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ETHAN PEARL AND THOSE SIMILARLY SITUATED

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SAN FRANCISCO**  
**UNLIMITED JURISDICTION**

ETHAN PEARL, INDIVIDUALLY AND ON  
BEHALF OF THOSE SIMILARLY SITUATED,

PLAINTIFFS,

v.

WIPRO LIMITED, A FOREIGN  
CORPORATION, AND DOES 1 THROUGH 10,  
INCLUSIVE,

DEFENDANTS.

CASE No. CGC-20-584628

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

**Date: February 18, 2022**

**Time: 9:30 a.m.**

**Dept: 302**

**Judge: Hon. Ethan P. Schulman**

**ACTION FILED JUNE 2, 2020**

**NO TRIAL DATE SET**

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## I. INTRODUCTION

After extensive discovery, analysis of records and months of settlement discussions after a full-day mediation session with Michael Dickstein, Plaintiffs Ronald Lloyd<sup>1</sup> and Ethan Pearl (“Pearl”) and Defendant Wipro Limited (“Wipro”) reached settlement on behalf of non-exempt California employees of Wipro, which warrants preliminary approval.

The \$6,500,000 settlement resolves all wage and hour claims brought in this case, including class action and Private Attorneys General Act (“PAGA”) claims alleging failure to pay overtime wages, failure to pay minimum wages and regular wages, failure to provide compliant meal and rest periods or premium pay for missed/noncompliant meal and rest periods, failure to timely pay final wages, failure to provide compliant and accurate wage statements, and unfair competition regarding some of the aforementioned wage and hour claims. The settlement also resolves additional PAGA claims alleging Wipro failed to pay vacation wages, failed to maintain required records and used illegal contract provisions. The Settlement Class should be conditionally certified for purposes of settlement because the requirements of California Code of Civil Procedure § 382 and California Rules of Court are met. Further, the settlement is fair, adequate and reasonable, and the notice plan comports with due process.

Accordingly, Plaintiff Pearl respectfully requests that the Court (1) grant preliminary approval of the class action settlement, (2) conditionally certify the Settlement Class, (3) approve the form and method of Class Notice, (4) approve Kevin Woodall of Woodall Law Offices as Class Counsel, (5) approve Pearl as Class Representative, (6) appoint Simpluris Class Action Settlement Administration as the settlement administrator, and (7) approve the proposed mechanism for objections and elections to opt-out of the settlement.

## II. STATEMENT OF FACTS

### A. Background and Claims Asserted

On June 2, 2020, Plaintiffs Lloyd and Pearl filed an initial complaint alleging the following class action claims: (1) unpaid overtime wages under Labor Code §§ 510 and 1194;

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<sup>1</sup> As noted in an earlier filing, Plaintiff Lloyd passed away after the short-form agreement was executed. As a result, this motion is filed on behalf of Plaintiff Pearl.

(2) unpaid minimum wages and regular wages under Labor Code §§ 1194 and 1197; (3) failure to timely pay final wages under Labor Code §§ 201-203; (4) failure to provide accurate itemized wage statements under Labor Code § 226; and (5) unfair competition (“UCL”). (Woodall Declaration in Support of Mtn. for Preliminary Approval (“Woodall Decl.”), ¶ 2.) At or about the same time, Plaintiffs provided notice under the PAGA alleging the foregoing wage and hour violations against Wipro, as well as allegations that Wipro failed to provide legally compliant meal and rest periods or premium pay for the same, failed to pay vacation wages, failed to maintain required records, and used illegal contract provisions. (*Id.* at ¶ 3, Exh. 3.) On July 24, 2020, Plaintiffs filed a First Amended Complaint, in which they asserted the foregoing PAGA claims. (Woodall Decl., ¶ 4.) In May, 2021 and January, 2022, Plaintiffs filed a Second Amended Complaint and Third Amended Complaint adding class action claims for noncompliant meal and rest periods under Labor Code §§ 226.7 and 512. (*Id.*)

In late June, 2021, the parties participated in a full-day mediation session with Michael Dickstein, an experienced and well-respected wage and hour mediator who has resolved numerous class action and PAGA disputes. (Woodall Decl., ¶ 5.) The mediation was unsuccessful, but the parties continued to engage in settlement discussions with Mr. Dickstein and ultimately settled the matter for \$6,500,000 in late October, 2021. (*Id.*)

#### **B. Extensive Discovery Conducted**

The parties engaged in extensive discovery prior to settling this matter. (Woodall Decl., ¶ 7.) Plaintiffs propounded and received responses to formal and informal discovery requests for documents and information. (*Id.*) Wipro produced all time entry records and all pay records for the Settlement Class, along with wage statements for a random sample of the Settlement Class, employment policies and class information relating to the dates of employment, rates of pay, pay periods and employment status (i.e., whether they were former or current employees). (*Id.*) After receiving this information and documents, Plaintiffs’ counsel and his staff conducted an extensive analysis of the data and records. (*Id.*)

#### **C. Primary Settlement Terms**

The parties settled this matter for Six Million Five Hundred Thousand Dollars (\$6,500,000)

(hereinafter, “Total Settlement Amount”), which is non-reversionary. (Woodall Decl., ¶ 8, Exh. 1 at pp. 12, 18 (Section II, ¶ 2.35; Section IV, ¶ 4.1).) The Total Settlement Amount will be allocated as follows under the agreement: (1) \$50,000 will be paid to the Labor Workforce Development Agency (“LWDA”) and PAGA represented employees (75 percent to the LWDA and 25 percent to PAGA represented employees); (2) class counsel will seek thirty-three percent (33%) of the Total Settlement Amount in attorney’s fees, along with the reimbursement of costs advanced—not to exceed \$30,000 in costs; (3) the Settlement Administrator will receive approximately \$4,000; (4) Pearl will seek incentive payments of \$7,500 to himself and Plaintiff Lloyd, relating to their efforts in advancing the interests of class members; and (5) the Settlement Class Members will receive the remainder of the Total Settlement Amount (“Net Settlement Fund”). (*Id.*, Exh. 1 at pp. 6, 9-11, 18-19 (Section II, ¶¶ 2.2, 2.19, 2.27 and 2.30; Section IV, ¶¶ 4.1-4.6).)

The Net Settlement Fund will be distributed to Settlement Class Members (those who do not opt-out of the settlement) as follows: (1) twenty-five percent (25%) shall be distributed equally to the 244 participating Settlement Class Members who are former employees of Wipro; and (2) seventy-five percent (75%) shall be distributed to all 440 Settlement Class Members on a pro rata basis, based upon the 7,424 pay periods worked by all participating Settlement Class Members during the Settlement Class Period (June 2, 2016 to August 1, 2021). (Woodall Decl., ¶ 9, Exh. 1 at p. 20 (Section V, ¶ 5.4).)

Assuming each of the projected 440 Settlement Class Members does not opt-out, the gross amount payable to Settlement Class Members who are former employees and worked during the entire Settlement Class Period, after subtraction of fees, costs and payments above, will be at least \$62,376.16 (calculated by adding the \$4,389 former employee amount ( $\$4,283,500 \text{ Net Settlement Fund} \times .25 = \$1,070,875 / 244 \text{ former employees}$ ) to the \$57,987.16 amount per pay period ( $\$4,283,500 \text{ Net Settlement Fund} \times .75 = \$3,212,625 / 7,424 \text{ total pay periods worked by all Settlement Class Members} \times 134 \text{ pay periods in the Settlement Class Period}$ ). (Woodall Decl., ¶ 10.) It follows that the gross amount payable to Settlement Class Members who are former employees and worked half the pay periods in the Settlement Class Period will be \$33,382.25. (*Id.*) Using the same formula, Settlement Class Members who are current employees and worked

1 during the entire Settlement Class Period will receive a gross amount of at least \$57,987.15, while  
2 current employees who worked half of the pay periods in the Settlement Class Period will receive  
3 at least \$28,993.58. (*Id.*) It is also noteworthy that if not all participate in the settlement, the  
4 settlement amount for each Settlement Class Member would be even higher. (*Id.*)

5 Payroll withholdings will be made on the thirty-five percent (35%) portion deemed unpaid  
6 wages, while there will be no taxes withheld regarding the sixty-five percent (65%) portion deemed  
7 penalties, interest and other non-wage damages. (Woodall Decl, ¶ 11, Exh. 1 at p. 18 (Section IV,  
8 ¶ 4.3).) In exchange for their participation, the Settlement Class Members will provide a release  
9 that covers the claims asserted in this action for the period of June 2, 2016 through November 15,  
10 2021, including those claims that were brought or could have been brought and that arose from or  
11 relate to the facts alleged in the Third Amended Complaint. (*Id.*, Exh. 1 at pp. 11-12 (Section II,  
12 ¶ 2.33).)<sup>2</sup>

### 13 III. DISCUSSION

#### 14 A. Preliminary Approval of Class Action Settlement Standard

15 Pursuant to California Rules of Court, Rule 3.769 (“Rule 3.769”), a class action settlement  
16 requires court approval. Likewise, under PAGA, the “superior court shall review and approve any  
17 penalties sought as part of a proposed settlement agreement.” Cal. Labor Code § 2699(l).<sup>3</sup> Wage-  
18 and-hour cases such as this action “routinely proceed as class actions.” *Prince v. CLS Transp.*,

19 <sup>2</sup> As set forth more fully below, within fifteen (15) calendar days of a preliminary  
20 approval order by the Court, Wipro shall provide the Settlement Administrator with the names and  
21 contact information of Settlement Class Members, along with the Class Information necessary to  
22 make the payments described above. (Woodall Decl., ¶ 12, Exh. 1 at pp. 6-7, 21-22 (Section VI,  
23 ¶¶ 6.1-6.6; Section II, ¶¶ 2.3 and 2.4), Exh. A.) The Settlement Administrator will update the  
24 addresses using a national address search service and send to the Class Members via first class  
25 mail (and personal email, if available) a Class Notice. (*Id.*) The Class Notice includes detailed  
26 information regarding the claims asserted, the settlement and amounts to be paid under the  
27 settlement (above), the number of Pay Period Worked by the employee during the Settlement Class  
28 Period, the impact on the rights of Settlement Class Members if they choose to opt-out of the  
settlement or do nothing, and how to submit an opt-out request and object to the settlement, along  
with the final approval hearing date. (*Id.*) If any Notices are returned, the Settlement  
Administrator will update the address using a national address search service and resend the Class  
Notice. (*Id.*) Class Members will have sixty (60) days from the mailing of the Class Notice to  
opt-out or object to the settlement. (*Id.*, Exh. 1 at p. 7 (Section II, ¶ 2.8).)

<sup>3</sup> Under the PAGA, the parties must provide notice of the proposed settlement to the Labor  
Workforce Development Agency, which has already been provided. (Woodall Decl, ¶ 37, Exh.  
4.)

1 *Inc.*, 118 Cal. App. 4th 1320, 1328 (2004). When they settle before the court has certified a class  
2 action, “[a] trial court unquestionably ha[s] the authority to conditionally certify a class for  
3 settlement purposes.” *Hernandez v. Vitamin Shoppe Indus. Inc.*, 174 Cal. App. 4th 1441, 1457  
4 (2009). Here, the parties negotiated a settlement prior to the filing of a class certification motion.

5 In determining whether to approve a class action settlement, courts must determine whether  
6 the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court*, 89  
7 Cal. App. 3d 434, 438 (1979); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-235  
8 (2001). Specifically, California Code of Civil Procedure section 382 requires that the Court find  
9 the proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal. App.  
10 4th 1794, 1801 (1996) (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th  
11 Cir. 1982)). A class action settlement is presumed fair under the following circumstances: (1) the  
12 parties reached settlement after arms-length negotiations; (2) investigation and discovery were  
13 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
14 litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1802. In addition  
15 to showing a class action settlement is fair, adequate and reasonable, the settlement class must  
16 satisfy the normal prerequisites for a class action. *Amchem Products, Inc. v. Windsor*, 521 U.S.  
17 591, 625-627 (1997).<sup>4</sup> Under Rule 3.769(b) and (c), the Court should review and approve the

18 <sup>4</sup> California courts have routinely followed Rule 23 of the Federal Rules of Civil Procedure  
19 and federal cases regarding class action procedures, especially where gaps exist in the California  
20 Rules of Court. *City of San Jose v. Superior Court*, 12 Cal. 3d 447, 453 (1974). Under Code of  
21 Civil Procedure § 382, “when the question is one of a common or general interest, of many persons,  
22 or when the parties are numerous, and it is impracticable to bring them all before the court, one or  
23 more may sue or defend for the benefit of all.” Thus, in order to certify a class, one must  
24 demonstrate: (1) the existence of an ascertainable and sufficiently numerous class, (2) a well-  
25 defined community of interest, and (3) substantial benefits from certification that render  
26 proceeding as a class superior to the alternatives. *Brinker Restaurant Corp. v. Superior Court*, 53  
27 Cal. 4th 1004, 1021 (2012); *Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th 562, 573 (2010).  
28 Ascertainability and numerosity are determined by examining the class definition, the size of the  
class and the means available to identify class members, such that notice can be given to putative  
class members who will be bound by the judgment. *Sotelo v. MediaNews Group, Inc.*, 207 Cal.  
App. 4th 639, 647-648 (2012); *Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987).  
The community of interest requirement is comprised of three separate factors: (1) predominant  
common questions of law or fact; (2) class representatives whose claims or defenses are typical of  
the class; and (3) class representatives who can adequately represent the class. *Brinker*, 53 Cal.  
4th at 1021, *Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 470 (1981); *Fireside Bank v. Superior  
Court*, 40 Cal. 4th 1069, 1089 (2007). The substantial benefits requirement is satisfied where “on  
balance, a class action is superior to other methods available for adjudicating the controversy.”  
*Bradley v. Networkers Int’l, LLC*, 211 Cal. App. 4th 1129, 1148-1156 (2012). Courts have held

proposed notice to settlement class members and the settlement agreement. Rule 3.769(e) further provides that upon preliminary approval of class action settlement, the Court’s “order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.”

## **B. Conditional Certification of The Settlement Class is Appropriate**

Based upon the standard above, the Settlement Class should be conditionally certified for settlement purposes because (1) the Settlement Class is ascertainable and sufficiently numerous, (2) there is a well-defined community of interest, and (3) substantial benefits from certification will render the Settlement Class superior to the alternatives.

### **1. Ascertainability and Numerosity**

Conditional class certification for settlement purposes is proper because the Class is sufficiently numerous and ascertainable. “[A] class definition is sufficient if the description of the class is ‘definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member.’” *Vietnam Veterans of Am. v. CIA*, 288 F.R.D. 192, 211 (N.D. Cal. 2012) (quoting *O’Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998)); see also *Dyer v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 65199 at \*6-7 (N.D. Cal. May 12, 2014); *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 858 (2003). There is no minimum number of plaintiffs required as a matter of law for maintenance of a class action in California. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981); *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2<sup>nd</sup> Cir. 1995) (numerosity is presumed at 40 or more).

that “wage and hour disputes (and others in the same general class) routinely proceed as class actions.” *Hill v. Bauer*, 242 F.R.D. 556, 562 (CD Cal. 2007) (quoting *Prince v. CLS Transportation, Inc.*, 118 Cal. App. 4th 1320, 1328 (2004)); see also *Leyva v. Medline Indus.*, 716 F.3d 510 (9th Cir. 2013) (class certification proper with unpaid wage, waiting time penalties and inaccurate wage statement allegations); *Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 402 (C.D. Cal. 2008) (class certified where employees were allegedly denied wages); *Boyd v. Bank of Am. Corp.*, 300 F.R.D. 431 (C.D. Cal. 2014) (Rule 23(a) and (b)(3) met where putative class was denied overtime wages, meal and rest periods, accurate wage statements and all wages due at termination); *Lopez v. Bank of Am., N.A.*, 2014 U.S. Dist. LEXIS 132149, \*10 (N.D. Cal. Sept. 19, 2014) (preliminary certification of wage statement settlement class granted); *Willner v. Manpower Inc.*, 2015 U.S. Dist. LEXIS 65 (N.D. Cal. Jan. 2, 2015) (preliminary certification granted where there were claims relating to improper wage statements).

Here, there are 440 Settlement Class Members, including 244 former employees, which easily satisfies the numerosity standard. (Woodall Decl., ¶ 30, Exh 1 at p. 11 (Section II, ¶ 2.31).) Class Members can be easily identified as well, as the Class is defined as “all current and former and nonexempt employees from June 2, 2016 through August 1, 2021, who do not timely request exclusion from the Settlement.” (*Id.*) Settlement Class Members have already been ascertained from Wipro’s records, including wage statements, time entry records and other documents showing those who are nonexempt, current and former California employees during this period of time, and their resignation and termination dates. (*Id.*)

## **2. Well-Defined Community of Interest**

There is a well-defined community of interest because there are (1) predominant common questions of law or fact; (2) the class representative’s claims are typical of the Settlement Class; and (3) the class representative and his counsel can adequately represent the class.

### **a. Predominant Common Questions of Law And Fact**

Courts have routinely determined that common issues predominate and the case is manageable where the claims involve inaccurate or noncompliant wage statements, unpaid wages, missed meal and rest periods, and failure to timely pay final wages. *Boyd*, 2014 U.S. Dist. LEXIS 90670 at \*22-29.<sup>5</sup> Common issues of fact and law predominate in this case as well.

Here, Plaintiffs contend that Wipro had defective, uniform policies and/or practices (or the lack of any policy) relating to overtime pay, minimum and regular wages, the payment of final

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<sup>5</sup> See also *Leyva*, 716 F.3d at 513-515 (predominance met because inaccurate wage statement and other wage and hour violations could be established through the employer’s own pay records); *Dyer v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 65199, \*11-12 (N.D. Cal. May 12, 2014); *Brinker*, 53 Cal.4<sup>th</sup> at 1021; *Bradley v. Superior Court*, 211 Cal.App.4<sup>th</sup> 1129, 1150 (2012) (noncompliant meal and rest period policies subject to class certification); *Faulkinbury v. Boyd & Assoc., Inc.*, 216 Cal.App.4<sup>th</sup> 220, 236-237 (2013) (same); *Seckler v. Kindred Healthcare Operating Group, Inc.*, 2013 U.S. Dist. LEXIS 29940, \*20 (C.D. Cal. March 5, 2013) (class certified where plaintiffs alleged their regular rates of pay did not include bonus compensation and shift differentials); *Kurihara v. Best Buy Co.*, 2007 U.S. Dist. LEXIS 64224, \*27-30 (N.D. Cal. Aug. 30, 2007) (while individualized liability issues existed, predominance standard met where question was whether the company-wide policies or practices resulted in unpaid compensation); *In re Wal-Mart Stores, Inc. Wage & Hour Litig.*, 2008 U.S. Dist. LEXIS 14756 at \*46 (N.D. Cal. Feb. 13, 2008) (derivative waiting time penalty claim certified); *McKenzie v. Fed. Express Corp.*, 275 F.R.D. 290, 293, 299-300 (C.D. Cal. 2011) (where company “implemented pay stub system” and “controlled how the wage statements were formatted,” class certification was proper).

wages, and meal and rest periods that affected all Settlement Class Members. (Woodall Decl., ¶¶ 31-34.) Plaintiffs assert that based upon thorough examination of wage statements, pay records and time entry records, Plaintiffs can demonstrate that Settlement Class Members were uniformly affected by the unlawful policies and practices. (*Id.*)

**b. Pearl's Claims Are Typical**

The “test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Martinez v. Joe’s Crab Shack Holdings*, 231 Cal. App. 4th 362, 375 (2014); *Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983). In this case, Pearl’s claims are typical of the Settlement Class. Pearl alleges that he was not paid overtime wages, minimum wages or regular wages for time spent working over 8 hours per day. (Woodall Decl., ¶ 35; Pearl Decl., ¶¶ 2-5.) Pearl also alleges he has a direct waiting time penalty claim because the final wages actually paid were paid weeks after his employment ended. Further, Pearl alleges that he was not paid the aforementioned wages when his employment ended, which supports a derivative waiting time penalty claim. (*Id.*) In addition, Pearl claims his wage statements do not include the correct gross wages earned, the number of hours worked at each rate of pay or the correct total hours worked. (*Id.*) Pearl also alleges that he regularly missed or was not provided compliant meal and rest periods, nor did Wipro provide him with premium pay for said alleged violations. (*Id.*)

**c. Pearl and His Counsel Will Adequately Represent The Class**

The class representative, through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834, 846 (1984). Pearl has demonstrated he will vigorously and tenaciously protect the interests of Settlement Class Members. Pearl has assisted with the preparation of complaints and discovery, the production of detailed information to his counsel and the preparation of his declaration, participated in a lengthy mediation session, and reviewed settlement agreements. (Woodall Decl., ¶ 36; Pearl Decl., ¶ 6.) Finally, Pearl’s counsel is qualified to represent the Settlement Class in this litigation, given his extensive class action and employment litigation experience. (Woodall

Decl., ¶¶ 26-27.) Plaintiff's counsel also tenaciously prosecuted the claims in this case.

### 3. Superiority

This standard is satisfied where judicial economy is achieved through common adjudication/ settlement of the claims of proposed class members. *Dyer*, 2014 U.S. Dist. LEXIS 65199, \*11; *Boring*, 2013 U.S. Dist. LEXIS 165909, \*15. Where, as here, the total potential value of each class member's claims is relatively low and the class includes a large number of members, certification of a class achieves judicial economy because a class action is superior to alternative procedures for adjudicating the individual claims. *Id.* In other words, judicial economy will be served by having all Settlement Class Members' cases resolved at the same time.

### 4. Appointment of Class Representative and Class Counsel

Pearl and his counsel should be appointed as class representative and class counsel, respectively. When class requirements are met, plaintiffs should be appointed as class representatives. *Lopez*, 2014 U.S. Dist. LEXIS 132149 at \*10-12. When appointing class counsel, the Court must consider: (a) the work counsel has done in identifying or investigating potential claims in the action; (b) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (c) counsel's knowledge of the applicable law; and (d) the resources that counsel will commit to representing the class. *Id.* Here, Pearl's counsel has diligently and vigorously prosecuted this action by: (1) filing and amending complaints; (2) investigating Settlement Class Members' potential claims; (3) propounding and receiving discovery; (4) analyzing extensive information and documents that Wipro provided in discovery; (5) preparing for and participating in a mediation; (6) negotiating the settlement agreement; (7) bringing motions to compel and preparing drafts of other motions; and (8) briefing the instant motion for preliminary approval. (Woodall Decl., ¶ 36.) Further, Pearl's counsel has significant experience prosecuting and defending class actions, and handling wage and hour matters. (*Id.* at ¶¶ 26-27.) Thus, Pearl requests that he be appointed class representative and his attorney be appointed class counsel.

### C. The Class Settlement is Fair, Adequate and Reasonable

The class settlement is fair, adequate and reasonable because the settlement was reached

after arms-length negotiations with an experienced mediator, Plaintiffs' counsel and his staff engaged in extensive investigation and discovery efforts to allow Plaintiffs and the Court to act intelligently, and Plaintiffs' counsel is experienced in similar litigation and believes the settlement is an exceptional result in light of the risks, expense, complexity and duration of continued litigation.<sup>6</sup> *Mallick*, 89 Cal. App. 3d at 438; *Wershba*, 91 Cal. App. 4<sup>th</sup> at 234-235; *Dunk*, 48 Cal. App. 4<sup>th</sup> at 1801-1802.

### **1. The Settlement Was the Result of Extensive Negotiations Conducted at Arm's Length with the Assistance of an Experienced Mediator**

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the proponents of the settlement, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979).

After extensive discovery, including obtaining extensive information and documents in response to discovery requests, the parties participated in a full-day mediation with a well-respected mediator, Michael Dickstein, prior to reaching the agreement. (Woodall Decl., ¶ 5.) Although the parties did not initially resolve the matter, after several more months of the arm's length negotiations with the assistance of Mr. Dickstein, the parties reached fair and reasonable settlement terms after considering the potential damages/penalties, the costs of protracted litigation, and the risks associated with a contested class certification motion and trial on the merits.

### **2. The Settlement Gives No Class Member Preferential Treatment**

The settlement does not grant preferential treatment to segments of the Settlement Class, as all Settlement Class Members are affected by Wipro's conduct and they will receive a settlement

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<sup>6</sup> Plaintiffs also believe the number of objectors will be small and the Settlement Class Members will have a positive reaction to the settlement, but that issue will need to be settled after notice is provided to Settlement Class Members.

amount based upon whether they are former or current employees (i.e., former employees are entitled to waiting time penalties because they did not receive timely final wages) and their number of pay periods worked in the Settlement Class Period (i.e., they will receive more compensation the longer they were subjected to Wipro's alleged unlawful conduct). (Woodall Decl. at ¶ 25, Exh. 1 at p. 20 (Section V, ¶ 5.4).)

**3. Plaintiffs' Counsel is Experienced and Knowledgeable in this Area and Has Concluded the Settlement is an Excellent Result for the Class in Light of the Risks at the Class Certification and Merits Stages of the Action**

Plaintiffs' counsel has extensive experience and knowledge with respect to wage and hour class actions (Woodall Decl., ¶ 13) and although he believes Plaintiffs could have ultimately prevailed if this case did not settle, Plaintiffs' counsel realizes his clients and the putative class would have to overcome substantial obstacles to demonstrate liability, damages and class action status. (*Id.*) As noted earlier, Plaintiffs contend that Wipro did not properly pay overtime, minimum and regular wages, issued inaccurate wage statements, did not provide compliant meal and rest periods or premium pay for the same, and did not timely pay final wages to putative class members in violation of Labor Code §§ 203, 226, 226.7, 510, 512, 1194 and 1197. Wipro denies the allegations and was ready to litigate the case on the merits. Wipro was also confident in its ability to defeat class certification should the parties not have reached resolution based upon its contention that individualized issues of law or fact would have predominated over those common to class members. In reaching the settlement, Plaintiffs were mindful of the risk that the Court may not certify a class action for purposes of trial or that Wipro may prevail on the merits. (*Id.*)

Wipro was prepared to argue that putative class members are not owed overtime, minimum or regular wages because employees were required to record all time worked, including overtime hours in accordance with Labor Code §§ 510, 1194 and 1197. (Woodall Decl., ¶ 14). Further, Wipro asserts it would be difficult to certify a class related to allegations that employees were discouraged from reporting overtime. (*Id.*) Wipro also contends that it was not liable for missed or noncompliant meal and rest periods under Labor Code §§ 226.7 and 512 because (a) its policies state employees are expected to take one-hour meal periods, (b) employees regularly take

compliant meal and rest periods, and (c) class certification would be problematic because conditions vary for employees who work at different client locations. (*Id.*) Wipro also asserts that at all times it complied with the law by providing employees with all legally required meal and rest periods and that if employees voluntarily chose not to take meal or rest periods, or chose not to take them at the correct time or for the full time permitted, it was not liable. (*Id.*) Wipro was also prepared to argue that Plaintiffs' claims for waiting time penalties under Labor Code §§ 201-203 and inaccurate wage statement claim under Labor Code § 226 fail as a matter of law because Wipro paid former employees all wages due and owing at the time of their termination and because Wipro's wage statements complied with Labor Code § 226. (*Id.*) Plaintiffs weighed these risks against the full value of the class claims for purposes of settlement.

If Plaintiffs were to prevail on liability and class certification, the total amount of unpaid overtime, minimum and regular wages during the UCL 4-year statute of limitations (June 2, 2016 to August 1, 2021) would have been approximately \$3,250,000, which represents the failure to pay all recorded hours at the correct rate of pay and off-the-clock work.. (Woodall Decl., ¶¶ 15-19.) Plaintiffs' counsel also determined that during the 3-year statute of limitations (June 2, 2017 to August 1, 2021), potential liability for statutory penalties relating to the failure to timely pay final wages would have been approximately \$2,635,200 (244 former employees x 8 hours worked per day x 30 days x \$45 average hourly rate). (*Id.*) In addition, Plaintiffs' counsel determined the potential statutory penalties relating to the inaccurate wage statement claim during the one-year statute of limitations (June 2, 2019 to August 1, 2021) would have been approximately \$296,900 (\$100 per pay period x 2,969 pay periods (40% of 7,424 pay periods in Settlement Class Period).) (*Id.*) Plaintiffs' counsel also found that potential liability for the unpaid premium pay for missed and noncompliant meal period claims, conservatively assuming a 25% violation rate, is \$835,200 (7,424 pay periods x 10 days/pay period x .25 violation rate x \$45 avg. hourly rate). (*Id.*) Finally, Plaintiffs' counsel determined the potential liability for unpaid premium pay for missed and noncompliant rest period claims, conservatively assuming a 25% violation rate, would be \$835,200 (7,424 pay periods x 10 days/pay period x .25 violation rate x \$45 avg. hourly rate). (*Id.*)

1           Despite the maximum potential recovery of \$7,852,500 for the class claims, there are  
2 risks associated with certifying a class action and establishing liability, including the  
3 aforementioned arguments made by Wipro. (Woodall Decl, ¶ 20.) Moreover, where well over  
4 half of the potential theoretical recovery consists of penalties, courts have found they may be  
5 substantially discounted when evaluating the proposed distribution of a settlement fund.  
6 *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964 (9<sup>th</sup> Cir. 2009).<sup>7</sup>

7           Given the risks involved with obtaining and certifying a class action, prevailing on the  
8 merits regarding the class claims and actually collecting on a judgment, the realistic potential  
9 recovery on the class action claims is a fraction of the maximum theoretical recovery.<sup>8</sup>

10  
11           <sup>7</sup> In addition to the statutory penalties sought as part of the class action, Plaintiffs  
12 seek civil penalties under PAGA relating to the same alleged violations of Labor Code §§ 201-  
13 202, 226, 226.7, 510, 512, 1194 and 1197. Plaintiffs also seek civil penalties under PAGA relating  
14 to the alleged failure to pay vacation wages under Labor Code § 227.3, failure to maintain records  
15 under Labor Code § 1174, and the use of illegal contract provisions under Labor Code § 925.  
16 (Woodall Decl., ¶¶ 21-22.) Plaintiffs seek \$100 per pay period for each violation, along with  
17 attorney's fees and costs. Wipro raises the same defenses mentioned above and contends it did  
18 not violate the law. (*Id.*) During the one-year statute of limitations relating to the released PAGA  
19 claims (June 2, 2019 to August 1, 2021), Plaintiffs were not able to identify vacation pay violations  
20 other than what they experienced. (*Id.*) With respect to violations of Labor Code §§ 201-202,  
21 226, 226.7, 510, 512, 925, 1174, 1194 and 1197, if Plaintiffs were able to demonstrate that Wipro  
22 violated said Labor Code sections during this same period of time, the maximum potential  
23 penalties would be \$1,555,100. (*Id.*) However, all of the risks identified above relating to the  
24 underlying alleged Labor Code section violations apply equally to the PAGA claim. For instance,  
25 Wipro would have argued that Plaintiffs' PAGA claims were unmanageable, for many of the same  
26 reasons it was confident in its ability to defeat certification of Plaintiffs' class claims. Wipro would  
27 have argued that even if any violations of the Labor Code could be proven, which it denies, said  
28 violations were not intentional, but inadvertent. In addition, Wipro would rely on the Court's  
discretion under PAGA to reduce or eliminate the award of civil penalties under Labor Code §  
2699 et seq. Additionally, Wipro would argue that it would be unjust to award substantial PAGA  
penalties on top of the statutory penalties and damages available under Labor Code §§ 201-203,  
226, 226.7, 510, 512, 1194 and 1197 for the same underlying statutory violations. Further, even  
if Plaintiffs' were to prevail in convincing the Court that violations of the Labor Code occurred  
and that PAGA penalties were justified, the LWDA would obtain 75% of the penalties and  
aggrieved employees would be entitled to 25% of the penalties. Given the above, it is common  
for PAGA penalties to be greatly reduced. *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist.  
LEXIS 160052 at \*21-22 (E.D. Cal. Oct. 31, 2012) (approving \$10,000 allocation to PAGA claim  
in \$3.7 million settlement of wage and hour class action); *Chu v. Wells Fargo Investments*, 2011  
U.S. Dist. LEXIS 15821 at \*4 (N.D. Cal. Feb. 16, 2011) (approving \$10,000 allocation to PAGA  
claims in \$6.9 million settlement of wage and hour class action); *Franco v. Ruiz Food Products,*  
*Inc.*, 2012 U.S. Dist. LEXIS 169057 at \*41 (E.D. Cal. Nov. 27, 2012) (approving \$10,000  
allocation to PAGA claim in context of \$2.5 million settlement of claims of 2,055 member class);  
*Shepard v. Lowe's HIW, Inc.*, 12-CV-03893-JSW (N.D. Cal. 2014).

<sup>8</sup> As set forth above, the PAGA civil penalties are separate and distinct from the  
realistic class action damages and statutory penalties.

Specifically, given the arguments and defenses raised by Wipro, the realistic potential recovery is approximately 80% of the maximum theoretical recovery or \$6,282,000. (Woodall Decl., ¶ 23.) Courts have found that a settlement is fair when it is a fraction of the potential recovery for class members. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9<sup>th</sup> Cir. 2000) (\$2 million settlement was fair even though potential damages were \$12 million); *Dyer*, 303 F.R.D. at 331 (even though the settlement was a third of the potential recovery, it was fair due to the uncertainties of continued litigation); *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965-967 (9<sup>th</sup> Cir. 2009) (counsel is in the best position to determine the value of the case, especially given the challenges of obtaining a favorable verdict). Based upon the risks involved, Plaintiffs' counsel believes the settlement is an exceptional result for the Settlement Class Members. (*Id.* at ¶ 28.)

#### **D. The Proposed Class Notice Plan Should Be Approved**

Class notice must comport with the requirements of due process. “[T]he plaintiff must receive notice plus an opportunity to be heard and participate in litigation, whether in person or through counsel.’ The notice must be ‘the best practicable,’ ‘reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Dyer*, 2014 U.S. Dist. LEXIS 65199 at \*19 (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)). “The notice should describe the action and the plaintiffs’ rights in it.” *Id.* “The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members . . . .” *Id.* Lastly, “an absent plaintiff [must] be provided with an opportunity to remove himself from the class by executing and returning an “opt out” or “request for exclusion” form to the court.” *Id.*

In this case, the proposed Settlement Administrator is Simpluris Class Action Settlement Administration, a company with substantial experience in this area that submitted a reasonable bid. (Woodall Decl, ¶ 12.) The Settlement Administrator will provide notice via first class mail

1 and personal email (if available), calculate the awards of class members, process opt-out requests  
2 and objections, mail settlement awards to participating Settlement Class Members, issue tax  
3 reporting forms, provide regular updates to counsel for the parties, and any necessary declarations  
4 regarding the relevant information. (*Id.*, Exh. 1 at pp. 20-23, 28-30 (Section V, ¶¶ 5.5-5.8; Section  
5 VI, ¶¶ 6.3-6.8; Section X, ¶¶ 10.1-10.8).) Prior to issuing notice via first class mail, the  
6 administrator will update the Settlement Class Members' last known addresses. (*Id.*) After the  
7 Class Notices are sent, Settlement Class Members will have 60 calendar days to postmark or email  
8 a Request for Exclusion and make objections. (*Id.* at Exh. 1, p. 7 (Section 2, ¶ 2.8).) The  
9 Settlement Administrator will perform skip-traces on any returned mail and re-mail class notice to  
10 the updated addresses. (*Id.* at Exh. 1, p. 22 (Section VI, ¶ 6.4).) Thus, the proposed Settlement  
11 Administrator and Class Notice procedures are appropriate.

12 The Notices to the Settlement Class Members are appropriate as well. The Notices clearly  
13 and concisely state, in easily understood language: (a) the nature of the action; (b) the definition  
14 of the Settlement Class; (c) the class claims, issues or defenses; (d) that Settlement Class Members  
15 may enter an appearance through an attorney if the member so desires; (e) that the Court will  
16 exclude from the Settlement Class any member who requests exclusion; (f) the time and manner  
17 for requesting exclusion; and (g) the binding effect of a class judgment on members. (Woodall  
18 Decl., Exh. 1 at Exh. A.) The Notice also provides the contact information of Class Counsel and  
19 the Settlement Administrator. (*Id.*)

#### 20 IV. CONCLUSION

21 For the reasons set forth above, Pearl respectfully requests that the Court grant this  
22 unopposed Motion for Preliminary Approval of Class Action Settlement.

23 DATE: JANUARY 21, 2022 WOODALL LAW OFFICES

24  
25  
26 BY: /s/ KEVIN F. WOODALL  
27 KEVIN F. WOODALL  
28 ATTORNEYS FOR PLAINTIFF, ETHAN PEARL  
AND SIMILARLY SITUATED FORMER AND  
CURRENT EMPLOYEES OF DEFENDANTS