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and the Class

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

10 YAZMIN GONZALEZ, individually, and on
behalf of all others similarly situated,

11 Plaintiff,

12 vs.

13
14 BRANDED ONLINE, INC., a Delaware
corporation; and DOES 1 through 100,
15 inclusive,

16 Defendants.

Case No.: 20STCV29702

*[Assigned for all purposes to the Hon. Maren
Nelson, Dept. 17]*

COMPLEX CLASS ACTION

**PLAINTIFF’S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT;**

PROOF OF SERVICE

Date: August 31, 2023

Time: 9:00 a.m.

Dept: 17

[Filed concurrently with Declaration of Taras
Kick, Esq.; Declaration of Plaintiff Yazmin
Gonzalez; Declaration of Lindsay Kline
Regarding Notice and Settlement
Administration]

Complaint filed: August 5, 2020

FAC filed: October 27, 2020

Trial date: None set

1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS:**

2 PLEASE TAKE NOTICE that on August 31, 2023, at 9:00 a.m. in Department 17 of this
3 Court, or as soon thereafter as the matter as the matter may be heard, Plaintiff Yazmin Gonzalez
4 (“Plaintiff”) respectfully moves this Court for an order that:

5 1. Finally approves of the proposed class action settlement described herein and as set forth
6 in the parties’ Amended Class Action and PAGA Settlement Agreement (“Settlement,” “Settlement
7 Agreement” or “SA”), on the grounds that the Settlement is fair, reasonable and adequate for all Class
8 Members;

9 2. Finally certifies and binds the Class for settlement purposes only;

10 3. Finds that the Court-approved Class Notice distributed to the Settlement Class pursuant
11 to the Court’s May 1, 2023 Order granting preliminary approval constituted the best notice practicable
12 under the circumstances;

13 4. Orders Defendant to remit payment of \$827,500 to the Settlement Administrator;

14 5. Orders the Settlement Administrator to distribute \$18,750.00 to the California Labor and
15 Workforce Development Agency (“LWDA”) for penalties pursuant to the Labor Code Private
16 Attorneys General Act of 2004 (“PAGA”); and to distribute \$6,250.00 in PAGA penalties to PAGA
17 Employees;

18 6. Approves the award of a Class Representative Service Award of \$10,000.00 to Plaintiff
19 Yazmin Gonzalez for her time and effort in representing the Class and orders the Settlement
20 Administrator to distribute the award to Plaintiff Yazmin Gonzalez; and

21 7. Approves Class Counsel’s Attorneys’ Fees Award in the amount of \$275,833.33 or one-
22 third (33-1/3%) of the total recovery and orders the Settlement Administrator to distribute the fee
23 award to The Kick Law Firm, APC, and \$61,673.21 for reimbursement of costs incurred by Class
24 Counsel in connection with the prosecution of this action, and to distribute \$10,000.00 in Settlement
25 Administration Costs to itself, Simpluris, Inc.

26 Plaintiff shall also request that this Court enter a Final Judgment, which includes a provision
27 for this Court’s retention of jurisdiction over the parties to enforce the terms of the judgment.
28

1 This Motion is made pursuant to Rules of Court, Rules 3.764, 3.766, and 3.769, and Code of
2 Civil Procedure section 382, and is based on this Notice, the attached Memorandum of Points and
3 Authorities, the accompanying Declaration of Taras Kick and exhibits thereto, the Declaration of
4 Lindsay Kline Regarding Notice and Settlement Administration, the Declaration of Yazmin
5 Gonzalez, the complete files and records of this case, and any other evidence or oral argument which
6 may be considered by the court at the time of the hearing.

7
8 Dated: August 9, 2023

Respectfully submitted,
THE KICK LAW FIRM, APC

9
10 By: /s/ Taras Kick
11 Taras Kick
12 Greg Taylor
13 Attorneys for Plaintiff Yazmin
14 Gonzalez and the Class
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TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	- 8 -
<i>Arenas v. El Torito Rests., Inc.</i> , 183 Cal. App. 4th 723 (2010)	- 20 -
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<i>City of Detroit v. Grinnell Corp.</i> (S.D.N.Y. 1972) 356 F. Supp. 1380, 1386, <i>aff'd in part, rev'd on</i> <i>other grounds</i> , (2d Cir. 1974) 495 F.2d 448	- 13 -
<i>Concepcion v. Amscan Holdings</i> (2014) 223 Cal.App.4th 1309	- 16 -
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<i>Glendora Community Redevelopment Agency v. Demeter</i> , (1984) 155 Cal.App.3d 465	- 18 -
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<i>In re High Tech Empl. Antitrust Litig.</i> , (N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 118052	- 17 -
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<i>In re Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706	- 8 -

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4	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	- 11 -
5	<i>Laffitte v. Robert Half Intern, Inc.</i> (2016) 1 Cal.5th 480	- 14, 15 -
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15	<i>Perdue v. Kenny A. ex rel. Winn</i> (2010) 559 U.S. 542 [130 S.Ct. 1662, 176 L.Ed.2d 494.....	- 16 -
16	<i>PLCM Group, Inc. v. Drexler</i> , (2000) 22 Cal.4th 1084	- 17 -
17	<i>Raining Data v. Barrenchea</i> (2009) 175 Cal.App.4th 1363	- 16 -
18	<i>Richmond v. Dart Industries</i> , 29 Cal.App.3d 462 (1981)	- 20 -
19	<i>San Bernardino Valley Audubon Soc. v. County of San Bernardino</i> , (1985) 155 Cal.App.3d 738	- 18 -
20	<i>Serrano v. Priest</i> , (1977) 20 Cal.3d 25	- 16, 18 -
21	<i>Van Vranken v. Atlantic Richfield Co.</i> , (N.D. Cal. 1995) 901 F.Supp. 294	- 18 -
22	<i>Vasquez v. Superior Court</i> , 4 Cal.App.3d 800 (1971)	- 20 -
23	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	- 18 -
24	<i>Washington Mut. Bank v. Superior Court</i> , 24 Cal. 4th 906 (2001)).....	- 20 -
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26		
27		
28		

1 *Wershba v. Apple Computer, Inc.*

(2001) 91 Cal.App.4th 224 - 8, 11, 14, 16, 18 -

2 Statutes

3 Cal. Bus. & Prof. Code § 17200, *et seq.* - 3 -

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4 Cal. Labor Code § 203 - 10 -

Cal. Rules of Court, Rule 3.766.....iii

5 Cal. Rules of Court, Rule 3.764.....iii

6 Other Authorities

7 *Newberg on Class Actions* (4th Ed., 2002) § 11.47 - 14 -

Newberg, § 15:65 (6th edition) - 15 -

8 *Newberg*, § 3:13 -19, 20 -

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY**

3 This Motion seeks final approval of a wage and hour class and representative action
4 Settlement. Plaintiff Yazmin Gonzalez (“Plaintiff”) brought this action, on behalf of herself and all
5 others similarly situated, against Defendant Branded Online, Inc. (“Defendant”). Plaintiff alleges that
6 she and her fellow Class Members and PAGA Employees were deprived of certain rights afforded to
7 them by the Labor Code during their employment with Defendant. Defendant denies any wrongdoing.

8 After two mediation sessions with experienced wage and hour mediators, the second with the
9 Honorable Lisa Hart Cole (Ret.), the parties reached a proposed settlement, which was the result of a
10 mediator’s recommendation. (See concurrently filed Declaration of Taras Kick [“Kick Decl.”], ¶ 17.)
11 Thereafter, the parties drafted a long-form settlement agreement and class notice, based on the Model
12 Class Action and PAGA Settlement Agreement and Class Notice (LACIV296), provided by the LA
13 County Superior Court for optional use in June 2022. (*Id.*, ¶ 18.)

14 On February 16, 2023, Plaintiff filed a motion seeking preliminary approval. On April 24,
15 2023, Class Counsel filed a supplemental declaration along with an amended settlement agreement
16 and class notice. (*Id.*, ¶ 20.) A true and correct copy of the Amended Class Action and PAGA
17 Settlement Agreement (“Settlement,” “Settlement Agreement,” or “SA”) is attached to the Kick Decl.
18 as **Exhibit 1**.

19 On May 1, 2023, this Court granted preliminary approval of the proposed Settlement, as
20 amended.¹

21 In its Preliminary Approval Order, the Court conditionally certified the following Settlement
22 Class: “all current or former non-exempt employees who worked for Defendant in the State of
23 California during the period from August 5, 2016, through September 30, 2022 (“Class Period”).”

24 _____
25 ¹ The Court stated as part of its Order granting Preliminary Approval that the parties “file Declarations
26 confirming they have no financial interest in, or role in the governance of the proposed cy pres
27 recipient” upon seeking final approval. (See Order Granting Motion for Preliminary Approval of
28 Class Action Settlement on Condition [“Preliminary Approval Order”], 3:5-8.) The parties’
concurrently filed declarations do this. (See Declaration of Yazmin Gonzalez [“Gonzalez Decl.”], ¶
10; Declaration of Shahriyar Rahmati [“Rahmati Decl.”], ¶ 3.)

1 (Preliminary Approval Order, 3:14-15, 22:20.)

2 In its Order, the Court also appointed Simpluris, Inc. (“Simpluris”) as the Settlement
3 Administrator (*Id.*, § V(1)); approved the proposed notice plan (*Id.*, § V(6)); and approved Plaintiff’s
4 proposed schedule of settlement proceedings, including the proposed deadlines for mailing class
5 notice, class member objections and opt outs, and filing the final approval motion. (*Id.*, § V(7).)

6 Plaintiff can now report that the notice program ordered by this Court has been very
7 successful, as evidenced by the contemporaneously filed Declaration of Lindsay Kline, documenting
8 a 99.57% successful deliverable rate. (*See* Declaration of Lindsay Kline Regarding Notice and
9 Settlement Administration [“Simpluris Decl.”], ¶¶ 8-9.) Further, no Class Member has objected to
10 any aspect of the proposed Settlement, and no Class Member has requested to be excluded from the
11 Settlement. (*Id.*, ¶¶ 11-12.) Finally, no Class Member has disputed any aspect of the workweeks or
12 pay periods. (*Id.*, ¶ 13.) Therefore, if this Court approves the proposed Settlement in full, 232
13 Settlement Class Members will be paid their portion of the Net Settlement Amount averaging
14 \$1,918.08, including a highest estimated payment of \$8,000.70. (*Id.*, ¶¶ 14-16.) This is in addition to
15 161 PAGA Employees receiving their proportionate share of \$6,250.00 in PAGA penalties, with an
16 estimated average PAGA Settlement Payment of \$38.82 and the highest estimated payment of \$79.12.
17 (*Id.*, ¶ 17.)

18 In sum, the proposed settlement of this class action is an excellent result for class members,
19 and Class Members’ reaction to it has been overwhelmingly favorable. For these reasons, and in
20 keeping with the points and authorities below, Plaintiff respectfully requests this Court enter a Final
21 Approval Order and an accompanying Final Judgment that: (1) finally approves the Settlement; (2)
22 finally certifies and binds the Class to the Settlement; (3) directs payments to Class Members; (4)
23 directs payments to the Settlement Administrator; (5) directs payment to the named Plaintiff; and, (6)
24 directs payments to Class Counsel, all in accordance with Settlement terms.

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 **A. The Parties**

27 Defendant Branded Online, Inc. (“Defendant” or “Branded Online”) is a Delaware
28 corporation that is headquartered in Tustin, California. (Declaration of Yazmin Gonzalez [“Gonzalez

Decl.”], ¶ 4.)² It provides e-commerce services to third-party retailers and vendors, including by hosting and creating web content to optimize online presence and sales. (*Id.*) Plaintiff Ms. Gonzalez worked as a non-exempt employee for Defendant in California during the Class Period. (*Id.*)

B. Procedural History

On July 15, 2020, Plaintiff submitted a PAGA Notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendant, Case No. LWDA-CM-797143-20, pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), alleging Defendant violated various provisions of the California Labor Code and IWC Wage Orders. (Kick Decl., ¶ 10, Ex. 2.)

On August 5, 2020, Plaintiff filed the initial complaint on behalf of herself and others similarly situated to recover damages and penalties for the Labor Code violations alleged against Defendant (the “Action”). Plaintiff alleged further that these violations constituted unfair and unlawful business practices under Bus. & Prof. Code § 17200, *et seq.* (“UCL”). (Kick Decl., ¶ 11.) On October 27, 2020, Plaintiff filed the First Amended Complaint (“FAC”) to add a cause of action under PAGA, Lab. Code § 2698, *et seq.* (*Id.*) On December 4, 2020, Defendant filed its Answer to the FAC. (*Id.*) Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action. (SA, ¶ 2.1.)

C. Investigation and Discovery, Settlement Negotiations, and Preliminary Approval.

Both before and after initiating the Action on behalf of the putative class, Plaintiff and Class Counsel diligently investigated the claims alleged and conducted legal research regarding Defendant’s potential liability and defenses. (*Id.*, ¶ 13.) The Parties engaged in extensive formal discovery, and Class Counsel prepared and propounded interrogatories, production demands, and multiple sets of requests for admissions on Defendant. (*Id.*) After good faith meet and confer efforts, the parties agreed to mediate with experienced wage-and-hour mediator, Kelly Knight, Esq. (*Id.*) Prior to mediation, the Parties also engaged in substantial informal discovery, including production of a randomly selected time and pay record sampling, which primarily covered the 2019 to 2021 period. (*Id.*)

² Branded Online rebranded itself as Nogin Commerce in 2021. (https://www.socaltech.com/nogin_commerce_merges_branded_online_onestop_commerce_zther_into_new_company/s-0081066.html)

1 On November 5, 2021, the Parties participated in a private mediation, presided over by
2 mediator Kelly Knight, which did not result in a settlement. (*Id.*, ¶ 14.) Thereafter, Plaintiff resumed
3 formal discovery efforts, and the Parties continued to meet and confer regarding Defendant’s discovery
4 responses. Defendant also propounded interrogatories and production demands on Plaintiff. (*Id.*)
5 Plaintiff also took the deposition of Defendant’s Person Most Knowledgeable (“PMK”), propounded
6 additional written discovery, and obtained declarations from putative class members after a successful
7 *Belaire-West* mailing. (*Id.*)

8 After substantial meet and confer efforts between counsel, Defendant provided supplemental
9 discovery responses and further production, including additional time and pay records from the 2017
10 to 2018 time period. (*Id.*, ¶ 15.) Class Counsel retained preeminent labor violation statistician Dr.
11 Richard Drogin as well as economic expert Berger Consulting Group, to analyze the data. (*Id.*, ¶ 16.)

12 On September 23, 2022, the Parties participated in a second mediation, this one presided over
13 by Hon. Lisa Hart Cole (Ret.), which resulted in the Parties’ acceptance of a mediator’s proposal. (*Id.*,
14 ¶ 17.) Based on the parties’ substantial investigation and discovery, Class Counsel was able to act
15 intelligently and effectively in negotiating at arm’s-length and evaluating the mediator’s
16 recommendation. (*Id.*) Thereafter, counsel for the Parties negotiated the terms of the long form
17 settlement, based on the LASC Model Class Action and PAGA Settlement Agreement. (*Id.*)

18 On February 16, 2023, Plaintiff filed an unopposed Motion for Preliminary Approval of Class
19 and PAGA Representative Action Settlement (“MPA”). Prior to the hearing, this Court issued a
20 “checklist” of items to address, and on April 19, 2023, counsel filed declarations addressing each of
21 these items. (*Id.*, ¶ 19.) As requested, Class Counsel provided further detail regarding Plaintiff’s
22 expert’s data analysis, Defendant’s payment plan for funding the GSA, and other information. (*Id.*)
23 At the hearing on April 20, 2023, the Court requested certain changes to the settlement agreement
24 and class notice. (*Id.*, ¶ 19.) Thereafter, Class Counsel promptly completed all requested changes and
25 filed a supplemental declaration along with the Amended Settlement Agreement and Class Notice.³

26 On May 1, 2023, the Court granted preliminary approval of the Settlement, as amended.

27 ³ Per the Court’s request, Plaintiff modified the description of the payment structure at ¶ 4.4, the
28 PAGA Period end date at ¶ 1.31, and the definition of “Released Parties” at ¶ 1.41 of the Settlement
Agreement. (Kick Decl., ¶¶ 19-20.)

1 **III. SUMMARY OF PROPOSED SETTLEMENT AGREEMENT**

2 **A. Settlement Amount and Funding after Final Judgment.**

3 Defendant has agreed to pay a Gross Settlement Amount (“GSA”) of \$827,500 to fund all
4 payments pursuant to the Settlement, including: Individual Class Payments for wages, penalties, and
5 interest; proposed Class Representative Service Award, Attorneys’ Fees and Costs to Class Counsel,
6 as approved by this Court; Administration Costs; and an allocation for penalties under PAGA (the
7 “PAGA Penalties”). (SA, ¶ 1.22.) Defendant will pay the employer’s payroll tax obligations on the
8 wage portion of Individual Class Payments (“Employer Taxes”) separately and in addition to the
9 GSA. (*Id.*) In accordance with the payment plan terms outlined at paragraph 4.3 of the Settlement,
10 Defendant will fund the entire GSA and Employer Taxes by making six (6) quarterly transfers to the
11 Settlement Administrator, beginning no later than January 19, 2024.⁴ (*Id.*, ¶ 4.3.)

12 **B. No-Claim Form Settlement Binding on Parties.**

13 Class Members and PAGA Employees are not required to opt in or submit claim forms to
14 receive their distribution from the Net Settlement Amount. (*Id.*, ¶ 3.1.)

15 **C. Release.**

16 After Defendant fully funds the entire Gross Settlement Amount and employer-side taxes,
17 Plaintiff and Class Members shall be deemed to have released the Released Parties of all Released
18 Claims arising during the Class Period. (*Id.*, ¶¶ 1.41, 5-5.4.) At that time, PAGA Employees also
19 release the Released Parties of all claims for penalties under PAGA, arising from Plaintiff’s LWDA
20 letter, dated, July 15, 2020, and/or the Complaint during the PAGA Period. (*Id.*, ¶ 5.5.)

21 As defined in the Settlement, Released Claims includes “all claims that were alleged, or
22 reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint,
23 Plaintiff’s PAGA Notice, or otherwise ascertained in the course of the Action.” (*Id.*, ¶ 5.4.) Released
24 Claims do not include claims based on facts occurring outside the Class Period. (*Id.*) In addition to
25 the release made by Class Members, Plaintiff shall further be deemed to have released the Released
26 Parties of a General Release, including by waiver of California Civil Code section 1542. (*Id.*, ¶ 5.3.)

27 _____
28 ⁴ As discussed during preliminary approval, Defendant requires a payment plan due to its financial
condition. (SA, ¶ 4.3; Taylor Decl., ¶¶ 2-4.)

1 **D. Net Settlement Amount and Settlement Payments to Class Members.**

2 The Net Settlement Amount (“NSA”) will be calculated by deducting from the Gross
3 Settlement Amount the following: (i) Class Counsel’s attorneys’ fees and costs, (ii) the Class
4 Representative Service Award, (iii) the PAGA Penalties, and (iv) the Settlement Administrator
5 expenses. (*Id.*, ¶ 1.28.) Under the Settlement, each Participating Class Member will be entitled to
6 payment of a pro-rata portion of the Net Settlement Amount. (*Id.*, ¶¶ 1.23.) Individual Class Payments
7 will be calculated based on the number of workweeks that each Class Member worked during the
8 Class Period, according to Defendant’s records. (*Id.*) Each Class Settlement Payment will be allocated
9 as 20% wages and 80% penalties. (*Id.*, ¶ 3.2.4.1.)

10 **E. PAGA Payment to the LWDA and PAGA Employees.**

11 From the GSA, \$50,000 is allocated to the PAGA Claim. From this amount, \$18,750.00 (75%)
12 will be paid to the LWDA, and the remaining \$6,250.00 (25%), will be distributed proportionally
13 among the PAGA Employees based on the number of PAGA Period Pay Periods each employee
14 worked between August 5, 2019, and December 2, 2022 (“the PAGA Period”). (*Id.*, ¶ 1.24, 1.31,
15 3.2.5.1.) Defendant’s records will be presumed accurate, subject to disputes regarding the number of
16 pay periods, as determined by the Administrator. (*Id.*, ¶ 7.6.) PAGA Payments will be characterized
17 as only penalties and shall be paid without deductions. (*Id.*, ¶ 3.2.5.2.) All PAGA Employees will be
18 paid a pro rata PAGA Payment even if not participating in the Class Settlement. (*Id.*, ¶ 7.5.4.)

19 **F. Settlement Checks Void at 180 Days.**

20 No money will revert to Defendant under any circumstances. (*Id.*, ¶ 3.1.) If any Individual
21 Settlement Payment check remains uncashed after one hundred eighty (180) days from the date the
22 check is issued, such check(s) will be voided. (*Id.*, ¶ 4.4.1.) Thereafter, subject to this Court’s
23 approval, the funds represented by any uncashed checks shall be distributed to 501(c)(3) non-profit
24 organization Public Citizen Foundation. (SA, ¶ 4.4.3.) When the Court preliminarily approved this *cy*
25 *pres* proposal on May 2, 2023, the Court requested for the parties to file declarations, in connection
26 with the final approval papers, confirming they have no financial interest in, or involvement in the
27 governance of, the proposed *cy pres* recipient. As noted, the concurrently filed declarations of Plaintiff
28 Gonzalez and Mr. Rahmati of Branded Online satisfy this request by confirming no such conflicts.

(See Gonzalez Decl., ¶ 10; Rahmati Decl., ¶ 3.)

IV. THE SETTLEMENT ADMINISTRATION PROCESS

On May 25, 2023, Simpluris received the Court-approved Notice of Proposed Class Action Settlement (“Notice Packet” or “Class Notice”). (Simpluris Decl., ¶ 5.)

On May 11, 2023, Defense Counsel provided Simpluris with a mailing list (“Class List”) containing contact information and dates of employment for all Class Members and PAGA Employees. The Class List contained data for 232 Class Members. (*Id.*, ¶ 6.) The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. (*Id.*, ¶ 7.) From the Class List, 161 individuals were identified as PAGA Employees, who worked during the PAGA Period. (*Id.*, ¶ 17.)

On May 25, 2023, Class Notice was mailed to 232 Class Members with addresses contained in the Class List via First Class mail or updated via the NCOA search. (*Id.*, ¶ 8.) A total of 28 Class Notices were returned as undeliverable. (*Id.*, ¶ 9.) For those returned without a forwarding address, Simpluris performed an advanced address search (i.e., skip trace), and Simpluris re-mailed a Class Notice to 25 updated addresses and promptly re-mailed Notices to the addresses located through skip tracing. (*Id.*) Ultimately, there remains just one (1) undeliverable Class Notice, meaning Simpluris achieved a successful delivery rate of 99.57%. (*Id.*)

Simpluris has received no objections to the Settlement, no opt out requests, and no disputes regarding workweeks or pay periods. (*Id.*, ¶¶ 11-13.) In sum, the response from the Class Members regarding the Settlement has been extremely positive.

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

“The trial court has broad discretion to determine whether the settlement is fair. [Citation.]” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581.)⁵ The proponent of the settlement has the

⁵ “It should consider relevant factors, such as the strength of plaintiffs’ 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 views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement ... Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

burden to show that it is fair and reasonable. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) “‘Ultimately, the [trial] court’s determination is nothing more than an ‘amalgam of delicate balancing, gross approximations and rough justice.’” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) 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. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.)

In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the dispute. (*7-Eleven, supra*, 85 Cal.App.4th at 1146.) The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55.) Even if the settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. (*Wershba, supra*, 91 Cal.App.4th at 251.)

A. The Settlement Resulted from Arm’s-Length Bargaining through Mediation After Extensive Investigation and Discovery

The investigation and discovery conducted in this matter have been adequate to give the Plaintiff and Class Counsel a sound understanding of the merits of their position, Defendant’s defenses, and to evaluate the reasonable value range of the claims of the Class. (Kick Decl., ¶¶ 12-16.) Plaintiff’s written discovery included interrogatories, production demands, and multiple sets of requests for admissions on Defendant. (*Id.*) Class Counsel also took the deposition of Defendant’s PMK and obtained declarations from putative class members. (*Id.*)

After substantial meet and confer efforts, Defendant provided supplemental discovery responses as well as informally produced documents and information for the purposes of mediation

whole, is fair, reasonable and adequate to all concerned.” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581.)

1 on the entry of a stipulated protective order. (*Id.*) In all, Defendant produced thousands of pages of
2 data and documents, including written policies and a detailed sample of non-exempt employees’
3 timekeeping and payroll records. (*Id.*) Class Counsel retained preeminent labor violation statistician
4 Dr. Richard Drogin, who tabulated meal breaks in the timekeeping data provided by Defendant and
5 analyzed the data for systemic meal and rest break violations. (*Id.*) In addition, Class Counsel retained
6 economic expert Berger Consulting Group, who analyzed the data and created a damages model based
7 on it. (*Id.*) Class Counsel carefully considered the class claims at issue and its experts’ analysis of
8 violation rates for Defendant’s timekeeping and payroll data. (*Id.*)

9 The Settlement was reached with the assistance of Hon. Lisa Hart Cole (Ret.), after
10 participating in a second mediation on September 23, 2022. (*Id.*, ¶ 17.) Judge Cole made a mediator’s
11 proposal which the parties accepted. (*Id.*) This mediation with Judge Cole took place only after a prior
12 mediation with another experienced wage and hour mediator, Kelly Knight, had failed to result in a
13 proposed settlement. (*Id.*) All negotiations at all times were arm’s length and adverse. (*Id.*) Following
14 the successful mediation, the Parties drafted and executed a long form agreement. (*Id.*, ¶ 18; SA.)

15 **B. The Risks Inherent in Continued Litigation and Individual Settlement Favor Final**
16 **Approval of the Settlement**

17 Had the Action not settled, Defendant would have challenged class certification and liability,
18 as Defendant vigorously disputes Plaintiff’s contentions. (Kick Decl., ¶¶ 29-30.) For instance,
19 Defendant denies that Class Members were not properly compensated and alleges that its third-party
20 payroll provider was instructed to process the exact times that employees clocked in and out. (*Id.*)
21 Defendant also argues that any allegedly unpaid overtime hours were either unauthorized, actively
22 concealed from Defendant, or there was no reasonable basis why Defendant knew or should have
23 known of such overtime work. (*Id.*) Plaintiff also faced the risk Defendant would successfully argue
24 that individualized questions of fact predominate over any common issues, and that such issues would
25 preclude certification. (*Id.*) Defendant may argue the Class is uncertifiable due to hundreds of
26 individual inquiries as to each Class Member’s experience with supposedly working off the clock and
27 logging time worked. (*Id.*) Defendant would have likely argued again at trial, if any, that Plaintiff’s
28 claims were not appropriate for class-wide adjudication. Additionally, preparation for trial would

1 have been expensive for all Parties. (*Id.*)

2 It is also preferable to reach an early resolution of a dispute because such resolutions save
3 time and money that would otherwise go to litigation. Were litigation to proceed, there is a strong
4 likelihood it would be protracted and contentious due to Defendant's dispute of nearly all aspects of
5 Plaintiff's claims. (*Id.*, ¶ 31.) As a threshold matter, if the Agreement is not approved, Plaintiff will
6 have to prepare and file a motion for class certification, which outcome is uncertain based on
7 Defendant's contentions, *inter alia*, that individual questions of fact predominate, and that Plaintiff
8 cannot show the "willfulness" requirement for Labor Code section 203 penalties. (*Id.*) If the proposed
9 class were certified, Defendant likely would appeal certification, move for decertification, and/or
10 move for Summary Judgment. (*Id.*) Plaintiff believes she would prevail on certification, but the risks
11 of further litigation to absent Class Members are significant. (*Id.*)

12 To succeed on the merits, Plaintiff would have to prove that Defendant actually engaged in
13 the practices and policies alleged and that those practices and policies violated the law. (*Id.*, ¶ 32.)
14 While Class Counsel believe strong evidence exists showing Defendant's liability, there remains a
15 risk that the trier of fact might find otherwise. (*Id.*) If the case were to proceed to trial, additional
16 discovery would be needed and the Parties would thus incur significant additional expenses, which
17 money could go instead to fund a settlement for the benefit of the Class as a whole. (*Id.*) Moreover,
18 discovery disputes would have certainly arisen, which would have cost the Parties additional time
19 and money. (*Id.*) Further, regardless of which Party prevailed, appellate practice likely would ensue,
20 further delaying any possible recovery by Class Members. (*Id.*, ¶ 33.) In other words, both Parties
21 would likely incur substantial attorneys' fees and costs from continued litigation, likely approaching
22 hundreds of thousands of dollars. (*Id.*) In contrast, the Settlement provides real and significant
23 benefits for the Class Members here and now, while avoiding the further expenses, risks, and delay
24 of prolonged litigation with only the possibility of recovery.

25 Along with determining a well-defined community of interest, courts may also evaluate "the
26 probability that each class member will come forward ultimately to prove his or her separate claim to
27 a portion of the total recovery and whether the class approach would actually serve to deter and redress
28 alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Here, if absent Class

1 Members wished to seek individual legal redress from Defendant for their wage and hour claims by
2 filing suit on their own, they could have opted out of the Settlement. (SA, ¶ 7.5.) None did. (Simpluris
3 Decl., ¶ 11.) Moreover, individual litigation arising from similar operative facts unduly burden the
4 courts and may produce inconsistent results, which may be avoided here. The GSA created may deter
5 and redress the wage-and-hour violations that Defendant is alleged to have committed.

6 It would be grossly inefficient for such a large class of current and former employees to bring
7 individual actions to recover for the alleged wage-and-hour violations. As the Court noted, “[g]iven
8 the relatively small size of the individual claims, a class action is superior to separate actions by the
9 class members.” (Preliminary Approval Order 19:2-3.) By granting final approval of the Settlement,
10 the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

11 **C. The Proposed Settlement is Fair and Reasonable.**

12 In granting Preliminary Approval, this Court already determined the proposed settlement was
13 within the ballpark of reasonableness. (*Id.*, 17:6-11.) A trial court has “broad discretion” to determine
14 “whether a settlement [is] fair and reasonable.” (*Wershba, supra*, 91 Cal.App.4th at 234-235; *In re*
15 *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389.) A trial court should consider
16 relevant factors, which may include the strength of a plaintiff’s case, the risk, expense, complexity
17 and likely duration of further litigation, the risk of maintaining class action status through trial, the
18 amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the
19 experience and views of counsel, the presence of a governmental participant, and the reaction of the
20 class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
21 116, 128.) The court must satisfy itself that the settlement is within the “ballpark” of reasonableness.
22 (*Id.*, at p. 133.)

23 Here, the Settlement, which provides for a Gross Settlement Amount of \$827,500, is fair,
24 adequate and reasonable to Class Members. (Kick Decl., ¶¶ 34-35.) It was reached through the
25 mediator’s proposal put forth by experienced wage and hour mediator, Hon. Lisa Hart Cole (Ret.)
26 (*Id.*, ¶ 17.) This proposal was accepted by the Parties after substantial formal and informal discovery
27 had been conducted, after Plaintiff had taken the deposition of Defendant’s PMK and obtained
28 declarations from putative class members, and after two mediations with experienced wage and hour

1 mediators. (*Id.*, ¶¶ 12-17.) Ultimately, as a result of the information and data uncovered through
2 substantial investigation and discovery, Class Counsel was able to effectively evaluate the mediator’s
3 recommendation in light of the case strengths and risks. (*Id.*) The Settlement takes into account the
4 potential risks and rewards inherent in any case and in this matter, in particular. (*Id.*, ¶ 34.) Moreover,
5 considering all of the facts in this case, the Settlement represents a considerable recovery.

6 There are 232 Class Members who will receive an average Class Settlement Payment
7 currently estimated to be \$1,918.08, with a highest estimated payment of \$8,000.70. (Simpluris Decl.,
8 ¶ 16.) This is in addition to 161 PAGA Employees receiving an estimated average payment of \$38.82.
9 (*Id.*, ¶ 17.) These are significant individual recoveries in light of the risks and costs of litigation.

10 Furthermore, the Settlement is an excellent result given Defendant’s financial condition.
11 (Taylor Decl., ¶¶ 2-5.) As discussed during preliminary approval, Defendant has faced a negative
12 cashflow and debt exceeding its cash assets since 2021. (*Id.*) This financial context was considered
13 during negotiation, leading to a structured plan for funding the GSA and distributing payments to
14 Class Members (outlined at paragraphs 4.3 and 4.4 of the Settlement). (*Id.*) The payment plan is fair
15 and reasonable, as it provides a practical means for Defendant to fund the entire GSA.⁶ Defendant
16 has represented that despite its limited cash assets, its substantial revenues ensure it will have no
17 problem completing the payments. (*Id.*) During preliminary approval, this Court thoroughly inquired
18 about the payment plan and Defendant’s ability to complete the payments and was satisfied with the
19 details provided by the parties. (*Id.*)

20 Throughout negotiations, Class Counsel carefully considered the viability of Plaintiff’s
21 claims, including careful analysis of Defendant’s sample of timekeeping and payroll data. The
22 information they gathered resulted in estimates of Defendant’s exposure and the potential recovery
23 for the Class, calculated with the assistance of Plaintiff’s experts, if Plaintiff was to prevail on each
24 theory of liability at trial. (Kick Decl., ¶¶ 16, 28.) Had this case gone to trial and Plaintiff prevailed
25

26 ⁶ As part of the payment plan, the Settlement provides for two distributions to the Class Members: first, a
27 proportionate distribution of 40% of funds, and second, the remaining 60%. (SA, ¶ 4.4.) This structured
28 distribution is fair and reasonable as it provides Class Members a substantial portion of payment promptly
without waiting for full funding. Furthermore, this payment structure minimizes complexity and costs for the
Settlement Administrator by avoiding excessive mailings.

1 on all legal theories, Defendant's maximum exposure for underpayment of wages is estimated to total
2 \$1,414,245.61, without penalties. (*Id.*) This means that the proposed settlement of \$827,500.00 is
3 approximately 58.5% of the total recovery possible for unpaid wages, not including penalties.

4 Courts have determined that settlements are, of course, reasonable even where plaintiffs
5 recover only a portion of their actual losses. *See, e.g., Behrens v. Wometco Enters., Inc.* (S.D. Fla.
6 1988) 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement
7 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or
8 inadequate.”) Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even—a
9 thousandth of a single percent of the potential recovery.” (*Id.*; *see also Martel v. Valderamma* (C.D.
10 Cal. 2015) 2015 U.S. Dist. LEXIS 49830 *17 (approving a settlement of \$75,000 when potential
11 damages were \$1.2 million, or about 6%); *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D.
12 438, 453 (approving settlement with vouchers, not cash, potentially worth a maximum of 3% if all
13 possible claims were actually made, or \$391.5 million aggregate voucher potential where the class
14 could have recovered \$13.05 billion); *City of Detroit v. Grinnell Corp.* (S.D.N.Y. 1972) 356 F. Supp.
15 1380, 1386, *aff'd in part, rev'd on other grounds*, (2d Cir. 1974) 495 F.2d 448 (a recovery of 3.2% to
16 3.7% of the amount sought is “well within the ball park.”)

17 As this Court knows, the inquiry is not whether the settlement agreement is the best one that
18 class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair,
19 adequate, and reasonable.” (*Chavez*, 162 Cal.App.4th at 55.) The Action involves multiple complex
20 legal issues, including Defendant's contested liability for alleged Labor Code and UCL violations and
21 class certification. If the proposed Agreement is not approved, the litigation could go on for several
22 years, which would be extremely expensive and an inefficient use of judicial resources. For example,
23 an exhaustive analysis of Defendant's timekeeping and payroll records would have been required for
24 presentation at trial, in addition to possible analysis of field experiment recreations of the alleged off-
25 the-clock violations. (Kick Decl., ¶ 33.) Continued litigation would also have been expensive,
26 including the expense of expert witnesses, trial consultants, and attorney fees for both sides. (*Id.*)

27 Accordingly, Class Counsel believes that \$827,500 represents a victory on multiple theories
28 and commensurate with any potential recovery at trial, had Plaintiff succeeded in certifying a class

1 and then also prevailed at trial, which outcome is not certain. (*Id.*, ¶¶ 34-35.) Given the risks inherent
2 in continuing to litigate, including 1) the possibility of an unfavorable, or less favorable, result at
3 trial, 2) the likely possibility that post-trial motions may similarly result in a less favorable result than
4 at trial, and 3) the possibility of a less favorable result on appeal, with the certainty that the appeal
5 process would be lengthy, the Agreement is a fair, adequate, and reasonable resolution for the Class
6 as a whole. (*Id.*)

7 In light of the above considerations, Class Counsel believes that the Settlement as a whole is
8 fair, reasonable, and adequate, and in the best interest of the Class Members. (Kick Decl., ¶ 35.)
9 Although the recommendations of Class Counsel are not conclusive, the Court can properly take the
10 recommendations into account, particularly if Class Counsel appears to be competent, has experience
11 with this type of litigation, and significant discovery and investigation have been completed, as is the
12 case here. (4 *Newberg and Rubenstein on Class Actions* (“Newberg”) (6th ed.) § 13.59.) As such, the
13 Court should grant final approval of the Settlement.

14 **VI. PLAINTIFF’S REQUEST FOR ATTORNEYS’ FEES AND COSTS IS REASONABLE**

15 Class Counsel request an award of attorneys’ fees of one-third of the Gross Settlement
16 Amount, which equals \$275,833.33. Although Class Counsel apply pursuant to the percentage-of-
17 the-benefit methodology, the requested fee award is appropriate under both a percentage-of-the-
18 benefit methodology, as well as under a lodestar cross-check. Defendant does not oppose this request.

19 **A. Plaintiff Requests a One-Third Percentage-Based Fee Award**

20 California law allows the award of attorneys’ fees in class actions based on the percentage-
21 of-the-fund method. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 486; *Chavez v. Netflix*
22 (2008) 162 Cal.App.4th 43, 63 [“fees based on a percentage of the benefits are in fact appropriate in
23 large class actions when the benefit per class member is relatively low”]; *Wershba v. Apple Computer,*
24 *Inc.* (2001) 91 Cal.App.4th 224, 255; *Consumer Cause v. Mrs. Gooch's Natural Food Markets* (2005)
25 127 Cal.App.4th 387, 397 [the common fund doctrine is “frequently applied in class actions when the
26 efforts of the attorney for the named class representatives produce monetary benefits for the entire
27 class”].) There is substantial authority for determining the fee award based on a percentage of the
28 total value of the recovery. The requested fees fall well within an appropriate range under the

1 common fund approach as it is common to award attorney's fees to class counsel of one-third (33-
2 1/3%) of the settlement amount or higher. (*Chavez*, at 66: "[e]mpirical studies show that, regardless
3 whether the percentage method or the lodestar method is used, fee awards in class actions average
4 around one-third of the recovery.")

5 In *Laffitte*, the Supreme Court of California, in a case involving an objection to a one-third
6 percentage based recovery in a \$19 million employment class action lawsuit, stated: "We hold further
7 that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee ... [and] *also*
8 *retain the discretion to forego a lodestar cross-check* and use other means to evaluate the
9 reasonableness of a requested percentage fee." (*Laffitte*, 1 Cal.5th at 506, emphasis added.) Several
10 courts have expressed frustration with the alternative "lodestar" approach, which usually involves
11 wading through voluminous and often indecipherable time records. (See, e.g., *In re Activision*
12 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375.) The percentage approach is
13 preferable to the lodestar because: (1) it provides predictability to class counsel and class members;
14 (2) encourages efficient resolution by providing an incentive for early, yet reasonable, settlement; and
15 (3) reduces the demands on judicial records. (*Id.*, at 1378-79.) In fact, "[a] task force commissioned
16 by the Third Circuit concluded that the lodestar approach... is a cumbersome, enervating, and often
17 surrealistic process of preparing and evaluating fee petitions that now plagues the Bench and Bar and
18 recommended a return to the percentage of the recovery fee formula in cases involving a settlement
19 fund." (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28, citations and quotation
20 marks omitted.) In *Lealao*, the Court of Appeal considered counsel's efficiency and skill in bringing
21 the case to an early resolution.

22 [T]he promptness of settlement cannot be used to justify the refusal to apply a
23 multiplier to reflect the size of the class recovery without exacerbating the disincentive
24 to settle promptly inherent in the lodestar methodology. Considering that our Supreme
25 Court has placed an extraordinarily high value on settlement . . . it would seem counsel
26 should be ***rewarded, not punished***, for helping to achieve that goal....
27 (*Id.*, at 52, citations omitted, emphasis added.) Newberg notes that the percentage methodology aligns
28 class counsel's interests with those of the class, rewards efficiency, and thus, decreases the social
costs of litigation. (5 Newberg, § 15:65 (6th ed.) Courts should not only consider the size of the class

1 or the amount of the recovery; instead, it should also examine the size of the settlement amount of
2 each class member as an indication of counsel's contribution. (*Lealao*, 82 Cal.App.4th at 53.)

3 Here, not only have there been no objections to any aspect of this proposed settlement, and no
4 requests for exclusion, but Class Counsel obtained an exceptional result – a proposed settlement of
5 \$827,500.00 for a Class of 232 employees.

6 As per the payment plan terms, Defendant will fund the GSA through six quarterly payments,
7 and two distributions will be made: first, after 40% of the GSA is funded, and second, after the
8 remaining 60% is funded. (SA, ¶ 4.4.) Rather than deducting the full attorney fee and cost award from
9 the first distribution, the Settlement provides that Class Counsel will receive a proportionate amount
10 with each distribution. (*Id.*) This is a fair approach, as discussed during preliminary approval, as it
11 recognizes the earned portion of fees and ensures timely payment. (Taylor Decl., ¶ 5.)

12 **B. Analysis Pursuant to the Lodestar Methodology.**

13 Regarding the lodestar methodology, a lodestar figure is calculated by multiplying the
14 reasonable hours expended by a reasonable hourly rate. (*Wershba v. Apple Computer* (2001) 91
15 Cal.App.4th 224, 254.) A lodestar amount may be increased by a multiplier. (*Serrano*, 20 Cal.3d at
16 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407.) “Multipliers can range from 2 to 4 or
17 even higher.” (*Wershba*, at 255.) Class Counsel's lodestar totals \$445,790, after voluntary deductions
18 based on business judgment, but will be restricting their fee request to \$266,667 or one-third of the
19 GSA. (Kick Decl., ¶¶ 6-8.)⁷ In other words, although this is the sort of case which would certainly
20 merit a “positive multiplier” on the lodestar, nonetheless, if this Court grants the fee request made by
21 Class Counsel, Class Counsel will be receiving a “negative multiplier.”⁸

22 There is a strong presumption that the lodestar represents a reasonable fee. (*See Perdue v.*
23 *Kenny A. ex rel. Winn* (2010) 559 U.S. 542, 543 [130 S.Ct. 1662, 1667, 176 L.Ed.2d 494] (citing

24 ⁷ Under California law, this Court may award the attorneys' fees without the attorneys' timesheets *Concepcion*
25 *v. Amscan Holdings* (2014) 223 Cal.App.4th 1309, 1324; *Raining Data v. Barrenchea* (2009) 175 Cal.App.4th
26 1363, 1375-76 (“[t]he law is clear, however, that an award of attorney fees may be based on counsel's
27 declarations, without production of detailed time records”). The concurrently filed declaration by Taras Kick
of The Kick Law Firm, APC describes the attorney time expended on this case. Class Counsel can also provide
time sheets and make them available for *in camera* review by this Honorable Court if the Court so wishes.

28 ⁸ Were this Court for some reason not to accept all of the hours or rates specified in the concurrently filed Kick
Declaration, Class Counsel respectfully request a multiplier which will allow the awarded attorneys' fees to
reach the one-third of the \$827,500 recovery, meaning \$275,833.33.

1 *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565, 106 S.Ct. 3088,
2 92 L.Ed.2d 439, 564)). Furthermore, courts have noted that a percentage fee that falls *below* counsel's
3 lodestar supports the reasonableness of the award. (*See, e.g., In re Portal Software, Inc. Sec. Litig.*,
4 No. C- 03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) ("negative multiplier
5 suggests that the percentage-based amount is reasonable and fair"); *In re Amgen Inc. Sec. Litig.*, Case
6 No. CV 07-2536 PSG (PLAx), 2016 WL 10571773, at *9 (C.D. Cal. Oct 25, 2016) (same).)
7 Moreover, a negative multiplier, like the negative multiplier here, means that Class Counsel is seeking
8 to be paid "for only a portion of the hours that they expended on the action." (*Amgen*, at *9.)

9 The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group,*
10 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). "[I]n assessing a reasonable hourly rate, the trial court
11 is allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys'
12 reputation and status." (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The
13 trial court may also "find hourly rates reasonable based on evidence of other courts approving similar
14 rates." (*Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.) The
15 current prevailing billing or "market" rates in the Los Angeles and Southern California area range
16 from over \$300.00 to over \$1,000.00 per hour.⁹ As can be seen in the Kick Declaration at Paragraph 5,
17 the rate sought here has been approved by numerous courts across the country, including in this Los
18 Angeles County Complex Court. (Kick Decl., ¶ 5.) Further, the rates are well within the range of
19 rates awarded in class action litigation in Southern California. (*In re Toyota Motor* (C.D. Cal. 2013)
20 2013 U.S. Dist.Lexis 123298 [approving rate of \$950]; *Banas v. Volcano Corp.* (N.D. Cal. 2014) 47
21 F.Supp.3d 957 [approving 2014 rate of \$1,095; *In re High Tech Emple. Antitrust Litig.*, (N.D. Cal.
22 2015) 2015 U.S. Dist. LEXIS 118052 *33 [approving rates of \$975 an hour].)

23 ⁹ *See, e.g., McKnight, et al., v. Uber Technologies, Inc., et al.* 3:14-CV-05615-JST, Docket No. 148,
24 [December 8, 2017 attorney fee declaration citing *In re High-Tech Employee Antitrust Litig.* (N.D.
25 Cal. Sept. 2, 2015) 2015 WL 5158730, at *9 (finding reasonable "billing rates for partners [that] range
26 from about \$490 to \$975 ... billing rates for non-partner attorneys, including senior counsel, counsel,
27 senior associates, associates, and staff attorneys, [that] range from about \$310 to \$800..."]; *Bickley*
28 *v. CenturyLink, Inc.* (C.D. Cal. Nov. 29, 2016) No. CV 15-1014-JGB (ASX), 2016 WL 9046911, at
*3-4 [finding six years ago attorneys' fee requests of up to \$750 per hour reasonable and in line with
the prevailing rate in the District].). In *Bickley*, a billing survey was submitted from 2013 listing the
rates for partners and associates from large law firms, noting that those rates ranged from a low of
\$515/per hour for associates to \$1,220/per hour for partners. (*Id.*, at ¶ 4.) The majority of the rates for
partners were between \$700 and \$1000 per hour. (*Ibid.*)

1 In California, “[m]ultipliers can range from two to four or even higher” and are routinely
2 applied. (*Wershba*, 91 Cal.App.4th at 254.)¹⁰ The goal is “to entice competent counsel to undertake
3 difficult public interest cases.” (*San Bernardino Valley Audubon Soc. v. County of San Bernardino*
4 (1985) 155 Cal.App.3d 738, 755.) But here, as stated, the multiplier will actually wind up being
5 negative if the full one-third fee requested is granted.

6 Class Counsel also seek reimbursement of necessary litigation costs in the amount of
7 \$61,673.21, which is the amount that has been advanced on behalf of the class members to date. (Kick
8 Decl., ¶ 25.) This Court already reviewed litigation costs on an itemized basis at the Motion for
9 Preliminary Approval before granting Preliminary Approval, and they are itemized again in the
10 concurrently filed Kick Declaration. (*Id.*) The cost reimbursement is justified, as those who incur
11 expenses to secure a favorable outcome and create a fund from which others benefit “may require
12 those passive beneficiaries to bear a fair share of the litigation costs.” *Serrano v. Priest* (1977) 20
13 Cal.3d 25, 35. Here, these costs include already-incurred costs of filing fees, expert fees, mediation
14 fees, and others. (Kick Decl., ¶ 25.) The requested reimbursement is less than the cost amount stated
15 in the Class Notice as “not to exceed \$65,000,” which received no objections from Class Members.
16 (*Simpluris* Decl., ¶ 12, Ex. A.)

17 **VII. PLAINTIFF SERVED ADMIRABLY AS A CLASS REPRESENTATIVE AND THE**
18 **REQUESTED SERVICE AWARD IS REASONABLE**

19 Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
20 compensation “for the expense or risk they have incurred in conferring a benefit on other members
21 of the class.” (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th
22 399, 412.) It is within a court’s discretion to award payment to a class representative for their efforts
23 and work. (*Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299 [approving
24 \$50,000 participation award to a single class representative].)

25
26 ¹⁰ See also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora*
27 *Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award
28 that included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d
1113, 1125 (awarding a common fund fee award that amounted to a 5.2 multiplier); *Vizcaino v.*
Microsoft Corp. (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*,
901 F.Supp. at 298-299 (approving multiplier of 3.6).

1 The criteria courts may consider in determining whether to make an incentive award
2 include: 1) the risk to the class representative in commencing suit, both financial and
3 otherwise; 2) the notoriety and personal difficulties encountered by the class
4 representative; 3) the amount of time and effort spent by the class representative; 4)
5 the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by
6 the class representative as a result of the litigation. [Citations.] (*Ibid.*)

7 Here, Plaintiff Yazmin Gonzalez has requested a Class Representative Service Award of
8 \$10,000.00, and Defendant does not oppose this request. (SA, ¶ 3.2.1.) This Service Award request
9 is fair and appropriate given: (1) the substantial time and effort Plaintiff expended; (2) the risks she
10 faced and continue to face as a result of bringing the Action; (3) the fact she put Class Members'
11 interests ahead of her own; and (4) the substantial benefit conferred upon the Class. (Kick Decl., ¶
12 26; Gonzalez Decl., ¶¶ 6-9.) As detailed in her concurrently filed declaration, Ms. Gonzalez spent a
13 substantial amount of time and effort in producing relevant documents and providing the facts and
14 evidence necessary to attempt to prove the allegations. (*Id.*) Ms. Gonzalez assisted actively in the
15 investigation of the claims alleged, conferred regularly with counsel, aided in preparation for the
16 Parties' mediations, made herself available throughout both mediation sessions, and provided all
17 information requested by counsel to benefit the Class. (*Id.*) Accordingly, it is appropriate and just for
18 Plaintiff to receive a Class Representative Service Award for her service on behalf of the Class, in
19 addition to her Individual Settlement Payment as a Class Member. Further, the Class was given notice
20 of the requested Service Award and, no objections have been received. (Simpluris Decl., ¶ 11.)

21 **VIII. REASONABLE SETTLEMENT ADMINISTRATION COSTS TO BE APPROVED**

22 As set forth in the accompanying Declaration of Lindsay Kline from Simpluris, Inc., the total
23 costs incurred and to be incurred by Simpluris for the notice and settlement administration process is
24 \$10,000.00. (Simpluris Decl., ¶ 18.) The costs incurred and to be incurred include, but are not limited
25 to, expenses for printing and mailing the Notice of Class Action Settlement to Class Members;
26 establishing and maintaining a means to receive and validate opt out requests submitted by Class
27 Members, including a toll-free telephone number; establishing and maintaining a settlement fund
28 account; calculating Individual Class Payments and distributing funds to Class Members; calculating
Employer Taxes and providing appropriate forms and calculations to Defendant; and providing
counsel with weekly reports. (*Id.*, ¶¶ 3-4, Ex. B.) Accordingly, the Court should grant final approval

1 of payment to Simpluris in the amount of \$10,000.00.

2 **IX. THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED**

3 In granting preliminary approval, this Court already reasoned that the proposed class is
4 numerous and ascertainable, there is a community of interest, and that “[g]iven the relatively small
5 size of the individual claims, a class action is superior to separate actions bt the class members.”
6 (Preliminary Approval Order, 17:13-19:3.) None of these factors have changed.

7 Numerosity is readily satisfied because there are 232 members in the settlement Class. (*See*,
8 *Vasquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971); Simpluris Decl., ¶ 14.) Common questions
9 of law and fact predominate because all Class members were subject to a common policies and
10 practices and were paid according to uniform formulae. *See Arenas v. El Torito Rests., Inc.*, 183 Cal.
11 App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913
12 (2001)). Typicality and adequacy of representation are also satisfied as Plaintiff was also subject to
13 the same compensation policies and practices. *See* 7 Newberg § 23:23 (6th ed.). (Gonzalez Decl., ¶
14 5.) Plaintiff’s interests are essentially identical, if not exactly identical, to those of the Class and there
15 is no conflict between Plaintiff or her counsel, on the one hand, and any other Class Member. *See*
16 *Richmond v. Dart Industries*, 29 Cal.App.3d 462, 470 (1981). (Gonzalez Decl., ¶ 8-9.)

17 Further, ascertainability also is met as Class members, who all worked for Defendant during
18 the Class Period, share “a set of common characteristics sufficient to allow a member of that group
19 to identify himself or herself as having a right to recover based on the description,” (*See Bartold v.*
20 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828), and in addition, Defendant’s records readily
21 identified the Class Members based on their dates of employment. (Simpluris Decl., ¶ 6.) Lastly, in
22 this matter, where global resolution is achieved for 232 Class members whose claims which would
23 otherwise be too small to warrant individual litigation, a class action is demonstrably superior to other
24 methods of adjudication. (*Richmond, supra*, 29 Cal.3d 462, 469; Simpluris Decl., ¶ 14.)

25 With each of these factors satisfied, it is appropriate now to grant final certification.

26 **X. CONCLUSION**

27 Plaintiff, hence, respectfully requests that this Court enter a Final Approval Order as set forth
28 above and an accompanying Judgment.

1 DATED: August 9, 2023

Respectfully submitted,
THE KICK LAW FIRM, APC

2
3 By: /s/ Taras Kick
4 Taras Kick
5 Greg Taylor
6 Attorneys for Plaintiff Yazmin Gonzalez
7 and the Class
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049.

On the below executed date, I served the document(s) described as:

- **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT;**
- **DECLARATION OF TARAS KICK IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT;**
- **DECLARATION OF GREG TAYLOR IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT;**
- **DECLARATION OF YAZMIN GONZALEZ IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT;**
- **DECLARATION OF LINDSAY KLINE REGARDING NOTICE AND SETTLEMENT ADMINISTRATION;**
- **DECLARATION OF ROBERT WEISSMAN OF PUBLIC CITIZEN FOUNDATION (PROPOSED CY PRES RECIPIENT);**
- **DECLARATION OF SHAHRIYAR RAHMATI REGARDING DEFENDANT BRANDED ONLINE, INC.'S INTEREST OR INVOLVEMENT IN THE PUBLIC CITIZEN FOUNDATION.**

on the interested parties in this action by sending a true copy thereof to interested parties as follows:

☒ **By electronic service (via electronic filing service provider.)** I caused the documents to be electronically transmitted to Case Anywhere, an electronic filing service provider, at www.caseanywhere.com pursuant to the Court's Electronic Case Management Order governing the matter and mandating electronic service to person(s) at the address(es) listed below. The transmission was reported as complete and without error to the addressees as stated below.

Tom T. Nagashima tnagashima@grsm.com GORDON REES SCULLY MANSUKHANI, LLP 633 West Fifth Street, 52nd Floor Los Angeles, California 90071 Telephone: (213) 576-5000 Facsimile: (213) 680-4470	Attorneys for Defendant BRANDED ONLINE, INC.
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I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 9, 2023.

/s/ Alina Muresan
Alina Muresan