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

RUBEN ALVARADO, individually, and
on behalf of other members of the general
public similarly situated; WHITEY
DAVIS, individually, and on behalf of
other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

v.

CITADEL SERVING CORPORATION,
a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 30-2019-01057617-CU-OE-CXC

Honorable Kirk H. Nakamura
Department CX103

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declarations of Proposed Class Counsel
(Edwin Aiwazian and Heather Davis);
Declarations of Proposed Class
Representatives (Ruben Alvarado and Whitey
Davis); and [Proposed] Order filed
concurrently herewith]

Reservation No.: 73471719
Date: April 1, 2021
Time: 2:00 p.m.
Department: CX103

Complaint Filed: March 18, 2019
FAC Filed: March 3, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 1, 2021 at 2:00 p.m. or as soon thereafter as the matter may be heard before the Honorable Kirk H. Nakamura in Department CX103 of the Superior Court of California for the County of Orange, located at Civil Complex Center, 751 West Santa Ana Blvd, Santa Ana, California 92701, Plaintiffs Ruben Alvarado and Whitey Davis (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Stipulation of Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Award to Class Counsel, Service Awards to Plaintiffs, and Settlement Administration Expenses to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Ruben Alvarado and Whitey Davis as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class and Representative Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Award to Class Counsel, Service Awards for Plaintiffs, and Settlement Administration Expenses to Settlement Administrator.

This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwarzian and Heather Davis) and Proposed Class Representatives (Ruben Alvarado and Whitey Davis) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: March 24, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Ruben Alvarado and Whitey Davis (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Stipulation of Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Citadel Servicing Corporation (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Total Settlement Amount of Nine Hundred Fifty Thousand Dollars (\$950,000.00).¹ The Total Settlement Amount includes the following: (1) gross Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Distribution Fund;² (2) the Service Awards of Ten Thousand Dollars (\$10,000.00) each to Plaintiffs (\$20,000 total);³ (3) the Class Counsel Award to Class Counsel, consisting of attorneys’ fees in the amount of thirty-three and one third percent (33.33%) of the Total Settlement Amount, or \$316,635.00, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars (\$30,000.00);⁴ (4) the Settlement Administration Expenses to the Settlement Administrator in the amount not to exceed Ten Thousand Dollars (\$10,000.00);⁵ and (5) the amount of One Hundred Thousand Dollars (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to Settlement Class Members as a part of the Net Distribution Fund.⁶

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¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § IV.1.

² *Id.*, § IV.7.

³ *Id.*, § IV.4.

⁴ *Id.*, § IV.5.

⁵ *Id.*, § IV.6.

⁶ *Id.*, § II.27.

1 Plaintiffs also seek to provisionally certify the following Classes for settlement purposes,
2 which Defendant does not oppose:

3
4 All current and former hourly-paid or non-exempt employees who worked for
5 Defendant in the State of California at any time during the period from March 18,
6 2015 through the date of Preliminary Approval (“Non-Exempt Class” or “Non-
7 Salaried Class Members”).⁷

8 All current and former employees who worked for Defendant in the State of
9 California at any time during the time period from March 18, 2015 through the date
10 of Preliminary Approval (the “Class Period”) and had one of the following job
11 titles: Funder, Account Executive, Area Sales Manager, Assistant Sales Manager,
12 Disclosure Supervisor, Paralegal, Technical Writer, Quality Control Specialist,
13 Quality Control Auditor, Quality Assurance Specialist, Disclosure Supervisor,
14 Investor Reporting Analyst, Learning and Development Specialist (“Salaried
15 Class” or “Salaried Class Members”).⁸

16 The Non-Exempt Class and the Salaried Class are collectively referred to as “Class” or
17 “Class Members.” The Class is estimated to consist of approximately 213 individuals.⁹

18 Class Members who do not submit a timely and valid request to be excluded from the
19 Settlement (“Settlement Class Member”) will receive a share of the Net Distribution Fund
20 (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of weeks each he
21 or she worked for Defendant as a Non-Exempt Class Member and/or a Salaried Class Member
22 in the State of California during the Class Period (“Workweeks”).¹⁰

23 The Settlement resolves the Released Claims of Plaintiffs and Settlement Class
24 Members, against the Released Parties.¹¹

25 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

26 Defendant provides mortgage lending services for residential properties. Plaintiffs
27 Ruben Alvarado and Whitey Davis are former employees of Defendant.

28 ///

⁷ Settlement Agreement, § II.2.

⁸ *Id.*, § II.20.

⁹ Aiwasian Decl., ¶ 9; *see also*, Settlement Agreement § II.9.

¹⁰ Settlement Agreement, §§ IV.7, IV.7.a, IV.7.b, and IV.7.c. Workweeks worked as a Non-Exempt Class Member are referred to as “Non-Exempt Workweeks” and Workweeks worked as an Salaried Class Member are referred to as “Salaried Workweeks.”

¹¹ *See id.* at §§ II.5 and II.22, for the full scope of the “Released Claims,” and *id.* at § II.30 for the definition of the “Released Parties.”

1 On March 18, 2019, Plaintiff Alvarado filed a Class Action Complaint for Damages in
2 the Orange County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
3 (“Action”).

4 On April 26, 2019, Defendant filed Defendant Citadel Servicing Corporation’s Notice
5 of Appearance to Plaintiffs’ Class Action Complaint.

6 On September 30, 2019, Plaintiff Alvarado propounded Form Interrogatories – General
7 (Set One), Special Interrogatories (Set One), Special Interrogatories (Set Two), Special
8 Interrogatories (Set Three), Special Interrogatories (Set Four), Requests for Production of
9 Documents (Set One), Requests for Production of Documents (Set Two) onto Defendant and
10 noticed the depositions of Defendant’s Person Most Knowledgeable designees.

11 On October 15, 2019, the Parties submitted the Stipulation of the Parties to Stay Formal
12 Discovery and Motion Practice Until After Mediation. Plaintiffs’ core allegation is that
13 Defendant has violated the California Labor Code by engaging in a uniform practice and
14 procedure, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all
15 overtime and minimum wages, failing to provide compliant meal and rest periods and associated
16 premium pay, failing to timely pay wages during employment and upon termination of
17 employment, failing to provide compliant wage statements, failing to maintain requisite payroll
18 records, and failing to reimburse necessary business expenses, and thereby engaged in unfair
19 business practices in violation of California Business and Professions Code section 17200, *et*
20 *seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and
21 the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited
22 to, penalties pursuant to PAGA), and attorneys’ fees.

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

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1 The Parties have actively litigated the Action since it was commenced on March 18,
2 2019. On January 22, 2020, the Parties participated in a formal, full-day mediation conducted
3 by Steven Serratore, a well-regarded mediator experienced in mediating complex labor and
4 employment matters.

5 On February 27, 2020, Defendant filed a Motion to Compel Arbitration. On March 9,
6 2020, Plaintiff filed an Opposition and Objection to Evidence Submitted to Defendant's Motion
7 to Compel Arbitration. On March 13, 2020, Defendant filed a Reply to Opposition in support
8 of Defendant's Motion to Compel Arbitration.

9 On March 3, 2021, pursuant to a Court order granting the Parties' joint stipulation,
10 Plaintiffs filed a First Amended Class Action Complaint for Damages and Enforcement Under
11 the Private Attorneys General Act, Cal. Labor Code § 2698 Et Seq., adding Plaintiff Davis to
12 the Action.

13 Ultimately, with the aid of the mediator and the mediator's evaluations, the Parties
14 reached the Settlement described herein to resolve the Action in its entirety.

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

16 Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to
17 resolve the Released Claims of Plaintiffs and the Class Members who do not submit a timely
18 and valid request to be excluded from the Settlement (i.e., Settlement Class Member) with
19 respect to the Released Parties.¹² Subject to approval by the Court, the Net Distribution Fund
20 will be calculated by deducting the following amounts from the Total Settlement Amount: (1)
21 attorneys' fees in an amount not to exceed Three Hundred Sixteen Thousand Six Hundred Thirty
22 Five Dollars (\$316,635.00) (i.e., up to 33% of the Total Settlement Amount) and reimbursement
23 of costs and expenses in an amount not to exceed Thirty Thousand Dollars (\$30,000.00) to Class
24 Counsel (collectively referred to as the "Class Counsel Award"); (2) settlement administration
25 costs, which are not to exceed Ten Thousand Dollars (\$10,000.00) to the Settlement
26 Administrator ("Settlement Administration Expenses"); (3) payment to the LWDA of its 75%
27 share of the PAGA Payment (i.e., \$75,000.00 out of \$100,000.00); and (4) payments in the
28

¹² Settlement Agreement, § II.16.

amount of up to Ten Thousand Dollars (\$10,000.00) each to Plaintiffs Ruben Alvarado and Whitey Davis (for a combined total of \$20,000) (“Service Awards”).¹³ The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member’s share of the available Net Distribution Fund (“Individual Settlement Payment”), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will multiply the Salaried Workweeks by two (2) (“Weighted Salaried Workweeks”) and add to the number of Non-Exempt Workweeks, resulting in the “Total Weighted Workweeks.”¹⁴
- b. The Settlement Administrator will then divide the Net Distribution Fund by all Total Weighted Workweeks in order to establish the value of each Weighted Salaried Workweek and Non-Exempt Workweek worked (“Weighted Workweek Value”).¹⁵
- c. The Individual Settlement Payment to be made to each Settlement Class Member shall be calculated by multiplying the Weighted Workweek Value times the number of his or her Weighted Salaried Workweeks and Non-Exempt Workweeks.¹⁶

Each Settlement Class Member’s gross Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties and interest which will be reported on an IRS Form 1099.¹⁷ Settlement Class Members will be issued payment of their gross Individual Settlement Payment subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each gross Individual Settlement Payment.¹⁸ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Payments in addition to the Total Settlement Amount.¹⁹

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¹³ Settlement Agreement, §§ II.27, IV. 1, IV. 4, IV. 5, IV. 6.

¹⁴ *Id.*, § IV.7.a.

¹⁵ *Id.*, § IV.7.b.

¹⁶ *Id.*, § IV.7.c.

¹⁷ *Id.*, § IV.8.

¹⁸ *Ibid.*

¹⁹ *Id.*, § IV.1.

1 The Individual Settlement Payment checks issued to Settlement Class Members will be
2 negotiable for one hundred eighty (180) calendar days from the date of issuance.²⁰ Individual
3 Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.²¹
4 The funds from associated with such cancelled checks will be transmitted by the Settlement
5 Administrator within thirty (30) calendar days after the expiration of the 180-day period, and
6 sent to the Community Legal Aid SoCal.²²

7 Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify
8 the Settlement Administrator in writing by sending a letter indicating that they want to exclude
9 themselves.²³ To be timely, the Class Member must mail a written request for exclusion
10 (“Request for Exclusion”) to the Settlement Administrator, postmarked on or before the date
11 that is sixty (60) calendar days from the initial mailing of the Class Notice (“Response
12 Deadline”).²⁴ A valid Request for Exclusion must contain: 1) the Class Member’s name,
13 address, and telephone number; (2) the name and case number of this case; (3) a clear and
14 unequivocal statement that the individual wishes to be excluded from the Settlement; and (4)
15 the Class Member’s signature.²⁵ Class Members who submit a valid and timely Request for
16 Exclusion will not be bound by the terms of the Settlement and Final Approval Order and
17 Judgment.²⁶

18 Only Class Members who do not exclude themselves from the Settlement (i.e.,
19 Settlement Class Members) have standing to object to the Settlement.²⁷ Settlement Class
20 Members who wish to object to the Settlement must mail a written notice of objection
21 (“Objection”) to the Settlement Administrator on or before the Response Deadline.²⁸ The
22 Objection must contain: (1) the objector’s full name, address, telephone, and signature; (2) a
23 clear reference to the name and case number of the action; (3) a statement of the specific legal
24

25 ²⁰ Settlement Agreement, §§ II.39 and X.3.

26 ²¹ *Ibid.*

27 ²² *Id.*, § X.3.

28 ²³ *Id.*, § VII.1.

²⁴ *Id.*, § VII.2.

²⁵ *Id.*, § VII.1.

²⁶ *Id.* § VII.4.

²⁷ *Id.*, § VIII.1.

²⁸ *Id.*, §§ VIII.1 and VIII.2.

1 and factual basis for each objection argument; and (4) a statement whether the objector intends
2 to appear at the Final Approval Hearing, either in person or through counsel and, if through
3 counsel, a statement identifying that counsel by name, bar number, address, and telephone
4 number.²⁹

5 Class Members who wish to dispute the number of Workweeks credited to them in their
6 Class Notice may do so by mailing a written letter to the Settlement Administrator on or before
7 the Response Deadline.³⁰

8 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
9 **SETTLEMENTS**

10 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
11 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
12 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
13 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
14 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*
15 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair
16 and reasonable, whether certification of the class was proper, and whether the attorney fee award
17 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
18 decision to approve a class action settlement may be reversed only upon a strong showing of
19 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
20 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

21 Courts review class action settlements in a two-step process: (1) an earlier conditional
22 review by the court; and (2) a later detailed review after the period during which notice is
23 distributed to class members for their comments or objections. Conte & Newberg, *Newberg on*
24 *Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both
25 federal and state courts, assures class members of the protection of procedural due process
26

27
28 ²⁹ Settlement Agreement, § VIII.3.

³⁰ *Id.*, Exh. A.

1 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement
2 class.

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

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

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

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

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

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

The Parties actively litigated the Action since it was commenced on March 18, 2019. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³¹

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.³² The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs and other Class Members’ employment records, a detailed sampling of Class Members’ time and pay data (including but not limited to earning statements, employee time cards, and punch detail reports), Defendant’s employee handbooks, company policy receipts acknowledgements, internal memoranda and emails, job descriptions, checklists (such as Defendant’s New Hired Checklist and Termination Checklist), Defendant’s operations and employment practices, forms (including but not limited to Defendant’s Position Change Form and Rate Change Form), procedures, policies, and agreements (such as bonus agreements and arbitration agreements) among other information and documents.³³ Class Counsel interviewed Plaintiffs and investigated other Class Members to gather facts and to

³¹ Aiwazian Decl., ¶¶ 11-13.

³² *Id.*, ¶ 12.

³³ *Ibid.*

1 identify potential witnesses.³⁴ Class Counsel propounded multiple sets of formal written
2 discovery requests on Defendant and noticed the depositions of Defendant's Person Most
3 Knowledgeable designees.³⁵ Counsel for the Parties also met and conferred on numerous
4 occasions, e.g., to discuss issues relating to the pleadings, discovery, motion practice, and the
5 production of documents and data prior to the mediation.³⁶ Class Counsel also drafted Plaintiffs'
6 mediation brief and prepared for and attended court proceedings, settlement negotiations, and
7 the mediation, among other tasks.³⁷

8 The Parties engaged in extensive settlement negotiations and participated in a formal,
9 full-day mediation conducted by Steven Serratore, a well-respected mediator experienced in
10 mediating complex labor and employment matters.³⁸ Prior to and during the mediation and
11 settlement discussions, the Parties exchanged class information and engaged in an intensive
12 discussion regarding their evaluations of the case and various aspects of the case, including but
13 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
14 with class certification and/or representative adjudication, the law relating to misclassification
15 and off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA
16 representative claims, as well as the evidence produced and analyzed, and the possibility of
17 appeals, among other things.³⁹ During all settlement discussions, the Parties conducted their
18 negotiations at arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was
19 acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their
20 ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed
21 that they would be able to obtain class certification and prevail at trial.⁴¹ After conducting
22 investigations, formal and informal discovery, extensive settlement negotiations, and with the
23 aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for
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25 ³⁴ Aiwazian Decl., ¶ 12.

26 ³⁵ *Ibid.*

27 ³⁶ *Ibid.*

28 ³⁷ *Ibid.*

³⁸ *Id.*, ¶ 11.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 11, 16-18.

1 settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and
2 risks to both sides that would attend further litigation.⁴²

3 The Settlement takes into account the strengths and weaknesses of each side's position
4 and the uncertainty of how the case might have concluded at certification and trial.⁴³ The Parties
5 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴
6 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and
7 the Class Members' employment with Defendant and performed significant research into the
8 law concerning class certification, PAGA representative actions, misclassification and off-the-
9 clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and
10 Defendant's defenses thereto, as well as facts discovered.⁴⁵ The Parties have reached the
11 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class
12 Counsel have extensive experience in employment class actions, including significant
13 experience in California wage-and-hour litigation.⁴⁶

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

15 The Settlement, which provides for a Total Settlement Amount of Nine Hundred Fifty
16 Thousand Dollars (\$950,000.00), represents a fair, adequate, and reasonable resolution of the
17 matter.⁴⁷ The Settlement was calculated using the information and data uncovered during
18 litigation, case investigation, as well as the formal and informal exchange of information.⁴⁸ The
19 Settlement takes into account the potential risks and rewards inherent in any case and, in
20 particular, in the case at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the
21 lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁰

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⁴² Aiwasian Decl., ¶¶ 11, 16-18.

25 ⁴³ *Ibid.*

26 ⁴⁴ *Ibid.*

27 ⁴⁵ Aiwasian Decl., ¶¶ 11-13 & 16-18.

28 ⁴⁶ *Id.*, ¶¶ 6-7; Declaration of Heather Davis ("HD Decl.").

⁴⁷ Aiwasian Decl., ¶¶ 11, 13, 14 & 21.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 16-18.

⁵⁰ *Id.*, ¶¶ 11, 13, & 21.

Assuming that the Class Counsel Award, Service Awards, PAGA Payment, and Settlement Administration Expenses are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Distribution Fund that is currently estimated to be Four Hundred Ninety Eight Thousand Three Hundred Sixty-Five (\$498,365.00).⁵¹ As discussed in Part III, *supra*, the entire Net Distribution Fund will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Payment will be calculated based on his or her Salaried Workweeks and Non-Exempt Workweeks.⁵² There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵³ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁴ The documents and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to

⁵¹ Aiwazian Decl., ¶ 14.

⁵² Settlement Agreement, § IV.7.

⁵³ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶¶ 11-13 & 18.

develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁵ As outlined in the Declaration of Edwin Aiwarzian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁷ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

⁵⁵ Aiwarzian Decl., ¶ 18.

⁵⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, § III.5.

1 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
2 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
3 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

4 This action involves a class of approximately 213 individuals.⁵⁸ This class is suffi-
5 ciently numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicat-
6 ing that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not
7 practical at that point). Further, all Class Members can and will be identified by Defendant to
8 the Settlement Administrator through a review of Defendant's employment records regarding
9 exempt and non-exempt employees in California during the Class Period. As such, the Class is
10 ascertainable and sufficiently numerous.

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

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

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

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28 ⁵⁸ Aiwazian Decl., ¶ 9.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁵⁹ Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, misclassifying Salaried Class Members as exempt, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁰

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶¹ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶²

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

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL AWARD

Class Counsel have litigated the matter for over two years, and were actively preparing the matter for class certification and trial.⁶³ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel

⁵⁹ Aiwazian Decl., ¶ 16.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Id.*, ¶¶ 11-13.

1 conducted extensive investigations into the facts of the case and formal and informal discovery,
2 including, and not limited to, propounding multiple formal written discovery requests onto
3 Defendant. Class Counsel also noticed the depositions of Defendant's Person Most
4 Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data⁶⁴
5 and also interviewed and obtained information from Plaintiffs and other Class Members,
6 researched applicable law, undertook damages/valuation calculations, and met and conferred
7 with Defendant's counsel regarding the pleadings, motion practice, discovery, and the
8 production of documents and data prior to mediation.⁶⁵ Counsel for the Parties also undertook
9 extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁶

10 Class Counsel are well-experienced in wage-and-hour class action litigation and used that
11 experience to obtain a great result for the Class.⁶⁷

12 The Settlement establishes a Total Settlement Amount of Nine Hundred Fifty Thousand
13 Dollars (\$950,000.00), and provides for Class Counsel to apply to the Court for Class Counsel
14 Award, consisting of attorneys' fees in an amount not to exceed thirty-three point three three
15 percent (33.33%) of the Total Settlement Amount (i.e., \$316,635.00) and an amount not to
16 exceed Thirty Thousand Dollars (\$30,000.00) for costs and expenses.⁶⁸ The attorneys' fees
17 provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in
18 bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel
19 dedicated to the case, (3) the skill and determination that Class Counsel have shown, (4) the
20 results that Class Counsel have achieved throughout the litigation, (5) the value of the Settlement
21 that Class Counsel have achieved for the Class Members, and (6) the other cases that Class
22 Counsel had to turn down in order to devote their time and efforts to this matter. The proposed
23 Class Notice provides Class Members with information about the amount allocated toward the
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26 ⁶⁴ Aiwasian Decl., ¶ 12.

27 ⁶⁵ *Ibid.*

28 ⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 6-7.

⁶⁸ Settlement Agreement, § IV.5.

Class Counsel Award, and that an award of the Class Counsel Award will be sought, as provided for by the Settlement.⁶⁹

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the “experienced trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’

⁶⁹ Settlement Agreement, Exh. A.

fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁰

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

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

The proposed Class Notice⁷¹ describes the Settlement, the deadlines and procedures to mail an Objection to the Settlement, Request for Exclusion, and/or a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷²

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

⁷⁰ Aiwazian Decl., ¶ 19.

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their gross Individual Settlement Payment is calculated and the number of Workweeks credited to them.⁷⁵

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁷⁶ Any undeliverable Class Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.⁷⁷ With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁷⁸ The Settlement Administrator will receive and process requests for exclusion, objections, and any disputes regarding Workweeks.⁷⁹

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⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Id.*, § VI. 2.

⁷⁷ *Id.*, § VI.6.

⁷⁸ *Ibid.*

⁷⁹ *Id.*, § III.4.

The Settlement Administrator will calculate the amounts of the gross Individual Settlement Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of gross Individual Settlement Payments; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Award, Service Awards, and LWDA's portion of the PAGA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁰ The Settlement Administration Expenses will not exceed ten thousand dollars (\$10,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁸¹

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸²

Within fourteen (14) calendar days after the date on which the Court enters preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) last known address; (3) Social Security number; (4) start and end dates as either a Non-Exempt Class Member or a Salaried Class Member, and (5) Non-Exempt Workweeks and Salaried Workweeks worked (collectively, "Class Information").⁸³

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⁸⁰ Settlement Agreement, § III.4.; Aiwazian Decl., ¶ 15.

⁸¹ Settlement Agreement, §§ II.34, and IV.6.

⁸² *Id.*, § VI.2.

⁸³ *Id.*, §§ II.8 and VI.1.

1 Within thirty (30) calendar days after entry of the Preliminary Approval Order, the
2 Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S.
3 Mail.⁸⁴ If a Class Notice is returned to the Settlement Administrator with a forwarding address,
4 the Settlement Administrator will re-send the Class Notice to the forwarding address.⁸⁵ If no
5 forwarding address is provided, then the Settlement Administrator will make reasonable efforts
6 to obtain an updated mailing address, including but not limited to conducting one skip-trace,
7 and re-mail the Class Notice to the Class Member.⁸⁶ Class Members will have until the
8 applicable Response Deadline to mail a request for exclusion, mail a dispute regarding
9 Workweeks, and/or to file and serve an objection.⁸⁷

10 Defendant will make a one-time deposit of the Total Settlement Amount, together with
11 an amount sufficient to pay Employer Taxes, to the Settlement Administrator, within ten (10)
12 calendar days following the Effective Date.⁸⁸ Within twenty (20) calendar days following the
13 Effective Date, the Settlement Administrator will distribute: (1) the gross Individual Settlement
14 Payments to Settlement Class Members; (2) the Court-approved Service Awards to Plaintiffs;
15 (3) the Court-approved Class Counsel Award to Class Counsel; (4) the LWDA's portion of the
16 PAGA Payment to the LWDA; and (5) the Court-approved Settlement Administration Expenses
17 to itself.⁸⁹

18 The Individual Settlement Payment checks will remain negotiable for one hundred and
19 eighty (180) calendar days from the date of their mailing.⁹⁰ Checks that are not negotiated within
20 the 180-day period, on the one hundred eighty-first (181) day the checks will be cancelled
21 (“Void Date”).⁹¹ The funds associated with such cancelled checks will be tendered by the
22 Settlement Administrator within (30) calendar days after the Void Date to the Community Legal
23 Aid SoCal.⁹²

24 ⁸⁴ Settlement Agreement, §VI.2.

25 ⁸⁵ *Id.*, §VI.7.

26 ⁸⁶ *Id.*, § VI.6.

27 ⁸⁷ *Id.*, § II.15.

28 ⁸⁸ *Id.*, § X.1.

⁸⁹ *Id.*, § X.2. a-e..

⁹⁰ *Id.*, § II.39.

⁹¹ *Ibid.*

⁹² *Id.*, § X.3.

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR SERVICE AWARDSS

Plaintiffs Ruben Alvarado and Whitey Davis respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Service Awards in an amount up to ten thousand dollars (\$10,000.00) each to Plaintiffs Ruben Alvarado and Whitey Davis (for a combined total of \$20,000).⁹³ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Service Awards are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁴ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁵ Accordingly, it is appropriate and just for Plaintiffs to each receive a Service Award for their services on behalf of the Class, in addition to their Individual Settlement Payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and

⁹³ Settlement Agreement, § IV.4.

⁹⁴ Aiwazian Decl., ¶ 20; Declaration of Ruben Alvarado in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Alvarado Decl."), ¶ 4; Declaration of Whitey Davis in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Davis Decl."), ¶ 4.

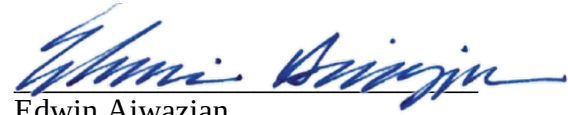
⁹⁵ Aiwazian Decl., ¶ 20; Alvarado Decl., ¶¶ 3-6; Davis Decl., ¶¶ 3-6.

1 designate Plaintiffs Ruben Alvarado and Whitey Davis as Class Representatives; appoint
2 Simpluris as Settlement Administrator; preliminarily approve the allocations for Class Counsel
3 Award, Service Awards, LWDA's portion of the PAGA Payment, and Settlement
4 Administration Expenses; approve the proposed Class Notice; direct the Settlement
5 Administrator to undertake the notice and settlement administration process in conformity with
6 the deadlines and procedures provided by the Settlement Agreement; and schedule a Final
7 Approval Hearing to take place in approximately four months after the Preliminary Approval
8 Order is entered.

9 Dated: March 24, 2021

LAWYERS for JUSTICE, PC

10
11 By:


Edwin Aiwanian
Attorneys for Plaintiff