into the Agreement,
19 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
20 including all available defenses and affirmative defenses, and arguments that any claim in the
21 Action could not be certified as a class action and/or managed as a representative action. In such
22 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
23 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
24 the Agreement with respect to the effect of the Agreement if it is not approved.

25 15. The Court reserves the right to adjourn or continue the date of the final approval
26 hearing and all dates provided for in the Agreement without further notice to Class Members, and
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1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

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7 Dated: _____

8 HON. KERI KATZ
9 JUDGE, SUPERIOR COURT OF CALIFORNIA

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EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MARTINA AVERY, an individual, on behalf
of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

SLEEP DATA SERVICES LLC a California
Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

CASE NO.: **37-2020-00032747-CU-OE-CTL**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date:
Hearing Time:

Judge: Hon, Keri Katz
Dept.: 74

Action Filed: September 17, 2020
Trial Date: None Set

FINAL APPROVAL ORDER AND JUDGMENT

1 The motion of Plaintiff Martina Avery (“Plaintiff”) for an order finally approving the Class
2 Action Settlement Agreement (“Agreement”) with Defendant Sleep Data Services LLC
3 (“Defendant”), and the motion for attorneys’ fees and costs, service payments, and the fees and
4 expenses of the Settlement Administrator, duly came on for hearing on _____ before
5 the Honorable Keri Katz.

6
7 **I.**
8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

- 11 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
14 including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiffs and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of Two Hundred Seventy-Seven
17 Thousand Five Hundred Dollars (\$277,500) and the terms set forth in the Agreement are fair,
18 reasonable, and adequate.
- 19 4. The Court further finds that the Settlement was the result of arm’s length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount the
22 Settlement, the significant risks relating to certification, liability, and damages issues, and the
23 assistance of an experienced mediator in the settlement process, among other factors, support the
24 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

25 **Preliminary Approval of the Settlement**

- 26 5. On _____, the Court granted preliminary approval of the Settlement. At
27 this same time, the Court approved conditional certification of the Class for settlement purposes

1 only.

2 **Notice to the Class**

3 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
4 by first class mail to members of the Class at their last known addresses on or about
5 _____. Mailing of the Class Notice to their last known addresses was the best notice
6 option under the circumstances and was reasonably calculated to communicate actual notice of the
7 litigation and the proposed settlement to the Class. The Class Notice given to the Class Members
8 fully and accurately informed the Class Members of all material elements of the proposed
9 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
10 Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully with the
11 laws of the State of California, the United States Constitution, due process and other applicable
12 law. The Class Notice fairly and adequately described the Settlement and provided Class
13 Members adequate instructions and a variety of means to obtain additional information.

14 7. The deadline for opting out of the Class or submitting written objections to the
15 Settlement was _____. There was an adequate interval between notice and the deadline
16 to permit Class Members to choose what to do and act on their decision. A full opportunity has
17 been afforded to the Class Members to participate in this hearing, and all Class Members and other
18 persons wishing to be heard have been heard. Class Members also have had a full and fair
19 opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
20 Court determines that all Class Members who did not timely and properly submit a request for
21 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

22 **Fairness Of Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 parties during an all-day mediation before Hon. Louis Meisinger (Ret.), a respected jurist and
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1 experienced mediator of wage and hour class actions. There has been no collusion between the
2 parties in reaching the proposed settlement.

3 b. Plaintiff's investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for both parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. ____
8 objections were received. _____ requests for exclusion were received.

9 e. The participation rate was high. _____ Class Members will be mailed a
10 settlement payment, representing ____% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Attorneys' Fees and Costs**

19 11. An award of \$_____ for attorneys' fees, representing one-third (1/3) of
20 the Gross Settlement Amount, and \$_____ for litigation costs and expenses, is
21 reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked by Class
22 Counsel, and the results achieved by Class Counsel. The requested awards have been supported
23 by Class Counsel's lodestar and billing statement.

24 **Class Representative Service Payment**

25 12. The Agreement provides for a Class Representative Service Payment of not more
26 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
27 Representative Service Payment in the amount of \$_____ to the Plaintiff is reasonable in light
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1 of the risks and burdens undertaken by the Plaintiff in the litigation, for her time and effort in
2 bringing and prosecuting this matter on behalf of the Class, and for her execution of a general
3 release.

4 **Settlement Administration Expenses**

5 13. The Settlement Administrator shall calculate and administer the payment to be
6 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
7 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Payment,
8 issue any required tax reporting forms, calculate withholdings and perform the other remaining
9 duties set forth in the Agreement. The Settlement Administrator has documented \$ _____ in
10 fees and expenses, and this amount is reasonable in light of the work performed by the Settlement
11 Administrator.

12 **PAGA Payment**

13 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
14 Amount of \$25,000, which shall be allocated \$18,750 to the LWDA as the LWDA's 75% share of
15 the settlement of civil penalties paid pursuant to the PAGA and \$6,250 to be distributed to the
16 Aggrieved Employees based on their respective pay periods during the PAGA Period. The
17 Aggrieved Employees are all individuals who worked for Defendant in California as non-exempt
18 employees at any time during the PAGA Period, which is April 22, 2019 to
19 _____. The Court finds this PAGA Payment to be reasonable. All Aggrieved
20 Employees will be sent their share of the PAGA Payment and will be subject to the release of the
21 Released PAGA Claims as set forth below, whether or not they opt out of the Settlement.

22
23 **II.**

24 **ORDERS**

25 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

26 1. The certification of the Class for the purposes of settlement is confirmed. The
27 Class is defined as follows:
28

1 All individuals who worked for Defendant in California as non-exempt employees
2 at any time during the Class Period (April 22, 2019 to [REDACTED]).

3 2. All persons who meet the foregoing definition are members of the Class, except for
4 those individuals who filed a valid request for exclusion (“opt out”) from the Class. [INSERT
5 REFERENCE TO IDENTIFY ANY OPT OUTS].

6 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
7 best interest of the Class.

8 4. Class Counsel are awarded attorneys' fees in the amount of \$_____ and
9 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
10 compensation or reimbursement from Defendant, Plaintiff or members of the Class.

11 5. The payment of the Class Representative Service Payment in the amount of \$
12 _____ to the Plaintiff is approved.

13 6. The payment of \$_____ to the Settlement Administrator for their fees and
14 expenses is approved.

15 7. The PAGA Payment of \$25,000 is approved and shall be allocated in accordance
16 with the Agreement.

17 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
18 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
19 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
20 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
21 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
22 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
23 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
24 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
25 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
26 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
27 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
28 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other

1 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
2 Released PAGA Claims.

3 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
4 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
5 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
6 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
7 to individual Class Members.

8 10. If the Agreement does not become final and effective in accordance with the terms
9 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
10 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
11 revert to their respective positions as of before entering into the Agreement, and expressly reserve
12 their respective rights regarding the prosecution and defense of this Action, including all available
13 defenses and affirmative defenses, and arguments that any claim in the Action could not be
14 certified as a class action and/or managed as a representative action.

15
16 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

17 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
18 Plaintiffs, and all members of the Class, shall take nothing in the Action.

19 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
20 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
21 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
22 arising from or in connection with the distribution of settlement benefits.

23 3. The Parties are authorized, without further approval from the Court, to agree to and
24 to adopt such amendments, modifications and expansions of the Agreement and all exhibits
25 attached thereto which are consistent with this Final Approval Order and Judgment and as
26 approved by the Court.

1 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
2 provided in the Agreement and in this Final Approval Order and Judgment.

3 5. As of the Effective Date, each Class Member who has not validly opted out has
4 released the "Released Class Claims" against the Defendant and the Released Parties as set forth
5 in the Agreement. "Released Class Claims" means all claims alleged in the operative complaint, or
6 which could have been asserted in the operative complaint premised on the facts asserted therein,
7 which arose during the Class Period, and expressly excluding all other claims, including claims for
8 vested benefits, wrongful termination, unemployment insurance, disability, social security, and
9 workers' compensation, and class claims outside of the Class Period.

10 6. As of the Effective Date, Defendant shall receive a release from the State of
11 California of all PAGA claims for civil penalties alleged in the operative complaint, or which
12 could have been asserted in the operative complaint premised on the facts asserted therein, which
13 arose during the PAGA Period ("Released PAGA Claims"). The release of the Released PAGA
14 Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved
15 Employee submitted a request for an exclusion from the Class for all Released PAGA Claims that
16 occurred during the PAGA Period.

17 7. As of the Effective Date, Plaintiff generally releases and discharges the Released
18 Parties from all of the Plaintiff's Released Claims as set forth fully in the Agreement.

19 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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21 Dated: _____

22 _____
23 HON. KERI KATZ
24 JUDGE, SUPERIOR COURT OF CALIFORNIA
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Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara, La Jolla, California 92037

Tel: (858) 551-1223

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FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

Aparajit Bhowmik

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

Nicholas J. De Blouw

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

Victoria Rivapalacio

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

Ricardo Ehmann

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

Jeffrey S. Herman

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2011, California; 2016 Arizona

Educated: University of Michigan (B.A. 2008); California Western School of Law (J.D. 2011)

Charlotte James

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: San Diego State University; California Western School of Law

Christine Levu

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2012, California

Educated: University of California, Irvine; California Western School of Law

Andrew Ronan

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: Arizona State University; University of San Diego School of Law

Scott Blumenthal

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D. Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

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Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior County, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	13812	Prepared By:	Michael Sutherland
Estimate Date:	9/7/2021	Direct Dial #	321.223.5067
		Email:	Msutherland@simpluris.com

Plaintiff Attorney
Attorney/Client: **Kyle Nordrehaug**
Firm: Blumenthal Nordrehaug & Bhowmik
Email: kyle@bamlawca.com

Defense Attorney
Attorney/Client:
Firm:
Email:

Case Name: Sleep Data: Opt Out Settlement

Anticipated Total Cost	\$8,629
Capped Fee*	\$8,250

Terms:

- 1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate
- .2) Included is a 2021 Federal 1120 tax return to account for banking activity in 2021.

Total Possible Class Size:	350	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	5%
Mailing Document Language:	English	Fund Distribution:	Simpluris
Reminder Postcard:	Yes	Redistribution:	One
Unclaimed Funds:	Escheat	State(s):	CA
		Tax Reporting Years	One

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	3	\$375.00
Database Manager - Initial Data Analysis	\$140.00	3	\$420.00
Total			\$795.00

Notification

Notice Packet: 4 pg Notice - Double Sided - English

Check Cashing Deadline Reminder.

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.00	350	\$350.00
Postage	\$0.58	350	\$203.00
NCOA/CASS/LACS	\$50.00	1	\$50.00
Undeliverable Processing	\$0.25	35	\$8.75
Skip Trace RUM	\$1.50	35	\$52.50
Remail Notice Packet	\$1.50	30	\$44.63
Remail Postage	\$0.58	30	\$17.26
Reminder Post Card Check Cashing Deadline	\$0.40	175	\$70.00
Postage	\$0.36	175	\$63.00
Mailing Supervisor	\$50.00	1	\$50.00
Total			\$909.13

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	5	\$375.00



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Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	3	\$375.00
Resolving Mismatched TINs	\$75.00	2	\$150.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	4	\$8.75
Opt Out Processing	\$1.50	4	\$5.25
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	3	\$375.00
Social Media Search for Check Cashing Deadline	\$125.00	2	\$250.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$1,214.00

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members: W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	3	\$420.00
Disbursement Manager - Data Validation	\$75.00	2	\$150.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$3.00	350	\$1,050.00
Postage	\$0.58	350	\$203.00
Process Returned Checks	\$0.50	4	\$1.75
Skip Trace Search Undeliverable Checks	\$5.00	4	\$17.50
Remail Checks (Includes Postage)	\$4.00	4	\$14.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee, 2021	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	5	\$26.25
Postage	\$0.58	5	\$3.05
Responding to IRS, State, Agency Inquiries	\$75.00	1	\$75.00
Escheat management-State	\$400.00	1	\$400.00
Disbursement Manager	\$125.00	6	\$750.00
Total			\$5,060.55



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Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc	\$50.00	3	\$150.00
Project Manager-Wrap-up Final Issues	\$125.00	2	\$250.00
Total			\$650.00

Postage \$423.26

Total Case Costs

\$8,628.68

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning