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

ROBERTO HERNANDEZ, individually, and
on behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiff,

v.

MAR-CONE APPLIANCE PARTS CO., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendant.

Case No.: 34-2020-00281810-CU-OE-
GDS

Honorable Gerrit W. Wood
Department 31

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Yasmin Hosseini); Declaration of
Proposed Class Representative (Roberto
Hernandez); and [Proposed] Order filed
concurrently herewith]

Reservation #: 2690179
Date: December 9, 2022
Time: 9:00 a.m.
Department: 31

Complaint Filed: September 18, 2018
FAC Filed: September 3, 2020
SAC Filed: December 3, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on December 9, 2021 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Gerrit W. Wood in Department 31 of the Superior Court of California for the County of Sacramento, located at 720 9th Street, Sacramento, California 95814, Plaintiff Roberto Hernandez (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT A**” to the Declaration of Yasmin Hosseini, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Roberto Hernandez as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Class Notice (“Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to Settlement Administrator.

1 This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
2 of Court, which provide for approval by the Court of the settlement of a putative class action
3 and allows the Court to preliminarily certify a class for settlement purposes, and permit the
4 Court to extend the page limit for memoranda.

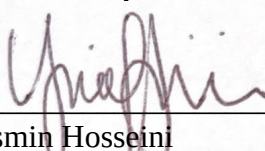
5 Pursuant to Local Rule 1.06(A), the Court will make a tentative ruling on the merits of
6 this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative
7 rulings for the department may be downloaded off the court's website. If a party does not have
8 online access, they may call the dedicated phone number for the department as referenced in the
9 local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before
10 the hearing and receive the tentative ruling. If the parties do not call the Court and the opposing
11 party by 4:00 p.m. the court day before the hearing, no hearing will be held.

12 This motion is based upon the following memorandum of points and authorities, the
13 Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini) and
14 Proposed Class Representative (Roberto Hernandez) in support thereof, the pleadings and other
15 records on file with the Court in this matter, and such evidence and oral argument as may be
16 presented at the hearing on this motion.

17
18 Dated: November 10, 2022

LAWYERS for JUSTICE, PC

19
20 By:



Yasmin Hosseini
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	2
III.	SUMMARY OF THE SETTLEMENT TERMS	5
IV.	LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS.....	8
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT	9
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.	10
B.	The Settlement Is Fair, Reasonable, and Adequate.....	12
C.	The Settlement Is of Significant Value.....	13
VI.	CERTIFICATION OF THE CLASS IS APPROPRIATE.	14
A.	The Class Is Ascertainable and Sufficiently Numerous.	14
B.	The Class Members Share a Well-Defined Community of Interest.....	15
VII.	APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND COSTS	16
VIII.	THE PROPOSED NOTICE IS ADEQUATE.....	19
IX.	APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT ADMINISTRATOR.....	20
X.	PROPOSED DEADLINES FOR THE NOTICE PROCESS	21
XI.	APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT	23
XII.	CONCLUSION	23

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	9
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	15
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	18
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 ..	15
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	19, 20
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	18
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	9
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 9
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	19
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	8, 9
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	14
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	13
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	18
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	18
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	13
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	18
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	18
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	15
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	19
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	19
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	9
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	15
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	14, 15

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<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	8
<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	23
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	8, 9
Statutes	
Cal. Code Civ. Proc. § 1781.....	19
Cal. Code Civ. Proc. § 1781(f).....	8
Other Authorities	
Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	9
Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	21
Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	13
Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	18
Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	20
Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	20
<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	19
<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	20
Rules	
Fed. R. Civ. P. 23(c)(2)	20
Fed. R. Civ. P. 23(e).....	20

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Roberto Hernandez (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Mar-Cone Appliance Parts Co. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to a settlement for a Total Settlement Amount of seven hundred and four thousand dollars and no cents (\$704,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of six thousand dollars and no cents (\$6,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or \$246,400.00, and reimbursement of litigation costs and expenses not to exceed forty-five thousand dollars and no cents (\$45,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed eight thousand dollars and no cents (\$8,000.00);⁵ and (5) the amount of fifty thousand dollars and no cents (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$37,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$12,500.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.⁶

¹ Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), ¶ 6.ff.; Per the Settlement Agreement, the Total Settlement Amount is \$600,000, however, if the total number of Workweeks for the period of September 18, 2014 to June 10, 2020 exceeds 12,000 by more than ten percent (i.e., exceeds 13,200), the Total Settlement Amount will be increased *pro rata*; as of this date, the actual total Workweeks for the period of September 18, 2014 to June 10, 2020 is estimated to be 14,081 and as a result, the Total Settlement Amount is estimated to be approximately \$704,000. See *id.*, ¶¶ 6.ff. & 36.

² *Id.*, ¶ 14.

³ *Id.*, ¶ 11.

⁴ *Id.*, ¶ 10; see n.1, *supra*.

⁵ *Id.*, ¶ 12.

⁶ *Id.*, ¶ 13.

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

All current and former hourly-paid or non-exempt employees who worked for Defendant at Defendant's locations in California at any time during the Class Period and who received at least one paycheck during the Class Period from Defendant ("Class" or "Class Members").⁷

The Class is estimated to consist of approximately one hundred and seventy-seven (177) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement ("Settlement Class Members") will receive a share of the Net Settlement Amount ("Individual Settlement Share") on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendant in California in an hourly-paid or non-exempt position during the period from September 18, 2014 through preliminary approval ("Workweeks").⁹

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Claims of Plaintiff and Settlement Class Members, against the Released Parties.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a supplier of appliance repair parts, including HVAC and plumbing supplies. Plaintiff is a former employee of Defendant.

On September 18, 2018, former plaintiff Carmen Ramirez commenced a putative class action entitled *Carmen Ramirez v. Mar-Cone Appliance Parts Co.*, Superior Court of California for the County of Fresno, Case No. 18CECG03479 ("*Ramirez Action*") against Defendant. On July 15, 2020, Roberto Hernandez commenced a putative class and representative PAGA action entitled *Roberto Hernandez v. Mar-Cone Appliance Parts Co.*, Superior Court of California for

⁷ Settlement Agreement, ¶ 6.d. "Class Period" is defined as the period from September 18, 2014 through the date of preliminary approval. *See id.*, ¶ 6.f.

⁸ Hosseini Decl., ¶ 10; *see also*, Settlement Agreement ¶ 36.

⁹ Settlement Agreement, ¶¶ 6.ee., 14, and 6.gg.

¹⁰ *See id.* at ¶ 6.x, for the full scope of the "Released Claims," and *id.* at ¶ 6.z. for the definition of the "Released Parties."

1 the County of Sacramento (“Court”), Case No. 34-2020-00281810 (the “*Hernandez Action*” or
2 “*Action*”) against Defendant.

3 On November 1, 2018, Carmen Ramirez filed a First Amended Class Action Complaint
4 for Damages in the *Ramirez Action*. On January 16, 2019, Defendant filed an Answer to former
5 plaintiff Carmen Ramirez’s First Amended Class Action Complaint in the *Ramirez Action*.

6 On March 4, 2019, former plaintiff Carmen Ramirez propounded multiple sets of
7 discovery including Requests for Production of Documents (Set One); Special Interrogatories
8 (Sets One and Two); and Form Interrogatories-General (Set One), on Defendant. On June 6,
9 2019, former plaintiff Carmen Ramirez propounded additional sets of Requests for Production
10 of Documents (Set Two) and Special Interrogatories (Set Three) on Defendant, and noticed the
11 deposition of Defendant’s person(s) most knowledgeable. Thereafter, on April 5, 2019, May
12 10, 2019, August 6, 2019, September 26, 2019, and January 31, 2020 Defendant responded to
13 former plaintiff Carmen Ramirez’s discovery requests. On January 25, 2019, Defendant
14 propounded Special Interrogatories (Set One) and Request for Production of Documents (Set
15 One) on former plaintiff Carmen Ramirez, and on February 28, 2019, former plaintiff Carmen
16 Ramirez provided her responses to the discovery requests. Furthermore, Class Counsel prepared
17 for and took the depositions for Defendant’s Regional Distribution Manager and Northern
18 California Regional Branch Manager (who was also a Branch Manager in Sacramento until May
19 2019) over the course of three (3) separate days in August 2019 and December 2019, and
20 prepared for and defended the deposition of former plaintiff Carmen Ramirez in February 2020.
21 Parties also engaged in a *Belaire-West* privacy notice and opt-out process with a neutral third-
22 party, Simpluris, Inc. (the same third-party proposed as the Settlement Administrator), and after
23 this process was completed, the class contact information was produced to former plaintiff
24 Carmen Ramirez and Class Counsel in October 2019.

25 On June 10, 2020, the Parties participated in a formal, full-day mediation conducted by
26 Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and
27 employment matters. With the aid of the mediator’s evaluation, the Parties ultimately reached
28 the Settlement described herein to resolve the *Hernandez Action* which they seek approval of in

the above-captioned Action.

On September 3, 2020, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*, adding former plaintiff Carmen Ramirez as a named plaintiff in the Action.

On December 3, 2020, Plaintiff filed a Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* in the Action, adding Fair Labor Standards Act causes of action (“Operative Complaint”).

On February, 17, 2022, the Superior Court of California for the County of Fresno dismissed the *Ramirez* Action in its entirety, and dismissed former plaintiff Carmen Ramirez’s individual claims and putative class claims in the *Ramirez* Action without prejudice.

On February 22, 2022, the Court entered an order granting Plaintiff’s Request for Dismissal of Carmen Ramirez’s Claims, dismissing former plaintiff Carmen Ramirez’s individual claims and putative class claims in the *Hernandez* Action without prejudice.

The Parties have actively litigated the matter since the *Ramirez* Action was commenced on September 18, 2018. Plaintiff’s core allegation is that Defendant has violated the California Labor Code, Industrial Welfare Commission Wage Orders, and Fair Labor Standards Act, by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contend that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action are

appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Members) with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed two hundred forty-six thousand four hundred dollars and no cents (\$246,400.00) (i.e., up to 35% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed forty five thousand dollars and no cents (\$45,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed eight thousand dollars and no cents (\$8,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Payment (i.e., \$37,500.00 out of \$50,000.00) ("LWDA Payment"); and (4) payments in the amount of up to six thousand dollars and no cents (\$6,000.00) to Plaintiff ("Enhancement Payment").¹² The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

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

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.¹³

¹¹ Settlement Agreement, ¶ 6.ee.

¹² *Id.*, ¶¶ 6.s. and 6.ff.; see also, ¶¶ 10, 12, 13, and 11; see n.1, *supra*.

¹³ *Id.*, ¶ 14.a.

- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁴

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: one-third (1/3) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining two-thirds (2/3) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁵ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement Payment”).¹⁶ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares separately and in addition to the Total Settlement Amount.¹⁷

The Individual Settlement Payment checks issued to Settlement Class Members will be negotiable for one hundred twenty (120) calendar days from the date of issuance.¹⁸ Individual Settlement Payment checks that are not negotiated within the 120-day period will be cancelled.¹⁹ The funds from associated with such cancelled checks will be transmitted by the Settlement Administrator to the Legal Aid at Work.²⁰

Class Members who wishes to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing (“Request for Exclusion”).²¹ To be timely, the Class Member must mail or fax a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice (“Response Deadline”).²² A Request for Exclusion must: (a) contain the case name and number of the Action (b) be signed by the Class Member; (c) contain the full name,

¹⁴ Settlement Agreement, ¶ 14.b.

¹⁵ *Id.*, ¶ 25.

¹⁶ *Ibid.*

¹⁷ *Id.*, ¶¶ 6.ff. and 25

¹⁸ *Id.*, ¶ 19.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Id.*, ¶ 20

²² *Id.*, ¶ 6.bb.

1 address, telephone number, and the last four (4) digits of the Social Security Number of the
2 Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be
3 included in the Settlement; and (e) be returned by fax or mail to the Settlement Administrator at
4 the specified address and/or facsimile number, postmarked or faxed on or before the Response
5 Deadline.²³ Class Members who submit a valid and timely Request for Exclusion will not be
6 bound by the terms of the Settlement and Final Approval Order and Judgment.²⁴

7 Only Class Members who do not exclude themselves from the Settlement (i.e.,
8 Settlement Class Members) have standing to object to the Settlement.²⁵ Settlement Class
9 Members who wish to object to the Settlement must submit their objection in writing (a “Notice
10 of Objection”) to the Settlement Administrator on or before the Response Deadline.²⁶ The
11 Notice of Objection must contain: (a) the case name and number of the Action; (b) the objector’s
12 full name, signature, address, and telephone number; (c) a written statement of all grounds for
13 the objection accompanied by any legal support for such objection; and (d) copies of any papers,
14 briefs, or other documents upon which the objection is based.²⁷

15 Class Members who wish to dispute the number of Workweeks credited to them in their
16 Notice may do so by submitting a written letter to the Settlement Administrator on or before the
17 Response Deadline.²⁸ The letter must: (a) contain the case name and number of the Action; (b)
18 be signed by the Class Member; (c) contain the full name, address, telephone number, and the
19 last four (4) digits of the Social Security Number of the disputing Class Member; (d) clearly
20 state that the Class Member disputes the number of Workweeks credited to him or her; (e)
21 include information and/or attach documentation demonstrating that the number of Workweeks
22 that he or she contends should be credited to him or her are correct; and (f) be returned by fax
23 or mail to the Settlement Administrator at the specified address and/or facsimile number,
24 postmarked or fax-stamped on or before the Response Deadline.²⁹

25 ²³ Settlement Agreement, ¶ 6.aa.

26 ²⁴ *Id.*

27 ²⁵ *Id.*, ¶ 22.

28 ²⁶ *Ibid.*

²⁷ *Id.*, ¶ 6.t.

²⁸ *Id.*, ¶ 18.

²⁹ *Ibid.*

1 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
2 **SETTLEMENTS**

3 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
4 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
5 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
6 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
7 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*
8 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair
9 and reasonable, whether certification of the class was proper, and whether the attorney fee award
10 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
11 decision to approve a class action settlement may be reversed only upon a strong showing of
12 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
13 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

26 In considering a potential class settlement, a court need not reach any ultimate
27 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
28 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495

F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

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

3 The Parties actively litigated the matter since the *Ramirez* Action was commenced on
4 September 18, 2018. Both sides used the pre-mediation time period to investigate the veracity,
5 strength, and scope of the claims, and Class Counsel was actively preparing the matter for class
6 certification and trial.³⁰

7 Prior to engaging in mediation, Class Counsel conducted significant investigation and
8 formal and informal discovery regarding the facts of the cases, including and not limited to, the
9 exchange, review, and analysis of thousands of pages of documents and data produced by
10 Defendant.³¹ The volume of data and documents that Class Counsel reviewed and analyzed
11 included and was not limited to: Plaintiff’s and other Class Members’ employment records, a
12 detailed sampling of Class Members’ time and pay data, company policy acknowledgements
13 (e.g., the Handbook Acknowledgement Form), internal memoranda, Defendant’s operations and
14 employment practices, policies, and procedures (including but not limited to Defendant’s
15 Policies and Procedures Manual for Employees, Employment Practices and Procedures,
16 Complaint Resolution Procedure, Hours and Pay Practices, Drug and Alcohol Free Workplace
17 Policy, Operations Policies, and Leave of Absence Policies), among other information and
18 documents.³² Class Counsel interviewed Plaintiff and other Class Members to gather facts and
19 to identify potential witnesses.³³ Class Counsel propounded multiple sets of formal written
20 discovery requests on Defendant (and reviewed Defendant’s responses and supplemental
21 responses to said discovery requests) and noticed the depositions of Defendant’s Person Most
22 Knowledgeable designees.³⁴ Class Counsel also worked with former plaintiff Carmen Ramirez
23 to provide responses to multiple sets of discovery requests that were propounded by Defendant,
24 prepared for and took the deposition of Defendant’s Person Most Knowledgeable witnesses, and
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³⁰ Hosseini Decl., ¶¶ 12-14.

27 ³¹ *Id.*, ¶ 13.

28 ³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

1 prepared for and defended the deposition of former plaintiff Carmen Ramirez.³⁵ Counsel for the
2 Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the
3 pleadings, discovery, and the production of documents and data prior to the mediation.³⁶ Class
4 Counsel also drafted pleadings and Plaintiff's mediation brief and prepared for and attended
5 court proceedings, settlement negotiations, and the mediation, among other tasks.³⁷

6 The Parties engaged in extensive settlement negotiations and participated in a formal,
7 full-day mediation on June 10, 2020, conducted by Paul Grossman, Esq., a well-respected
8 mediator experienced in mediating complex labor and employment matters.³⁸ Prior to and
9 during the mediation and settlement discussions, the Parties exchanged extensive information
10 and engaged in discussions regarding their evaluations of the cases and various aspects of the
11 matter, including but not limited to, the risks and delays of further litigation, the risks to the
12 Parties of proceeding with class certification and/or representative adjudication, the law relating
13 to off-the-clock theory, meal and rest periods, federal and state wage-and-hour law and
14 enforcement, and PAGA representative claims, as well as the evidence produced and analyzed,
15 and the possibility of appeals, among other things.³⁹ During all settlement discussions, the
16 Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ Arriving at a
17 settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt
18 strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class
19 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴¹ After
20 conducting investigations, significant formal and informal discovery and exchange of
21 information, extensive settlement negotiations, and with the aid of the mediator's evaluation,
22 the Parties have agreed that the matter is well-suited for settlement given the legal issues relating
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25 ³⁵ Hosseini Decl., ¶ 13.

26 ³⁶ *Ibid.*

27 ³⁷ *Ibid.*

28 ³⁸ *Id.*, ¶ 12.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 12, 17-19.

1 to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend
2 further litigation.⁴²

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

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

15 The Settlement, which provides for a Total Settlement Amount of Seven Hundred and
16 Four Thousand dollars (\$704,000.00), represents a fair, adequate, and reasonable resolution of
17 the matter.⁴⁷ The Settlement was calculated using the information and data uncovered during
18 litigation, case investigation, as well as the formal and informal exchange of information.⁴⁸ The
19 Settlement takes into account the potential risks and rewards inherent in any case and, in
20 particular, in the matter at issue.⁴⁹ Moreover, considering all of the facts and circumstances of
21 the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁰

22 Assuming that the Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment,
23 and Settlement Administration Costs are approved by the Court and paid in the full amounts

24 _____
25 ⁴² Hosseini Decl., ¶¶ 12, 17-19.

26 ⁴³ *Ibid.*

27 ⁴⁴ *Ibid.*

28 ⁴⁵ *Id.*, ¶¶ 12-14 & 17-19.

⁴⁶ *Id.*, ¶¶ 6-7.

⁴⁷ *Id.*, ¶¶ 12, 14, 15 & 22; see n.1, *supra*.

⁴⁸ Hosseini Decl., ¶¶ 12-14.

⁴⁹ *Id.*, ¶¶ 17-19.

⁵⁰ *Id.*, ¶¶ 12, 14, & 22.

provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Two Hundred Eighty Six Thousand Dollars (\$286,000.00).⁵¹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks.⁵² There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

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

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁴ The documents and information that Class Counsel obtained from Defendant, Plaintiff, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁵ As outlined in the Declaration

⁵¹ Hosseini Decl., ¶ 15.

⁵² Settlement Agreement, ¶ 14.

⁵³ Hosseini Decl., ¶¶ 12, 14, & 22.

⁵⁴ *Id.*, ¶¶ 12-14 & 19.

⁵⁵ *Id.*, ¶ 19.

of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

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

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

⁵⁶ Hosseini Decl., ¶¶ 12-14 & 17-19.

⁵⁷ Settlement Agreement, ¶ 7.

1 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
2 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

3 This matter involves a class of approximately one hundred seventy-seven (177)
4 individuals.⁵⁸ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
5 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
6 requirement as joinder is not practical at that point). Further, all Class Members can and will
7 be identified by Defendant to the Settlement Administrator through a review of Defendant's
8 employment records regarding its hourly-paid or non-exempt employees in California during
9 the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

25 Here, common issues of fact and law predominate as to each of the claims alleged and
26 asserted in the Operative Complaint. Based on the documents and information obtained through
27 formal and informal discovery and exchange of information in the cases, Plaintiff contends that
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⁵⁸ Hosseini Decl., ¶ 10.

Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁵⁹ Plaintiff's claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁰ Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶¹ As a result of the alleged conduct, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶²

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

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

Class Counsel has litigated the matter for over three years, and was actively preparing the matter for class certification and trial.⁶³ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the cases and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant (and reviewing Defendant's responses and supplemental responses thereto), working with former plaintiff Carmen Ramirez to respond to multiple sets of discovery requests

⁵⁹ Hosseini Decl., ¶ 17.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Id.*, ¶¶ 12-14.

propounded on her, noticing and taking the depositions of Defendant's Person Most Knowledgeable designees, and preparing for and defending the deposition of former plaintiff Carmen Ramirez. Class Counsel reviewed thousands of pages of documents and data⁶⁴ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁵ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁶

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

The Settlement establishes a Total Settlement Amount of Seven Hundred and Four Thousand Dollars (\$704,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (i.e., \$246,400.00) and an amount not to exceed Forty Five Thousand Dollars (\$45,000.00) for costs and expenses.⁶⁸ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members and State of California, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁶⁹

⁶⁴ Hosseini Decl., ¶ 13.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶ 12.

⁶⁷ *Id.*, ¶¶ 6-7.

⁶⁸ Settlement Agreement, ¶¶ 6.ff. and 10; see n.1, *supra*.

⁶⁹ *Id.*, Exh. A.

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

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

21 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
22 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
23 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
24 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
25 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
26 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
27 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
28 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class

actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

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

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

VIII. THE PROPOSED NOTICE IS ADEQUATE.

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

The proposed Notice⁷¹ describes the Settlement, the deadlines and procedures to submit an objection to the Settlement, mail a request for exclusion from the Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷²

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷³ The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The

⁷⁰ Hosseini Decl., ¶ 20.

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks credited to them.⁷⁵

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

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

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Notice to each Class Member by First-Class U.S. Mail.⁷⁶ Any undeliverable Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.⁷⁷ With respect to any undeliverable Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting a skip-trace, and re-mail the Notice to the Class Member within five (5) calendar days.⁷⁸ The Response Deadline to submit a request for exclusion, objection, or dispute regarding Workweeks for Class Members to whom a Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be fifteen (15) calendar days from the original forty-five (45) calendar day deadline.⁷⁹ The Settlement Administrator will receive and process requests for exclusion, objections, and any disputes regarding Workweeks.⁸⁰

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⁷⁵ Settlement Agreement, Exh. A.

⁷⁶ *Id.*, ¶ 17.a.

⁷⁷ *Id.*, ¶ 17.b.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Id.*, ¶¶ 6.aa, 6.t. and 18.

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸¹ The Settlement Administration Costs are currently estimated to be Eight Thousand Dollars (\$8,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁸²

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸³

Within thirty (30) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: full name, last known mailing address, Social Security Number, dates worked for Defendant as an hourly-paid or non-exempt employee during the Class Period, the number of shifts worked during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks (collectively, "Class Data and List").⁸⁴

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⁸¹ Settlement Agreement, ¶¶ 6.aa, 6.t. and 18; Hosseini Decl., ¶ 16.

⁸² Settlement Agreement, ¶¶ 12. and 6.ff.

⁸³ *Id.*, ¶ 6.e.

⁸⁴ *Id.*, ¶ 6.c.

Within forty-five (45) calendar days of receipt of the Class Data and List, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail the Notice to the Class Members via First-Class U.S. Mail.⁸⁵ If a Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Notice to the forwarding address.⁸⁶ If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting a skip-trace, and re-mail the Notice to the Class Member within five (5) calendar days.⁸⁷ Class Members will have until the Response Deadline, or extended Response Deadline if (applicable), to submit a Request for Exclusion, dispute regarding Workweeks, and/or Notice of Objection.⁸⁸

Defendant will make a one-time deposit of the Total Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a settlement account to be established by the Settlement Administrator, within forty-five (45) calendar days after the Effective Date.⁸⁹ Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) LWDA Payment to the Labor and Workforce Development Agency; (3) the Court-approved Enhancement Payment to Plaintiff; (4) the Court-approved Attorneys' Fees and Costs to Class Counsel; and (5) the Court-approved Settlement Administration Costs to itself.⁹⁰

The Individual Settlement Payment checks will remain negotiable for one hundred and twenty (120) calendar days from the date of their issuance.⁹¹ Checks that are not negotiated within the 120-day period will be cancelled.⁹² The funds associated with such cancelled checks

⁸⁵ Settlement Agreement, ¶ 17.a.

⁸⁶ *Id.*, ¶ 17.b.

⁸⁷ *Ibid.*

⁸⁸ *Id.*, ¶¶ 6.aa, 6.t. and 18.

⁸⁹ *Id.*, ¶ 9.

⁹⁰ *Ibid.*

⁹¹ *Id.*, ¶ 19.

⁹² *Ibid.*

will be tendered by the Settlement Administrator to the Legal Aid at Work.⁹³

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR
ENHANCEMENT PAYMENT**

Plaintiff Roberto Hernandez respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to Six Thousand Dollars (\$6,000.00) to Plaintiff Roberto Hernandez.⁹⁴ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records, providing the facts and evidence necessary to attempt to prove the allegations.⁹⁵ Plaintiff actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹⁶ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for their services on behalf of the Class, in addition to his individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Roberto Hernandez as Class Representative; appoint Simpluris, Inc. as

⁹³ Settlement Agreement, ¶ 19.

⁹⁴ *Id.*, ¶ 11.

⁹⁵ Hosseini Decl., ¶ 21; Declaration of Roberto Hernandez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Hernandez Decl."), ¶ 4.

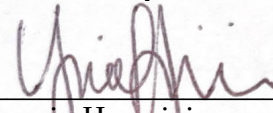
⁹⁶ Hosseini Decl., ¶ 21; Hernandez Decl., ¶¶ 3-6.

Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment, and Settlement Administration Costs; approve the proposed Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately six (6) months.

Dated: November 10, 2022

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiff