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

REX TULLIO, 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,

vs.

DACM INC. dba DEL AMO
MOTORSPORTS, a California corporation;
TOO FAST, INC., a California corporation;
CALIFORNIA MOTORCYCLE
ASSESSORIES, INC., a California
corporation; DASB, INC., a California
corporation; DAMLA, INC., a California
corporation; and DOES 5 through 100,
inclusive,

Defendants

Case No.: 30-2020-01147256-CU-OE-CXC

Honorable William Claster
Department CX104

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
(Edwin Aiwazian); Declaration of Proposed
Class Representative (Rex Tullio); and
[Proposed] Order filed concurrently
herewith]

Reservation No.: 73672810
Date: February 4, 2022
Time: 9:00 a.m.
Department: CX104

Complaint Filed: July 8, 2020
FAC Filed: October 6, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on February 4, 2022 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable William Claster in Department CX104 of the Superior Court of California for the County of Orange, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Rex Tullio (“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 Edwin Aiwazian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, 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 Rex Tullio as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment for Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

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

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

Dated: January 4, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian

Attorneys for Plaintiff

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TABLE OF CONTENTS

I. SUMMARY OF MOTION.....1

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....3

III. SUMMARY OF THE SETTLEMENT TERMS4

**IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENTS.....7**

**V. THE COURT SHOULD PRELIMINARILY APPROVE THE
SETTLEMENT8**

**A. The Settlement Resulted from Arm’s-Length Negotiations Based
Upon Extensive Investigation and Discovery.9**

B. The Settlement Is Fair, Reasonable, and Adequate.....11

C. The Settlement Is of Significant Value.....13

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.13

A. The Class Is Ascertainable and Sufficiently Numerous.14

B. The Class Members Share a Well-Defined Community of Interest....14

**VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR
ATTORNEYS’ FEES AND COSTS16**

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.18

**IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT
ADMINISTRATOR.....19**

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS20

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION
FOR ENHANCEMENT PAYMENT22**

XII. CONCLUSION23

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	14
<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 .	14
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	18, 19
<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	8
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	7
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7, 9
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	18
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	7, 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	12
<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	17
<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	17
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	17
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	14
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	18
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	18
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	8
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	14
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	13, 14, 15

1	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	7
2	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	22
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	7, 9
4	Statutes	
5	Cal. Code Civ. Proc. § 1781.....	18
6	Cal. Code Civ. Proc. § 1781(f).....	7
7	Other Authorities	
8	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	8
9	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	20
10	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	12
11	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	18
12	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	19
13	Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	19
14	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	19
15	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	19
16	Rules	
17	Fed. R. Civ. P. 23(c)(2)	19
18	Fed. R. Civ. P. 23(e).....	19
19		
20		
21		
22		
23		
24		
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Rex Tullio (“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 Defendants DACM, Inc. dba Del Amo Motorsports, Too Fast, Inc., California Motorcycle Assessories, Inc., DASB, Inc., and DAMLA, Inc. (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Total Settlement Amount of Three Million Two Hundred Thousand Dollars (3,200,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-three point thirty-three percent (33.33%) of the Total Settlement Amount, or \$1,066,666.67, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars (\$30,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Fifteen Thousand Dollars (\$15,000.00);⁵ and (5) the amount of Four Hundred Eighty Thousand Dollars (\$480,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$360,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”)

¹ Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Edwin Aiwarzian (“Aiwarzian Decl.”), § 7.ee. If it is determined that the number of Workweeks for the time period of July 8, 2016 through March 24, 2021 exceeds 40,573 by more than 12% (i.e., the Workweeks exceed 45,442), the Total Settlement Amount will be increased *pro rata* to the extent the Workweeks for the period July 8, 2016 through March 24, 2021 exceed 45,442. See *id.*, 38.a.

² *Id.*, § 7.p.

³ *Id.*, § 13.

⁴ *Id.*, § 12.

⁵ *Id.*, § 14.

and 25% (i.e., \$120,000.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.⁶

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

All current and former hourly-paid or non-exempt employees employed by DACM, Inc. dba Del Amo Motorsports at any time from July 8, 2016 through the date of entry of the Court order granting preliminary approval of the Settlement, including employment with the following entities.

DAMS – Orange County, currently located at 2401 Pullman Street, Santa Ana, California 92705, operated by DACM, Inc. dba Del Amo Motorsports;

DAMS – Redondo Beach, currently located at 2500 Marine Avenue, Redondo Beach, California 90278, operated by Too Fast, Inc.;

DAMS – Long Beach, currently located at 3291 Cherry Avenue, Long Beach, California 90807, operated by California Motorcycle Assessories, Inc.;

DAMS – Chula Vista, currently located at 1890 Auto Park Place, Chula Vista, California 91911, operated by DASB, Inc.; and

DAMS – Los Angeles, currently located at 15725 Lakewood Boulevard, Paramount, California 90723, operated by DAMLA, Inc.

(“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately nine hundred eighty-nine (989) 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 as an hourly-paid or non-exempt employee by Defendant DACM, Inc. dba Del Amo Motorsports during the Class Period at California Store Locations, which information will be provided by Defendants to the Settlement Administrator (“Workweeks”).⁹

⁶ Settlement Agreement, § V.15.

⁷ *Id.*, § 7.e.

⁸ Aiwazian Decl., ¶ 9.

⁹ Settlement Agreement, §§ 7.q, 7.ff & 16. “Class Period” is defined as the period from July 8, 2016 through the date of entry of the Court order granting preliminary approval of the Settlement. *See id.*, §§ 7.g & 7.w. *See id.* at § 7.b, for the full definition of the “California Store Locations.”

1 The Settlement resolves the Released Claims of Plaintiff and Settlement Class Members,
2 against the Released Parties.¹⁰

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

4 Defendants operate powersports dealerships in southern California and manage locations
5 in Redondo Beach, Long Beach, Santa Ana, Los Angeles, and Chula Vista. Plaintiff Rex Tullio
6 is a former employee of Defendants.

7 On July 8, 2020, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys
8 General Act, California Labor Code § 2698, *Et Seq.* in the Orange County Superior Court
9 (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

10 On August 18, 2020, Defendant DACM, Inc. dba Del Amo Motorsports filed an Answer
11 to Plaintiff’s Complaint.

12 On September 23, 2020, Plaintiff propounded multiple sets of discovery including
13 Requests for Production of Documents, (Set One & Two); Special Interrogatories, (Set One,
14 Two & Three); and Form Interrogatories, (Set One), on Defendants and noticed the deposition
15 of Defendants’ Person Most Knowledgeable regarding job duties, organizational structure and
16 affirmative defenses of Defendants.

17 On April 8, 2021, the Parties participated in a formal, full-day mediation conducted by
18 Hon. S. James Otero (Ret.), a well-regarded mediator experienced in mediating complex labor
19 and employment matters. With the aid of the mediator, the Parties ultimately reached the
20 Settlement described herein to resolve the Action in its entirety.

21 On October 6, 2021, Plaintiff filed a First Amended Class Action Complaint for
22 Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §
23 2698, *Et Seq.* (“Operative Complaint”).

24 The Parties have actively litigated the Action since it was commenced on July 8, 2020.
25 Plaintiff’s core allegation is that Defendants have violated the California Labor Code by
26 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
27

28 ¹⁰ See *id.* at § 7.x , for the full scope of the “Released Claims,” and *id.* at § 7.y for the definition of the “Released Parties.”

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 contends 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.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further deny that the Action is 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, Defendants 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 up to 33.33% of the Total Settlement Amount, i.e., One Million Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$1,066,666.67), and reimbursement of costs and expenses in an amount not to exceed Thirty Thousand Dollars and No Cents (\$30,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed Fifteen Thousand Dollars and No Cents (\$15,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Allocation (i.e., \$360,000 out of \$480,000) ("LWDA Payment"); and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) to Plaintiff Rex Tullio

¹¹ Settlement Agreement, § 7.ee.

1 (“Enhancement Payment”).¹² The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or
2 “Settlement Administrator”) to handle the notice and settlement administration process.

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

- 6 a. After preliminary approval of the Settlement, the Settlement Administrator will divide
7 the Net Settlement Amount by the Workweeks of all Class Members to yield the
8 “Estimated Workweek Value,” and multiply each Class Member’s individual
9 Workweeks by the Estimated Workweek Value to yield his or her estimated
10 Individual Settlement Share that he or she may be eligible to receive under the
11 Settlement.¹³
- 12 b. After final approval of the Settlement, the Settlement Administrator will divide the
13 final Net Settlement Amount by the Workweeks of all Settlement Class Members to
14 yield the “Final Workweek Value,” and multiply each Settlement Class Member’s
15 individual Workweeks by the Final Workweek Value to yield his or her Individual
16 Settlement Share.¹⁴

17 Each Individual Settlement Share will be allocated as follows: ten percent (10%) as
18 wages, which will be reported on an IRS Form W-2; and the remaining ninety percent (90%) as
19 penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁵ The
20 Settlement Administrator will withhold the employee’s share of taxes and withholdings with
21 respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement
22 Class Members for their Individual Settlement Payment (i.e., payment of their Individual
23 Settlement Share net of these taxes and withholdings).¹⁶ Defendants will pay the employers’
24 share of taxes and contributions on the wages portion of Individual Settlement Shares separately
25 and in addition to the Total Settlement Amount.¹⁷

26 Each Individual Settlement Payment check will be valid and negotiable for one hundred
27 and eighty (180) calendar days from the date the checks are issued, and, thereafter, shall be
28 cancelled.¹⁸ All funds associated with such cancelled checks will be distributed by the
Settlement Administrator, in accordance with California Code of Civil Procedure section 384,

¹² Settlement Agreement, §§ 7.ee, 12, 13, 14, & 15.

¹³ *Id.*, § 16.a.

¹⁴ *Id.*, § 16.b.

¹⁵ *Id.*, § 27.

¹⁶ *Ibid.*

¹⁷ *Id.*, §§ 7.ee & 27.

¹⁸ *Id.*, § 21.

1 to Legal Aid at Work, a non-profit legal services organization that assists low-income working
2 families through its projects including and not limited to its Workers' Rights Clinics.¹⁹

3 Any Class Member wishing to be excluded from the Settlement must submit a written
4 letter indicating a request to be excluded from the Settlement ("Request for Exclusion") to the
5 Settlement Administrator, by mail, within sixty (60) calendar days from the initial mailing of
6 the Class Notice by the Settlement Administrator ("Response Deadline").²⁰ If the 60th day falls
7 on a Sunday or Federal holiday, the Response Deadline will be extended to the next day on
8 which the U.S. Postal Service is open. A Request for Exclusion must: (a) state the case name
9 and number of the Action, (b) be signed by the Class Member, (c) state the full name, address,
10 telephone number, and last four digits of the Social Security Number of the Class Member
11 requesting exclusion, (d) state that the Class Member does not wish to be included in the
12 Settlement, and (e) be returned by mail to the Settlement Administrator at the specified address,
13 postmarked on or before the Response Deadline.²¹ A Class Member who does not request
14 exclusion from the Settlement will be deemed a Settlement Class Member and will be bound by
15 all terms of the Settlement, if the Settlement is granted Final Approval by the Court.²²

16 To object to the Settlement, Class Members who do not exclude themselves from the
17 Settlement (i.e., Settlement Class Members) must submit a valid and timely written objection to
18 the Settlement ("Notice of Objection") to the Settlement Administrator, by mail, on or before
19 the Response Deadline.²³ To be timely and valid, a Notice of Objection must: (a) state the case
20 name and number of the Action; (b) be signed by the Settlement Class Member; (c) state the full
21 name, address, telephone number, and the last four digits of the Social Security number of the
22 Settlement Class Member; (c) state all grounds for the objection and be accompanied by any
23 legal or factual support for such objection; (d) state the full name, address, and telephone number
24 of any legal representative representing the Settlement Class Member with respect to the
25 objection; (e) include copies of any papers, briefs, or other documents upon which the objection

26 ¹⁹ Settlement Agreement, § 21.

27 ²⁰ *Id.*, §§ 7.z & 7.aa.

28 ²¹ *Id.*, § 7.z.

²² *Ibid.*

²³ *Id.*, §§ 7.t & 24.

1 is based; and (f) be returned by mail to the Settlement Administrator at the specified address,
2 postmarked on or before the Response Deadline.²⁴

3 Class Members will have an opportunity to dispute the number of Workweeks to which
4 they have been credited, as reflected in their respective Class Notices.²⁵ In order to dispute
5 Workweeks, Class Members must submit a written letter to the Settlement Administrator that:
6 (a) states the case name and number of the Action, (b) is signed by the Class Member, (c) states
7 the full name, address, telephone number, and the last four digits of the Social Security Number
8 of the disputing Class Member, (d) states that the Class Member disputes the number of
9 Workweeks credited to him or her and what he or she contends is the correct number that should
10 be credited to him or her, (e) includes information and/or attaches documentation demonstrating
11 that the number of Workweeks that he or she contends should be credited to him or her is correct,
12 and (f) is returned by mail to the Settlement Administrator at the specified address, postmarked
13 on or before the Response Deadline.²⁶

14 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
15 **SETTLEMENTS**

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

27 ²⁴ Settlement Agreement, § 7.t.

28 ²⁵ *Id.*, § 20.

²⁶ *Ibid.*

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

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

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not 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.

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

The Parties actively litigated the Action since it was commenced on July 8, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.²⁷

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendants.²⁸ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff and other Class Members’ employment records, a detailed sampling of Class Members’ time and pay data, Defendants’ Employee Handbook, company policy acknowledgements (including but not limited to Acknowledgment of Receipt of Employee Handbook and California Automotive Technician Tool Acknowledgment & Agreement), Defendants’ operations and employment practices, forms (including but not limited

²⁷ Aiwazian Decl., ¶¶ 11-13.

²⁸ *Id.*, ¶ 12.

to Uniform Release Form), procedures, and policies (including but not limited to Time Records policy, Rest and Meal Periods (Non-Exempt Employees) policy, Overtime (Non-Exempt Employees) policy, Cell Phone Reimbursement policy, and Reimbursement of Business Expenses policy), among other information and documents.²⁹ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁰ Class Counsel propounded multiple sets of formal written discovery requests on Defendants and noticed the depositions of Defendants' Person Most Knowledgeable designees regarding organizational structure, job duties, and affirmative defenses.³¹ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³² Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³³

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation on April 8, 2021, conducted by Hon. S. James Otero (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters.³⁴ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁵ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁶ Arriving at a settlement that was

²⁹ Aiwazian Decl., ¶ 12.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Id.*, ¶ 11.

³⁵ *Ibid.*

³⁶ *Ibid.*

1 acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their
2 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that
3 they would be able to obtain class certification and prevail at trial.³⁷ After conducting
4 investigations, significant formal and informal discovery and exchange of information,
5 extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have
6 agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's
7 principal claims, as well as the costs and risks to both sides that would attend further litigation.³⁸

8 The Settlement takes into account the strengths and weaknesses of each side's position
9 and the uncertainty of how the case might have concluded at certification and trial.³⁹ The Parties
10 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁰
11 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
12 the Class Members' employment with Defendants and performed significant research into the
13 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
14 rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto,
15 as well as facts discovered.⁴¹ The Parties have reached the Settlement based on this large volume
16 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
17 employment class actions, including significant experience in California wage-and-hour
18 litigation.⁴²

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

20 The Settlement, which provides for a Total Settlement Amount of Three Million Two
21 Hundred Thousand Dollars and No Cents (\$3,200,000.00), represents a fair, adequate, and
22 reasonable resolution of the matter.⁴³ The Settlement was calculated using the information and
23 data uncovered during litigation, case investigation, as well as the formal and informal exchange
24

25 ³⁷ Aiwazian Decl., ¶¶ 11, 16-18.

26 ³⁸ *Ibid.*

27 ³⁹ *Ibid.*

28 ⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 11-13 & 16-18.

⁴² *Id.*, ¶¶ 6-7.

⁴³ *Id.*, ¶¶ 11, 13, 14 & 28.

of information.⁴⁴ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁵ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁶

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be One Million Seven Hundred Twenty Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$1,720,833.33).⁴⁷ 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.⁴⁸ 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 the State of California.⁴⁹ 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.

⁴⁴ Aiwasian Decl., ¶¶ 11-13.

⁴⁵ *Id.*, ¶¶ 16-18.

⁴⁶ *Id.*, ¶¶ 11, 13, & 28.

⁴⁷ *Id.*, ¶ 14.

⁴⁸ Settlement Agreement, § 7.q.

⁴⁹ Aiwasian Decl., ¶¶ 11, 13, & 28.

1 **C. The Settlement Is of Significant Value.**

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted significant formal and informal discovery and exchanged thousands of pages of
4 documents, data, and information prior to mediation.⁵⁰ The discovery and information that Class
5 Counsel obtained from Defendants and through other sources allowed Class Counsel to develop
6 valuation models in order to evaluate the potential value and merit of the claims, and perform a
7 complete evaluation of Defendants’ defenses thereto.⁵¹ As outlined in the Declaration of Edwin
8 Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to
9 *Kullar* prior to entering into the Settlement.⁵²

10 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.**

11 For settlement purposes, the requisites for establishing class certification are met, and
12 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵³
13 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
14 one of a common or general interest, of many persons, or when the Parties are numerous, and it
15 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
16 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
17 “both [1] an ascertainable class and [2] a well-defined community of interest among class
18 members.” *Id.*

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact that predominate over any questions
21 affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of
22 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
23 Class. Finally, prosecution of separate actions by individual Class Members would create the
24 risk of inconsistent or varying adjudications, and a class action is superior to other available
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27 ⁵⁰ Aiwazian Decl., ¶¶ 11-13 & 18.

28 ⁵¹ *Id.*, ¶ 18.

⁵² *Id.*, ¶¶ 21-26.

⁵³ Settlement Agreement, § 35.b.

means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

This case involves a class of approximately nine hundred eighty-nine (989) individuals.⁵⁴ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants’ employment records regarding their hourly-paid and non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

⁵⁴ Aiwazian Decl., ¶ 9.

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

6 Here, common issues of fact and law predominate as to each of the claims alleged and
7 asserted in the Operative Complaint. Based on the documents and information obtained through
8 formal and informal discovery and exchange of information in this case, Plaintiff contends that
9 Class Members were subject to the same or similar job duties and uniform operations and
10 employment practices, policies, and procedures during the time period at issue.⁵⁵ Plaintiff’s
11 claims arise from Defendants’ alleged uniform policy and systematic scheme, with respect to
12 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
13 wages for all hours worked, failing to provide compliant meal and rest periods and associated
14 premium pay, failing to timely pay wages during employment and upon termination of
15 employment, failing to provide complaint wage statements, failing to keep requisite payroll
16 records, and failing to reimburse necessary business-related expenses.⁵⁶

17 Plaintiff also contended that Defendants’ payroll and recordkeeping practices with
18 respect to Plaintiff and the Class Members were substantially the same during the time period
19 at issue.⁵⁷ As a result, Plaintiff claims that all of the Class Members were uniformly not paid
20 all compensation due to them from Defendants during the time period at issue.⁵⁸

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

25 ///

26
27 ⁵⁵ Aiwazian Decl., ¶ 16.

28 ⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

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

Class Counsel has litigated the matter for over a year, and was actively preparing the matter for class certification and trial.⁵⁹ 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 case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendants. Class Counsel also noticed the depositions of Defendants' Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data⁶⁰ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶¹ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶²

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶³

The Settlement establishes a Total Settlement Amount of Three Million Two Hundred Thousand Dollars and No Cents (\$3,200,000.00), 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-three point thirty-three percent (33.33%) of the Total Settlement Amount (i.e., \$1,066,666.67) and an amount not to exceed Thirty Thousand Dollars and No Cents (\$30,000.00) for costs and expenses.⁶⁴ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and

⁵⁹ Aiwazian Decl., ¶¶ 11-13.

⁶⁰ *Id.*, ¶ 12.

⁶¹ *Ibid.*

⁶² *Id.*, ¶ 11.

⁶³ *Id.*, ¶¶ 6-7.

⁶⁴ Settlement Agreement, § 12.

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 the 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 Class 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.⁶⁵

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

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

⁶⁵ Settlement Agreement, Exh. A.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained in the Action.⁶⁶

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff’s 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 CLASS NOTICE IS ADEQUATE.

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

The proposed Class Notice⁶⁷ describes the Settlement, the deadlines and procedures to submit a Notice of Objection, a Request for Exclusion, and/or a dispute regarding Workweeks,

⁶⁶ Aiwasian Decl., ¶ 19.

⁶⁷ Settlement Agreement, Exh. A.

1 and the date and time set for the Final Approval Hearing.⁶⁸

2 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
3 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
4 members to make an informed decision about their participation.” *Manual for Complex*
5 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
6 proceedings to date and the terms and conditions of the Settlement in an informative and
7 coherent manner.⁶⁹ The proposed Class Notice recognizes that the Court has not yet granted
8 final approval of the settlement.⁷⁰ The proposed Class Notice also apprises the Class Members
9 of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks
10 credited to them.⁷¹

11 The proposed Class Notice satisfies all due process requirements and complies with the
12 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
13 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The
14 essentials of due process of law in class suits would appear to be afforded by fair representation
15 in the assertion of claims of class members against the opposing parties in any lawsuit, and
16 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

17 **IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT**
18 **ADMINISTRATOR**

19 The Parties have selected Simpluris to administer the Settlement.

20 The Settlement Administrator will mail the Class Notice in English and Spanish to each
21 Class Member by First-Class U.S. mail.⁷² With respect to any Class Notices that are returned
22 as undeliverable and received by the Settlement Administrator on or before the Response
23 Deadline, the Settlement Administrator will search for an alternative address by way of skip-
24 trace and re-mail the Class Notice within five (5) calendar days.⁷³ In the event that a Class

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26 ⁶⁸ Settlement Agreement, Exh. A.

27 ⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

28 ⁷² *Id.*, § 19.a.

⁷³ *Id.*, § 19.b.

1 Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be
2 extended by fifteen (15) calendar days.⁷⁴ The Settlement Administrator will receive and process
3 Requests for Exclusion, Notices of Objections, and any disputes regarding Workweeks.⁷⁵

4 The Settlement Administrator will calculate the amounts of the Individual Settlement
5 Shares; deduct and transmit applicable state and/or federal taxes in connection with the wages
6 portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to
7 Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys'
8 Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks
9 necessary to effectuate the terms of the Settlement Agreement.⁷⁶ The Settlement Administration
10 Costs are currently estimated to not exceed Fifteen Thousand Dollars and No Cents (\$15,000.00)
11 and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁷⁷

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

16 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

17 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
18 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
19 entails mailing of the Class Notice, in the form approved by the Court, to all known and
20 reasonably ascertainable Class Members based on Defendants' records.⁷⁸

21 Within forty-five (45) calendar days after the date of entry of the Court order granting
22 preliminary approval of the Settlement, Defendants will provide a complete list of all Class
23 Members to the Settlement Administrator ("Class Data and List").⁷⁹ The Class Data and List
24 will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class
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26 ⁷⁴ Settlement Agreement, § 7.aa.

27 ⁷⁵ *Id.*, § 20, 22 & 24.

28 ⁷⁶ *Id.*, § 14; Aiwazian Decl., ¶ 15.

⁷⁷ Settlement Agreement, § 14.

⁷⁸ *Id.*, § 19.a.

⁷⁹ *Id.*, § 7.d.

Member's last known full name, last known mailing address, last known telephone number, name(s) of California Store Location(s) at which the Class Member worked during the Class Period, Social Security Number, and number of Workweeks.⁸⁰ The Class Data and List will also include the total Workweeks count for the escalator clause of the Settlement, so that Class Counsel and the Settlement Administrator may confirm whether or not the Workweeks threshold referenced by the escalator provision in the Settlement has been exceeded.⁸¹ For each Class Member, the Class Data and List will contain two Workweeks totals: (1) the number of Workweeks each employee worked between July 8, 2016 to March 24, 2021 (the time period relevant for the escalator provision); and (2) the number of Workweeks each employee worked between March 25, 2021 and the date of entry of the Court order granting preliminary approval of the Settlement.⁸² Each Class Notice will include both Workweeks counts for each respective Class Member, and Class Members will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notice.⁸³

Within fourteen (14) calendar days after receiving the Class Data and List from Defendants, 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 a Class Notice in both English and Spanish to all Class Members via First-Class U.S. Mail using the most current, known mailing addresses identified by the Settlement Administrator.⁸⁴ With respect to Class Notices that are returned as undeliverable and received by the Settlement Administrator on or before the Response Deadline, the Settlement Administrator will search for an alternative address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.⁸⁵ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, a dispute regarding Workweeks, and/or a Notice of Objection.⁸⁶

⁸⁰ Settlement Agreement, § 7.d.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Id.*, § 19.a.

⁸⁵ *Id.*, § 19.b.

⁸⁶ *Id.*, §§ 20, 22 & 24.

Defendants will make a one-time deposit of the Total Settlement Amount into a settlement account to be established by the Settlement Administrator within ninety (90) calendar days of Final Approval or by April 8, 2022, whichever date is later in time.⁸⁷ Within seven (7) calendar days of the funding of the Total Settlement Amount, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) LWDA Payment to the Labor and Workforce Development Agency; (c) Enhancement Payment to Plaintiff; (d) Attorneys' Fees and Costs to Class Counsel; and (e) Settlement Administration Costs to the Settlement Administrator.⁸⁸

Each Individual Settlement Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.⁸⁹ All funds associated with such cancelled checks will be distributed by the Settlement Administrator, in accordance with California Code of Civil Procedure section 384, to Legal Aid at Work, a non-profit legal services organization that assists low-income working families through its projects including and not limited to its Workers' Rights Clinics.⁹⁰

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Rex Tullio respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) to Plaintiff Rex Tullio.⁹¹ 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

⁸⁷ Settlement Agreement, § 11.

⁸⁸ *Ibid.*

⁸⁹ *Id.*, § 21.

⁹⁰ *Ibid.*

⁹¹ *Id.*, § 13.

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 and providing the facts and evidence necessary to attempt to prove the allegations.⁹² Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁹³ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class, in addition to his Individual Settlement Payment.

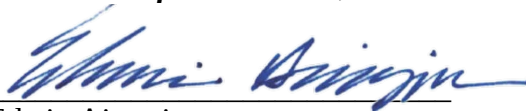
XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Rex Tullio as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment, and Settlement Administration Costs; approve the proposed Class 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: January 4, 2022

LAWYERS for JUSTICE, PC

By:


Edwin Aiwanian
Attorneys for Plaintiff

⁹² Aiwanian Decl., ¶ 20; Declaration of Rex Tullio in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Tullio Decl."), ¶ 4.

⁹³ Aiwanian Decl., ¶ 20; Tullio Decl., ¶¶ 3-5.