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on behalf of himself and all others similarly situated
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF ALAMEDA**

9 BOBBY RAY MCCOY on behalf of
10 himself and all others similarly situated

11 Plaintiff,

12 vs.

13 JO-ANN STORES, LLC, and DOES 1
14 through 50, inclusive,

15 Defendants.
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Case No. RG20061158
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. Brad Seligman
DEPT.: 23

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
DECLARATION OF JAMES R. HAWKINS
IN SUPPORT THEREOF; [PROPOSED]
ORDER**

Date: September 21, 2021
Time: 3:00 pm
Dept.: 23

Reservation Number R-2273646

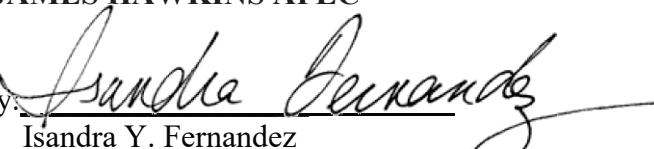
1 **PLEASE TAKE NOTICE THAT** on September 21, 2021. in Department 23 of the
2 above-entitled court located at 1221 Oak Street, Alameda, CA 94612, Plaintiff Bobby Racy
3 McCoy (“Plaintiff”) will and hereby does move the Court for an Order (1) provisionally
4 certifying the Class for Settlement purposes only; (2) provisionally approving James Hawkins and
5 Isandra Fernandez from the law firm of James Hawkins, APLC, as counsel for Plaintiff and the
6 Class Members in this matter, (3) provisionally approving Bobby Ray McCoy as the Class
7 Representative; (4) approving Simpluris, Inc. as the Settlement Administrator; (5) preliminarily
8 approving the class action settlement; and (6) approving and directing distribution of the Notice
9 of Proposed Class Action and PAGA Settlement.

10 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which
11 provides for court approval of the settlement of a purported class action and allows the Court to
12 preliminarily certify a class for settlement purposes. The basis for this motion is that the
13 proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties
14 are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to
15 the Settlement.

16 This motion will be based on the Memorandum of Points and Authorities included herein,
17 the declaration of James R. Hawkins, the Joint Stipulation of Class Action and PAGA Settlement
18 Agreement attached to the Declaration of James R. Hawkins as Exhibit 1, and upon the oral
19 arguments of counsel (should there be any) and upon the complete records and file herein.

20
21 **DATED: July 27, 2021**

22 **JAMES HAWKINS APLC**

23 By: 

Isandra Y. Fernandez

Kacey E. Cook

Attorneys for Plaintiff

Bobby Ray McCoy

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On May 11, 2020, Plaintiff Bobby Racy McCoy filed this wage and hour class action on
4 behalf of himself and all employees employed by, or formerly employed by Jo-Ann Stores, LLC.
5 (hereinafter “Defendant” and/or “Jo-Ann Stores”) who occupied non-exempt hourly positions in
6 the state of California. The lawsuit seeks recovery of alleged unpaid wages, premium wages and
7 penalties pursuant to California Labor Code, California Industrial Welfare Commission (“IWC”)
8 Wage Order No.7-2001, Bus. & Prof. Code § 17200 and the Private Attorney General Act of
9 2004 (“PAGA”) Labor Code section 2699 *et seq.* The action further seeks an award of attorneys’
10 fees, interest and costs. Jon-Ann Stores denies the claims alleged and disputes any liability for the
11 damages sought.

12 Subject to court approval, the parties have reached a settlement of the claims asserted on
13 behalf of the class asserted against JoAnn Stores in this lawsuit for a total of One Million, Five
14 Hundred Thousand Dollars (\$1,500,000) (“Maximum Settlement Amount”), which includes the
15 individual settlement payments to the class members, attorneys’ fees and costs, Class
16 Representative enhancement payment, the costs of the settlement administrator, and payment to
17 the California Labor Workforce Development Agency (“LWDA”) under PAGA (the
18 “Settlement”). **This is a cash settlement.** Every Class Member who does not opt out of the
19 Settlement will automatically be mailed an individual settlement payment. There is no claims
20 filing process, and Class Members do not have to file a claim to be mailed a payment.

21 As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria
22 for preliminary settlement approval under California law and falls well within the range of proper
23 approval. As such, Plaintiff moves this court to: (i) provisionally certify the proposed Settlement
24 Class; (ii) provisionally approve James Hawkins and Isandra Fernandez from the law firm of
25 JAMES HAWKINS, APLC as class counsel for Plaintiff and the Class in this matter; (iii)
26 provisionally approve named Plaintiff Bobby Ray McCoy as the class representative; (iv) appoint
27 Simpluris, Inc. as the settlement administrator; (v) grant preliminary approval of the Joint
28 Stipulation of Class Action and PAGA Settlement Agreement (hereinafter “Settlement
Agreement”); (vi) direct distribution of the Notice of Proposed Class Action and PAGA

1 Settlement (hereinafter referred to as “Class Notice ”) on the terms and conditions set forth in the
2 Settlement Agreement; and (vii) schedule a final approval hearing.

3 **II. FACTUAL BACKGROUND**

4 On May 11, 2020, Plaintiff Bobby Ray McCoy initiated this action in the Superior Court
5 for the County of Alameda, on behalf of himself and all others similarly situated, styled *Bobby*
6 *Ray McCoy v. Jo-Ann Stores, LLC*. Case no. RG20061158. The Complaint asserts causes of
7 action for; (1) failure to pay lawful wages owed; (2) failure to provide lawful meal periods or
8 compensation in lieu thereof; (3) failure to provide lawful rest periods or compensation in lieu
9 thereof; (4) failure to pay timely wages; (5) knowing and intentional failure to comply with
10 itemized employee wage statement provisions; (6) failure to indemnify employees; and (7)
11 violations of the unfair competition law (Bus. & Prof. Code § 17200 *et seq.*) (the “Action”). (See
12 Declaration of James R. Hawkins “Hawkins Decl.” ¶ 2.) On June 9, 2020, Plaintiff filed a First
13 Amended Complaint adding a claim under PAGA (*Id.*). This Action was subsequently removed to
14 Federal Court on July 9, 2020. (Hawkins Decl. ¶ 3.) Pursuant to the Parties’ agreement, this case
15 was remanded back to Alameda Superior Court on March 15, 2021. (*Id.*)

16 Plaintiff brings this action pursuant to Labor Code sections 201, 202, 203 204, 221, 225,
17 226, 226.7, 510, 512, 558,1194, 1198, 1199, 2802, 2699 and California Code of Regulations,
18 Title 8, section 110 70 *et seq.* seeking unpaid lawful wages, unpaid rest and meal period
19 compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.
20 Pursuant to Business and Professions Code sections 17200 through 17208, Plaintiff also seeks
21 restitution for unpaid premium wages. Throughout this litigation, Jo-Ann Stores has vigorously
22 denied Plaintiff’s allegations and raised defenses to the claims, individually and on a class wide
23 basis. Jo-Ann Stores maintains that its employment policies and practices meet the requirements
24 of the Labor Code and applicable Wage Orders. (Hawkins Decl. ¶ 4.) To date, no motion for class
25 certification has been filed, no class has been certified and the court has not made any findings
26 that Jo-Ann Stores engaged in any wrongdoing or in violation of any state law, rule or regulation,
27 with respect to the issues presented in the litigation. (Hawkins Decl. ¶ 5.)

28 Through informal discovery, Plaintiff and Jo-Ann Stores have exchanged extensive
documents and information related to the claims asserted (Hawkins Decl. ¶ 6.). Defendant has

1 produced thousands of pages of information, including timecard records and wage reports of
2 putative class members. (*Id.*) Defendant also provided to Plaintiff his complete personnel file,
3 information regarding the number of non-exempt employees during the relevant time period, and
4 corporate documents reflecting Defendant's wage and hour policies and practices. (Hawkins
5 Decl. ¶ 7.)

6 After conducting extensive informal discovery, exchanging relevant information and
7 engaging in numerous discussions regarding the claims alleged, on January 19, 2021, the parties
8 participated in a private mediation with Mediator Lou M. Marlin. (Hawkins Decl. ¶ 8.) During the
9 course of the mediation, the parties exchanged further information and documentation concerning
10 Plaintiff's claims Jo-Ann Stores' defenses and aggressively advocated for their respective
11 positions. (*Id.*)

12 At the conclusion of the mediation, the parties reached a settlement this action for a
13 maximum settlement amount of \$1,500,000.00. (Hawkins Decl. ¶ 9.) The parties exchanged
14 multiple drafts of the proposed settlement release agreement and class notice documents and
15 engaged in communications regarding the settlement terms. (*Id.*) The final terms and provisions
16 of the settlement agreement were approved and executed by all the parties on or about June 1,
17 2021. (Hawkins Decl. ¶ 10; Exhibit 1- Settlement Agreement).

18 Based on their own respective independent investigations and evaluations and after taking
19 into account the sharply disputed factual and legal issues involved in this matter, the risks
20 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v.*
21 *Super. Ct.*, (2012) 53 Cal. 4th 1004 ("*Brinker*") decision, the discovery and investigation
22 conducted to date, Plaintiff and his counsel are of the opinion that settlement for the consideration
23 and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in
24 the best interests of the named Plaintiff and Class Members. (Hawkins Decl. ¶ 11.)

24 **III. SUMMARY OF SETTLEMENT TERMS**

25 **A. Class Members**

26 The Class Members are defined as: all current and former non-exempt hourly paid
27 employees of Defendant who occupied the positions of key holders, assistant managers, store
28

managers, and freight supervisors at any time in the State of California from May 11, 2016 through the date of the Court's order granting preliminary approval of this Agreement . (Settlement Agreement p. 1, ¶¶ 2, 4.)

B. Allocation of Settlement Amount

1. The total maximum value of settlement is \$1,500,000.00 to be paid by Defendant pursuant to this Settlement ("Maximum Settlement Amount"). The Maximum Settlement Amount ("MSA") is available to pay (a) all settlement payments; (b) class counsel's fees and expenses; (c) the class representative' enhancement; (d) settlement administrator costs; and (e) PAGA payment to LWDA. (Settlement Agreement p. 2, ¶ 18; p.5 ¶ 43 .)

2. Subject to Court approval, the law firm of James Hawkins, APLC shall be paid \$500,000 in attorneys' fees (i.e. 33.33% of the Gross Settlement Amount) and litigation costs not to exceed \$18,000. (Settlement Agreement p. 11, ¶ 53 (d)(i).)

3. Subject to Court approval, \$10,000 shall be paid to the named Plaintiff, Bobby Ray McCoy, for his effort and work in prosecuting the actions on behalf of the class. (Settlement Agreement p. 10, ¶ 53(c).)

4. Subject to Court approval, \$15,000 will be set aside from the Class Settlement Amount to cover any of the Settlement Administrator's costs of administering this Settlement. (Settlement Agreement p. 3, ¶ 34; p.12, ¶. 53 (f))

5. Subject to Court approval, \$100,000 will be set aside from the Class Settlement Amount for the PAGA penalties, of which 75% [\$75,000] will go to the California Labor and workforce Development Agency (the "LWDA Payment"), and 25% [\$25,000] remain part of the Net Settlement Amount and distributed to Settlement Class Members. Plaintiff will take all actions required by California Labor Code § 2699 (I) (Settlement Agreement p. 12, ¶ 53 (e).)

6. Payment to Class Members shall be made based on percentage of the Net Settlement Amount ("NSA") which is the amount remaining after deducting amounts set forth in paragraphs 2-5 above from the MSA. (Settlement Agreement p. 2, ¶ 19; p. 9, ¶ 53(b).)

7. The Parties make no representations as to the tax treatment or legal effect of the payments in this Agreement. Settlement Class Members understand and agree that they will be responsible for the payment of any taxes assessed on the Individual Settlement Payments

1 that they receive.. (Settlement Agreement p.6, ¶ 48.)

2 8. Settlement Payments shall be allocated as follows for tax purposes: 25%
3 shall be attributed to wages, which will be reported on W-2 and subject to payroll tax
4 withholding; 75% as penalties, interest, and reimbursement of business expenses incurred, which
5 shall be reported on an IRS Form 1099 by the Settlement Claims Administrator. (Settlement
6 Agreement p. 10, ¶ 53 (b)(ii).)

7 9. This is a non-reversionary settlement with no reversion to Jo-Ann Stores. Thus,
8 any unpaid cash residue or unclaimed or abandoned class member funds, plus any accrued
9 interest thereon will be sent to the State of California Controller's Office Unclaimed Property
10 Division. (Settlement Agreement p. 10, ¶ 53 (b)(iv).)

11 **C. Released Claims Summary**

12 1) **Participating Class Members**

13 Upon the effective date, Plaintiff and the Settlement Class Members will be deemed to
14 have fully, finally and forever released, settled, compromised, relinquished and discharged
15 Defendant and Released Parties from all claims and causes of action alleged in the Action and the
16 PAGA Letter, as well as all predicate claims based on the factual or legal theories alleged in the
17 Action and the PAGA Letter, or reasonably could have been alleged based on the facts and legal
18 theories alleged in the Action and the PAGA Letter, including all of the following legal claims:
19 any and all claims for unpaid wages, including, but not limited to, claims for minimum, overtime,
20 and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay
21 for all hours worked at correct rates, including overtime at the correct rates, and alleged improper
22 rounding of time entries that allegedly resulted in unpaid wages; any and all claims for meal
23 period violations, including claims for late, short, interrupted and/or missed meal periods and/or
24 the failure to pay premiums, and the alleged failure to properly record meal periods; any and all
25 claims for rest break violations, including claims for late, short, interrupted, missed, or otherwise
26 improperly controlled rest breaks and/or the failure to pay premiums; any and all claims for
27 unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phone
28 usage and mileage; any and all claims for improper or inaccurate itemized wage statements,
including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal

1 theories contained in the Action and the PAGA Letter; any and all claims for the untimely
2 payment of final wages and associated waiting time penalties under Labor Code Section 203
3 based on the facts, claims, causes of action, or legal theories alleged in the Action and the PAGA
4 Letter; any and all claims regarding the alleged failure to maintain required records in violation of
5 Labor Code §§ 226, 1174, 1198 and the applicable IWC Wage Order provisions; any and all
6 claims for civil penalties under PAGA premised on the facts, claims, causes of action, or legal
7 theories described herein or in the Action; any and all claims under the Bus. & Prof. Code
8 premised on the facts, claims, or legal theories described herein or in the Action; any other claims
9 or penalties under the wage and hour laws pleaded in the Action and the PAGA Letter under
10 California and federal law, including the California Labor Code and the applicable Wage Orders
11 as to the facts and theories alleged in the Action and the PAGA Letter ((Settlement Agreement,
12 p. 3, ¶ 28; p. 5, ¶ 44). The release here is a common type of release found in class action
13 settlements. This type of release has been approved in both state and federal courts. (*Villacres v.*
14 *ABM Industries, Inc.* (2010) 189 Cal.App.4th 562, 586 [“the weight of authority establishes that
15 ... a court may release not only those claims alleged in the complaint and before the court, but
16 also claims which ‘could have been alleged by reason of or in connection with any matter or fact
17 set forth or referred to in’ the complaint”]; *Hesse v. Sprint Corp.* (9th Cir. 2009) 598 F.3d 581,
18 591 [“a state court’s approval of a settlement agreement could release not only the state law
19 fraudulent billing claims before it, but also federal RICO claims arising from the same billing
20 practices”].)

21 Likewise, it is perfectly permissible for releases to release more than simply the named
22 defendant in the class action. (See, e.g., *Villacres*, 189 Cal.App.4th at p. 573 [enforcing a class
23 action settlement that released the named defendant and “its affiliates, subsidiaries, parent,
24 successors-in-interest, and assigns, and all of their present, former and future offices, directors,
25 shareholders, employees, agents, attorneys, insurers, and representatives ...”]; *Reyn’s Pasta*
26 *Bella, LLC v. Visa USA, Inc.* (9th Cir. 2006) 442 F.3d 741, 748 [“A class settlement may also
27 release factually related claims against parties not named as defendants”].) Indeed, a class action
28 settlement would have little value to the settling defendant if, minutes after the settlement
agreement obtained final court approval, the plaintiff could simply turn around and sue the

1 defendant's officers, directors, employees or agents for the same alleged wrongful acts. (*Wal-*
2 *Mart Stores, Inc. v. Visa U.S.A. Inc.* (2nd Cir. 2005) 396 F.3d 96, 106 ["Broad class action
3 settlements are common, since defendants and their cohorts would otherwise face nearly limitless
4 liability from related lawsuits"].)

5 2) Class Representative

6 Upon the Effective Date, the Class Representative shall be deemed to have fully, finally,
7 and forever released the Released Parties from all Released Claims in addition to any and all
8 claims known or unknown, at law or in equity, which he may have against Defendant through the
9 date of execution of the Settlement Agreement and to have expressly waived and relinquished, to
10 the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have
11 had relating to the released claims pursuant to Section 1542 of the California Civil Code.
12 (Settlement Agreement p. 5, ¶ 45.)

13 **D. Notice to Class Members**

14 Subject to Court approval of the Settlement, within twenty (20) calendar days after entry
15 of the Preliminary Approval Order, Defendant shall provide to the Settlement Administrator Class
16 Data which will identify each Class Member's name, last known mailing address, last known
17 telephone number, Social Security Number, dates of employment, and information sufficient to
18 allow the Settlement Administrator to calculate total workweeks worked at Jo-Ann's Stores
19 during the Class Period. (Settlement Agreement p. 1, ¶ 5.; p.7, ¶ 52(a)). Upon receipt of the list of
20 Class Members, the Settlement Administrator shall take steps to determine the current mailing
21 address for each Class Member. (Settlement Agreement p. 7, ¶ 52(c)).

22 Within fourteen (14) court days after receiving the class list from Defendant, the
23 Settlement Administrator shall mail, via first class postage-prepaid U.S. mail, to all Class
24 Members, at their most recent address, the Class Notice (Settlement Agreement p. 7, ¶ 52). In the
25 event that any Class Notice is returned as undeliverable, the Settlement Administrator will
26 promptly conduct further date searches and, for each search that results in a corrected address,
27 shall promptly re-mail the Class Notice to the Class Member. Class Members who received a re-
28 mailed notice shall have their Response Deadline extended fifteen (15) calendar days from the
original Response Deadline (Settlement Agreement p. 7, ¶ 52(d)). The Response Deadline will be

1 forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement
2 Administrator. (Settlement Agreement p. 3, ¶ 31).

3 **IV. CALIFORNIA RULES OF COURT § 3.769 APPROVAL PROCESS**

4 A class action may not be dismissed, compromised or settled without approval of the
5 Court. (*Wershba v. Apple Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 240; Cal. Rules of Court,
6 Rule 3.769.) The approval or rejection of the proposed settlement is committed to this Court's
7 sound discretion. (*Wershba*, 91 Cal. App. 4th at 234-235.) A court's decision to approve a class
8 action settlement may be reversed only upon a strong showing of "clear abuse of discretion."
9 (*Class Plaintiffs v. City of Seattle*, (9th Cir. 1992) 955 F.2d 1268, 1276.) The purpose of the
10 court's preliminary evaluation of the proposed settlement is to determine whether it is within the
11 "range of reasonableness" and thus, whether the notice to the class is appropriate. (NEWBERG,
12 §11.25 at 11-36-37.)

13 According to this procedure, Plaintiff requests this Court to provisionally certify the
14 proposed class for settlement purposes – conditional upon final approval of the settlement. The
15 practical purpose of provisional class certification is to facilitate distribution to all Class Members
16 of notice of the terms of the proposed Settlement and the date and time of the final approving
17 hearing. Additionally, Plaintiff requests this Court to preliminarily approve the Settlement as fair,
adequate and reasonable as set forth below.

18 **V. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE**

19 The law favors settlement, particularly in class actions and other complex cases in which
20 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
21 (*City of Seattle* 955 F.2d at 1276; *Potter v. Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
22 592, 602-603.; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action
23 settlement, the Court need find only that the settlement falls within the "range of reasonableness."
24 (*North County Contractor's Ass. Inc. v. Touchstone Ins. Svcs.*, (1994) 27 Cal. App. 4th 1085,
25 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts
26 must consider the following relevant factors: the strength of the plaintiff's case, the risk, expense,
27 complexity and likely duration of further litigation, the risk of maintaining class action status
28 through trial, the amount of offered settlement, the extent of discovery completed and the range of

1 the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.*, (1996) 48
2 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC*, (2009) 175 Cal. App.
3 4th. 785,799.) The list of factors is not exclusive and the court is free to engage in a balancing and
4 weighing of the factors depending on the circumstances of each case.” (*Clark*, 175 Cal. App. 4th
5 at 799; *Wershba*, 91 Cal. App. 4th at 245.)

6 Furthermore, courts must give “proper deference to the private consensual decision of the
7 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
8 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
9 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
10 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
11 adequate to all concerned.” (*Hanlon v. Chrysler Corp.*, (9th Cir. 1998), 150 F.3d 1011, 1027.)

12 **A. The Terms of the Proposed Settlement are Fair**

13 A preliminary review of the terms of the Settlement Agreement provides no reason to
14 doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through
15 arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the
16 court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of
17 objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, at 1802.) The first three of these factors apply
18 at the preliminary approval stage; the percentage of objectors is determinable only at the final
19 approval stage.

20 1. The Settlement Was Reached Through Extensive Arm’s Length Bargaining and
21 Based on the Recommendation Proposed by the Mediator

22 As already discussed herein, the Parties have conducted themselves in informed, good
23 faith arm's-length negotiations after exchanging extensive information about the claims and
24 defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at
25 settling their dispute. In attempts to settle this lawsuit, the Parties participated in a full day
26 mediation with Mediator Lou M. Marlin. (Hawkins Decl. ¶ 8.) In sum, armed with all of the
27 relevant information and with the help of an experienced mediator, counsel for the parties
28 participated in lengthy, serious and informed negotiations which has resulted in the proposed
Settlement Agreement that is now placed before this Court.

1 2. Investigation and Discovery Were Sufficient For the Parties to Evaluate the Risks
2 Intelligently

3 Plaintiff has conducted significant investigation of the facts and law both before and after
4 the Action was filed. Plaintiff's counsel reviewed voluminous supporting documents provided by
5 Defendant through discovery and in exchanges of information in preparation for mediation.
6 (Hawkins Decl. ¶¶ 6-8).

7 3. Plaintiff's Counsel is Experienced in Similar Litigation

8 Moreover, counsel for Plaintiff has represented, mediated and settled other employee class
9 actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the
10 claims against Jo-Ann Stores and the benefits of the proposed Settlement under the circumstances
11 of the case. (Hawkins Decl. ¶ 12).

12 **B. The Settlement Provides for Reasonable Compensation to Class Members**

13 Even without the presumption of fairness and reasonableness, the Settlement clearly is
14 within the range of reasonableness. Based on documents and information produced by Defendant
15 in informal discovery, in preparation for mediation and during settlement negotiations and taking
16 into account the nature of the claim and Defendant's defenses thereto, Plaintiff's counsel
17 estimated the maximum potential liability of \$8,198,062 that may be owed to the putative class,
18 assuming Plaintiff and the Class were able to obtain an order certifying the class and were also
19 able to prove their claims. (Hawkins Decl. ¶ 13.)

20 a. Meal Period Claim

21 The meal period violation claim is based primarily on Jo-Ann Stores alleged failure to
22 provide an uninterrupted 30-minute meal break by the end of the fifth hour. Specifically, Plaintiff
23 alleges that due to the scheduling and work load requirements, he and class members were
24 frequently required to take on duty meal breaks and/or had their meal breaks interrupted, with
25 30-minute deductions being made from their recorded time regardless of whether or not the full
26 30 minute meal period was actually taken. Plaintiff also alleges that due to the work load
27 requirements, he and class members were unable to take a timely meal periods and that Defendant
28 did not provide a second 30 minute meal period for shifts worked in excess of 10 hours and/or 12
hours.

1 Jo-Ann Stores adamantly denies Plaintiff's allegations and maintains that he and class
2 members were provided with the opportunity to take all meal and rest periods to which they were
3 entitled. Further, Defendant contends that Plaintiff and putative class member were paid meal
4 break premiums during the class period when, do the demands of the work shift, they were unable
5 to take compliant meal breaks. Jo-Ann Stores also maintained that Plaintiff's claims were
6 improper for class treatment. Plaintiff's review of the documents and information provided in
7 anticipation of mediation, including a random sample of time records, and taking into
8 consideration the nature of the claim, Defendant's defenses, the meal break premiums paid by
9 Defendant during the liability period and certification issues faced due to *Brinker*, for purposes of
10 settlement, the meal break claim was valued between an estimated maximum of \$440,000 and
11 \$300,000.

12 b. Rest Period Claim

13 The rest period violation claim is primarily based on allegations that Plaintiff and class
14 members were not provided a net 10 minute rest period during their work shifts. Specifically,
15 Plaintiff alleges that due to the work load requirements, he and putative class members were
16 unable to take minimum ten minute rest break for every four hours or major fraction thereof
17 worked during their shifts. Jo-Ann Stores contends that class members were allowed to take the
18 full 10-minute rest periods and regularly took such breaks. Taking into consideration the nature of
19 the claim, Defendant's defenses and certification issues faced due to *Brinker*, for purposes of
20 settlement, the rest break claim was valued between estimated maximum of \$2,500,000 and
\$1,250,000.

21 c. Lab. Code § 2802 Claim (failure to reimburse employee expenses)

22 The business expense reimbursement claim is based on allegations that Plaintiff and class
23 members were frequently required to use their personal phones in the performance of their job
24 duties and were not reimbursed for the use of the phones. Defendant maintains that employees
25 were not required to use their phones. Additionally, in 2019, Defendant implemented a
26 reimbursement policy for personal devices in which ranged from \$25 for manager to \$5 for non-
27 exempt employees. Plaintiff did not receive reimbursement during his employment and also
28 contends that the \$5 monthly reimbursement is insufficient. This claim would be difficult to

1 certify given the predominance of the individualized inquiry as to the whether and to what extent
2 each class member used their personal phones in the performance of their job duties. As such, for
3 purposes of settlement, this claim was valued between an estimated maximum \$500,000 and
4 \$100,000.

5 d. Lab. Code § 226 Claim (failure to provide accurate itemized wage statements)

6 Under Lab. Code § 226(e), an employee suffering “injury as a result of a knowing and
7 intentional failure by an employer” to provide accurate wage statements is entitled to \$50 for the
8 initial violation and \$100 for each subsequent violation up to \$4,000. Jo-Ann Stores denies that it
9 provided inaccurate wage statements. Further, Jo-Ann Stores argues that, if any wage statements
10 were in fact inaccurate, they did not “knowingly and intentionally” fail to provide accurate
11 statements and that Plaintiff and the class did not suffer any “injury” from such inaccurate wage
12 statements. For purposes of settlement negotiations, said claim was valued between \$1,267,950
13 and \$380,385.

14 e. Failure to Pay Lawful Wages Claims

15 Plaintiff’s claim for failure to pay wages owed is based on allegations that, due to the
16 demands of the work shift, he and Class Members had their meal breaks interrupted and worked
17 off the clock during said breaks for which they did not receive compensation. Jo- Ann Stores
18 disputes this claim and asserts that its policies prohibits employees from working off the clock.
19 This claim would be face certain challenges to certify given the predominance of the
20 individualized inquiry as to the whether, and to what extent, each class member performed work
21 off the clock and without compensation. Nevertheless, for purposes of settlement negotiations,
22 this claims was valued between a maximum \$600,000 and \$150,000.

23 f. Lab. Code § 203 Claim (failure to timely pay wages) –

24 With respect to Lab. Code §203 claim, there were an estimated 630 former class members
25 to whom this claim applied. The estimated maximum value was calculated at \$2,044, 781.
26 However, faced with the willful intent requirement of the enabling statute along with Defendant’s
27 position that Lab. Code §203 does not apply to rest and meal break claims, for settlement
28 purposes this claim was valued between \$817,912 and \$204,478.

g. Bus. & Prof. Code § 17200 Claim

1 Plaintiff's cause of action for violation of Business and Professions Code Section 17200 is
2 based on the above-mentioned claims and is therefore duplicative of those claims. Accordingly,
3 Class Counsel assigned a zero dollar value to this claim.

4 h. Lab. Code § 2699 (PAGA Claim)

5 Plaintiff's claims under PAGA are primarily predicated on or derivative of the rest and
6 meal break claims. The estimated maximum PAGA penalty was calculated as \$2,072,200. This
7 figure attributes a \$100 penalty to each of the estimated 20,722 pay periods in scope during the
8 PAGA period. The figure also assumes that there is a 100% violation rate during the PAGA
9 period, such that every single pay period in question involved at least one Labor Code violation,
10 despite disputes regarding Defendant's liability. However, PAGA claims under the facts and
11 circumstance of this case may result in no award or at best a very minimal award by the trial
12 court. See specifically §2699(e)(2) which states in its pertinent part:

13 "... a court may award a lesser amount than the maximum civil penalty amount specified
14 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
15 result in an award that is unjust, arbitrary and oppressive, or confiscatory."

16 Given the nature of these claims, Class Counsel believes it to be likely that if there would
17 be any award it would be a minimal amount. Therefore, the amount of \$100,000 (which has been
18 reserved for the PAGA claim) is both fair and reasonable. (Settlement Agreement, p. 2, ¶ 22.)

19 Through his counsel, Plaintiff took into consideration the significant risks that class
20 certification could be denied on the central claim, or that a merits decision on the central claim
21 would not favor the Class. Plaintiff has considered the expense and length of continued
22 proceedings necessary to continue the Action against Jo-Ann Stores through trial and any possible
23 appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the
24 claims asserted in the Action, Jo-Ann's defenses thereto, and the difficulties in establishing
25 Plaintiff's damages. (Hawkins Decl. ¶ 14.)

26 The proposed Settlement requires Defendant to pay each Class Member who does not opt
27 out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement.
28 (Hawkins Decl. ¶ 15.) The amount to be paid to the Class is undoubtedly fair, adequate and

1 reasonable especially in light of the significant risk to Plaintiff and Class Members in continuing
2 with the litigation and not prevailing on class certification or at trial. (*Id.*)

3 For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and
4 reasonable, and is in the best interests of the Class Members.

5 **C. The Class Representative Payment and Class Counsel Fees Are Reasonable**
6 **and Should be Awarded**

7 The Settlement Agreement provides for an award to be paid to the Class Representative.
8 The primary purpose is to provide Plaintiff Bobby Ray McCoy an enhancement payment, taking
9 into consideration the risks, time, effort and expenses incurred by him in coming forward to
10 provide invaluable information and negotiate and litigate this matter on behalf of all Class
11 Members. (Hawkins Decl. ¶ 16.) Plaintiff has actively participated in this litigation by providing
12 significant supporting documents and information and assisting counsel in developing
13 information necessary to litigate and settle this case which has resulted in a favorable settlement
14 for the putative Class Members. (*Id.*) Thus, the payment of \$10,000.00 to the Class
15 Representative represents a small portion of the aggregate settlement amount and should be
16 awarded.

17 Further, as will be discussed in more detail in Plaintiff's motion for final approval of the
18 Settlement, class counsel fees in the amount of \$500,000.00 is reasonable within California's
19 standard benchmark and well within the range customarily approved by the California courts in
20 comparable class actions.

21 **VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

22 In addition to such terms as class definition, settlement amounts and payment procedures,
23 the Settlement Agreement reached between the Parties contains a provision to which the Parties
24 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this
25 settlement only. Plaintiff now requests this Court to provisionally certify the Class.

26 It is well established that trial courts should use a lower standard for determining the
27 propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor*
28 *Co.*, (1996) 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is
appropriate when the Class is ascertainable and there is a "well defined community of interest in

1 the questions of law and fact affecting the parties to be represented.” (Code Civ. Proc., §382;
2 *Dunk*, 48 Cal. App. 4th at 1806.) State law requirements under *California Code of Civil*
3 *Procedure* section 382 for class certification largely mirrors *Federal Rules of Civil Procedure*
4 Rule 23 – namely, numerosity and typicality of the class representative’s claims, adequacy of
5 representation, predominance of common issues and superiority. As discussed below, although
6 Defendant adamantly disputed and continues to dispute Plaintiff’s ability to certify a litigation
7 class, all of the requirements of certification for settlement purposes are met for the proposed
8 settlement Class.

9 **A. The Proposed Class is Ascertainable**

10 Here, the proposed class is ascertainable because all of the Class Members are/were
11 employed directly by Jo-Ann Stores and received their compensation directly from Jo-Ann
12 Stores. The class members have been identified through Defendant’s employee and personnel
13 files. (See *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 [“Class Members are
14 ‘ascertainable’ where they may be readily identified without unreasonable expense or time by
15 reference to official records”].)

16 **B. Numerosity of the Class is Sufficient**

17 If the class is sufficiently large that joinder of all members is impractical or that individual
18 joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28
19 Cal.App.3d 1017, 1030.) Here, the proposed class consists of approximately over one thousand
20 two hundred members, consisting of current and former employees of Defendant. Therefore,
21 joinder of individual claims would be impractical and the numerosity requirement is met.

22 **C. There are Common Questions of Law and Fact to the Class**

23 Commonality is met if there are common questions of fact and law to the class. (*Hanlon v.*
24 *Chrysler Corp.* 150 F.3d at 1019 [“The existence of shared legal issues with divergent legal
25 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal
26 remedies within the class”].) Here, Plaintiff alleges that the proposed Class Members’ claims all
27 stem from the same alleged conduct. Specifically, Plaintiff alleges that Jo-Ann Stores violated
28 California wage and hour law by: (1) failure to pay lawful wages; (2) failure to provide lawful
meal periods or compensation in lieu thereof; (3) failure to provide lawful rest periods or

1 compensation in lieu thereof; (4) failure to reimburse employee expenses; (5) failure to timely
2 pay wages; (6) knowing and intentional failure to comply with itemized employee wage statement
3 provisions; and (7) violations of the unfair competition law. Plaintiff seeks recovery of all alleged
4 wages, premium wages, penalties and interest pursuant to the California Labor Code, the
5 California Industrial Welfare Commission (“IWC”) Wage Orders, Bus. & Prof. Code § 17200 *et*
6 *seq.*, and PAGA. Although Defendant disagrees with Plaintiff’s contentions for purposes of
7 certifying a litigation class, for purposes of a settlement class, these circumstances create
8 questions of law and fact common to all proposed Class Members.

9 **D. The Typicality Requirement is Met**

10 The typicality requirement is met if the claims of the named Class Representative are
11 typical of those of the class, though “they need not be substantially identical.” (*Hanlon* 150 F.3d
12 at 1020.) Factual differences may exist between the Class and the Class Representative so long as
13 the claims arise from the same events or course of conduct and are based on the same legal
14 theories. (*Id.*) Here, the claims of the Class Representative are typical of the other Class Members
15 because they arise from the same factual basis and are based on the same legal theories as those
16 applicable to all Class Members. (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.)
17 Thus, for purposes of a settlement class, the typicality requirement is met.

18 **E. The Adequacy Requirement is Met**

19 If the named representative and his or her counsel have no interests adverse to the interest
20 of the proposed class members and are committed to vigorously prosecuting the case on behalf of
21 the class, then the adequacy requirement is met. (*McGhee .v Bank of America*, (1976) 60 Cal.
22 App. 3d 442,450.) Here, under the proposed settlement, the Class Representative will receive a
23 reasonable award for his time and efforts assisting counsel with factual issues surrounding the
24 case and risk incurred in bringing this action on behalf of the class members. Other than this
25 specific payment, all Settlement Class Members will receive a percentage of the Net Settlement
26 Amount based on his or her respective number of covered work weeks. Therefore, no “settlement
27 allocation” questions are raised. (*Hanlon* 150 F.3d at 1020.)

28 Finally, Class Members who wish to “opt-out” of the settlement may do so. (Settlement
Agreement, p. 8, ¶ 52(g.)). As a result, there is no conflict of interest between the Class

1 Representative and the Class Members. Additionally, the Class Representative and his counsel
2 have been committed to prosecuting this action on behalf of the Class.

3 **F. Common Issues Predominate and Class-wide Settlement is Superior to Other**
4 **Available Methods of Resolution**

5 Class certification is authorized where common questions of law and fact predominate
6 over individual questions and where class-wide treatment of a dispute is superior to individual
7 litigation. (*Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d 462, 469.) The test is whether the
8 proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon, supra*,
9 at p. 1022.) Plaintiff contends that the proposed Class in this case is sufficiently cohesive, since
10 all Class Members share a “common nucleus of facts and potential legal remedies.” Specifically,
11 all of the Class Members and the Class Representative seek compensation for alleged unpaid
12 wages, premium wages for failure to provide compliant meal and rest breaks, as well as penalties
13 and interest for the allegations described herein; common questions about compensation or lack
14 thereof for work performed by Class Members predominate over individual questions, and the
15 Class Members’ potential legal remedies are identical. (*Id.*) Although Defendant disagrees with
16 Plaintiff’s contentions, it has agreed the Class may be certified for settlement purposes only.

17 Additionally, particularly in the settlement context, class resolution is superior to other
18 methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at p. 1023;
19 *Dunk, supra*, 45 Cal. App. 4th at p. 1087.) The superiority requirement involves a “comparative
20 evaluation of alternative mechanisms of dispute resolution.” (*Hanlon, supra*, at p. 1023.) Here,
21 the alternative methods of resolution are a plethora of individual claims from potentially over
22 1,200 plaintiffs. The class action device can thus conserve judicial resources by avoiding the
23 waste and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues
24 and claims. (*Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v*
25 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide
26 basis is superior.

27 **VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

28 The Class Notice is attached as Exhibit A to the Settlement Agreement. The Class Notice
provides the requisite, pertinent information to Class Members and the options available to them.

1 Should a Class Member wish to exclude themselves from the Settlement, they can send a request
2 for exclusion to the settlement administrator. Should a Class Member wish to object to the
3 Settlement, they can object as described in the Class Notice. If a Class Member does nothing in
4 response to the Class Notice, the Class Member will be mailed an individual settlement payment.

5 **A. The Class Notice Satisfies Due Process**

6 California statutory and case law vests the Court with broad authority to fashion an
7 appropriate notice process. (Cal. Rules of Court 3.760 *et seq.*) A proposed method of notice of a
8 proposed settlement is fair, adequate and reasonable if it has “a reasonable chance of reaching a
9 substantial percentage of the class members. (*Cartt v. Superior Court*, (1975) 50 Cal. App. 3d
10 960, 974.) The Class Notice plan described herein entails mailing the Class Notice to all known
11 and reasonably ascertainable Class Members based on Defendant’s payroll records and provides
12 for a reasonable chance of reaching a significant percentage of class members. (See section III
13 (D) herein.) Further, such individual notice by first class mail is routinely approved as consistent
14 with due process. (See, *e.g.*, MANUAL at §§21.311, 21.312; Wright & Miller, Fed. Practice &
15 Procedure §1797.6 [“Of course, notice by mail to all of the identified class members . . . will
16 suffice.”] (citing cases).) The Notice is consistent with the class certification notices approved by
17 numerous state and federal courts and is the best notice practicable under circumstances of this
18 case.

19 **B. The Proposed Class Notice is Accurate and Informative**

20 Not only is the manner of the proposed Class Notice proper, so too is the content of the
21 said notice. The proposed Class Notice provides information on the meaning and the nature of the
22 proposed settlement, the terms and provisions of the settlement, the relief the settlement will
23 provide the Class Members, the application of Plaintiff’s counsel for reimbursement of costs and
24 attorneys’ fees from the settlement amount, the date, the time and place of the Final Fairness and
25 Approval Hearing, and the procedure and deadlines for opting out of the Settlement or for
26 submitting comments and objections. (Cal. Rule of Court 3.769(f).)

27 The Class Notice also fulfills the requirement of neutrality in class notices. (2 NEWBERG
28 §8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement in an
informative and coherent manner, in compliance with the MANUAL’S statement, “the notice

1 should be accurate, objective, and understandable to class members.....” (MANUAL at §30.21.)
2 The Class Notice clearly states the settlement does not constitute an admission of liability by Jo-
3 Ann Stores and recognizes the Court has not ruled on the merits. It also states the final settlement
4 approval decision has yet to be made. Accordingly, the Class Notice complies with the standards
5 of fairness, completeness and neutrality required of a settlement class notice disseminated under
6 the authority of the Court. (F.R.C.P. 23(c)(2).)

7 Moreover, the class notice comports with CA Rules of Court, Rule 3.766(d). As per Rule
8 3.766, the contents of the class notice that provides for an opt out procedure for the class
9 members must include the following:

- 10 (1) A brief explanation of the case, including the basic contentions or denials of
11 the parties;
- 12 (2) A statement that the court will exclude the member from the class if the
13 member so requests by a specified date;
- 14 (3) A procedure for the member to follow in requesting exclusion from the class;
- 15 (4) A statement that the judgment, whether favorable or not, will bind all members
16 who do not request exclusion; and
- 17 (5) A statement that any member who does not request exclusion may, if the
18 member so desires, enter an appearance through counsel.

19 The class notice contains the information required under Rule 3.766(d). (See Ex. A
20 attached to Settlement Agreement.)

21 **VIII. CONCLUSION**

22 Based on the foregoing, Plaintiff respectfully requests that the Court enter the Proposed
23 Order Granting Preliminary Approval submitted concurrently herewith, and thus:

- 24 1. Grant preliminary approval of the Settlement Agreement, and certify the
25 Settlement Class for the purposes of settlement only;
- 26 2. Confirm named Plaintiff Bobby Ray McCoy as the Class Representative and
27 James R. Hawkins and Isandra Fernandez of the law firm of JAMES HAWKINS, APLC as Class
28 Counsel;

- 1 3. Approve and appoint Simpluris, Inc. as Settlement Administrator;
- 2 4. Enter an Order preliminarily approving the proposed settlement and approving of
- 3 the Class Notice; and
- 4 5. Schedule the Final Approval Hearing Date on _____, 2021; (to be
- 5 determined by the court at the hearing for preliminary approval of settlement.

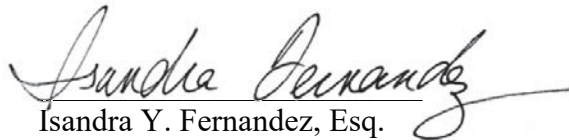
6 Respectfully submitted,

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8 Dated: July 27, 2021

JAMES HAWKINS, APLC

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Isandra Y. Fernandez, Esq.

Kacey E. Cook, Esq.

Attorneys for Plaintiff

Bobby Ray McCoy

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On July 27, 2021, I served on the interested parties in this action the following document(s) entitled:

- [XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Nicole@jameshawkinsapl.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

MICHAEL J. NADER, SBN 200425 michael.nader@ogletree.com RABIA Z. REED, SBN 317288 rabia.reed@ogletree.com OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. 500 Capitol Mall, Suite 2500 Sacramento, CA 95814 Attorneys for Defendant JO-ANN STORES, LLC	Labor and Workforce Development Agency Attn: PAGA Administrator 1515 Clay Street, Ste 801 Oakland, CA 94612 http://www.dir.ca.gov/Private-Attorneys-General-Act
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Executed on July 27, 2021, at Irvine, California

PROOF OF SERVICE