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

SPENCER SUMISAKI, DAVIAN
MONTGOMERY, individually, and on
behalf of other members of the general
public similarly situated; NADIA
MORALES, 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;
NINA WILLIAMS, individually, on behalf
of other aggrieved employees pursuant to
the California Private Attorneys General
Act,

Plaintiffs,

v.

BERKELEY BOWL PRODUCE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: RG19014520

Honorable Evelio Grillo
Department 21

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declarations of
Proposed Class Representatives (Davian
Montgomery, Nadia Morales, and Nina
Williams); and [Proposed] Order filed
concurrently herewith]

Reservation No. 768154232963
Date: January 26, 2022
Time: 10:00 a.m.
Department: 21

Complaint Filed: April 10, 2019
FAC Filed: July 17, 2019
SAC Filed: November 20, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on January 26, 2022 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Evelio Grillo in Department 21 of the Superior Court of California for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612, Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams (together, “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement and Stipulation (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” 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 Attorneys' Costs to Class Counsel, Service Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members and PAGA 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 Attorneys' Costs to Class Counsel, Service Payments to Plaintiffs, and Settlement Administration Costs to 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 Aiwarzian) and Proposed Class Representatives (Davian Montgomery, Nadia Morales, and Nina Williams) 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 5, 2022

LAWYERS for JUSTICE, PC

By:


Edwin Aiwarzian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams (together, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Class Action and PAGA Settlement Agreement and Stipulation (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Berkeley Bowl Produce, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to a settlement for a Maximum Settlement Amount of three million dollars and no cents (\$3,000,000.00).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Distribution Fund²; (2) the Service Payments of ten thousand dollars and no cents (\$10,000.00) each to Plaintiffs (\$30,000 total)³; (3) the Attorneys’ Fees and Attorney’s Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (38%) of the Maximum Settlement Amount, or \$1,140,000.00 (if the Maximum Settlement Amount is \$3,000,000.00⁴), and reimbursement of litigation costs and expenses not to exceed one hundred twenty thousand dollars and no cents (\$120,000.00)⁵; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed twenty five thousand dollars and no cents (\$25,000.00);⁶ and (5) the amount of four hundred thirty thousand dollars and no cents (\$430,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Allocation”), of which 75% (i.e., \$322,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA Payment”) and 25%

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwasian (“Aiwasian Decl.”), § 18.

² *Id.*, § 20.

³ *Id.*, § 31.

⁴ *Id.*, § 69 (providing for *pro rata* increase of the Maximum Settlement Amount depending on the Workweeks count).

⁵ *Id.*, §§ 3 and 4.

⁶ *Id.*, § 34.

(i.e., \$107,500.00) (“Net PAGA Distribution Amount”) will be distributed to PAGA Members on a *pro rata* basis (“Individual PAGA Payment(s)”).⁷

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

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from April 10, 2015 to the date of the Preliminary Approval Order (“Class” or “Class Members”).⁸

The Class is estimated to consist of approximately two thousand and fifty-four (2,054) individuals.⁹

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (“Settlement Class Member”) will receive a share of the Net Distribution Fund (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of weeks they worked for Defendant within the State of California in a non-exempt or hourly-paid position during the period from April 10, 2015 to the date of the Preliminary Approval Order (“Qualifying Workweeks”).¹⁰

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Settled Claims of Plaintiffs and Settlement Class Members and the Settled PAGA Claims of the State of California, with respect to Plaintiffs and PAGA Members, against the Released Parties.¹¹

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is an independent grocery store selling primarily organic and natural products in Berkeley, California. Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams are former employees of Defendant.

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⁷ *Id.*, § 24.

⁸ Settlement Agreement, § 6. “Class Period” is defined as the period of time from April 10, 2015 to the date of the Preliminary Approval Order. *See id.*, § 8.

⁹ Aiwazian Decl., ¶ 9.

¹⁰ Settlement Agreement, §§ 37, 20 and 53.g.ii.

¹¹ *See id.* at § 35 for the full scope of the “Settled Claims,” *id.* at § 36 for the full scope of the “Settled PAGA Claims,” and *id.* at § 29 for the definition of the “Released Parties.”

1 On April 10, 2019, former plaintiff Spencer Sumisaki filed a Class Action Complaint for
2 Damages in the Alameda County Superior Court (“Court”), thereby commencing the above-
3 captioned lawsuit (“Action”).

4 On July 17, 2019, former plaintiff Spencer Sumisaki filed a First Amended Class Action
5 Complaint for Damages (“First Amended Complaint”) in the Action, adding Davian
6 Montgomery as a named plaintiff (“Plaintiff Montgomery”). On September 9, 2019, Defendant
7 filed an Answer to Plaintiffs’ First Amended Complaint, and thereafter, on October 3, 2019,
8 Defendant filed a First Amended Answer to Plaintiffs’ First Amended Complaint in the Action.

9 On September 5, 2019, Plaintiff Montgomery and former plaintiff Spencer Sumisaki
10 served multiple sets of discovery requests on Defendant, including Requests for Production of
11 Documents (Set One); Special Interrogatories (Sets One and Two), and Form Interrogatories-
12 General (Set One), and noticed multiple depositions of Defendant’s person(s) most
13 knowledgeable regarding organizational structure, job duties, and wage and hour practices of
14 Defendant. On December 10, 2019, Plaintiff Montgomery and former plaintiff Spencer
15 Sumisaki served additional sets of written discovery requests on Defendant, Requests for
16 Production of Documents (Set Two) and Special Interrogatories (Set Three), and served notices
17 of deposition(s) of Defendant’s person(s) most knowledgeable regarding organizational
18 structure, job duties, wage and hour practices, and affirmative defenses of Defendant, along with
19 accompanying requests for production of documents. On April 23, 2020, Plaintiff Montgomery
20 and former plaintiff Spencer Sumisaki served a notice of videotape deposition of non-party
21 witness, Chemseddine Chekill. On June 19, 2020, Plaintiff Montgomery and former plaintiff
22 Spencer Sumisaki served notices of deposition of Defendant’s person(s) most knowledgeable
23 regarding organizational structure, job duties, wage and hour practices, and affirmative defenses
24 of Defendant, along with accompanying requests for production of documents. On or about
25 December 3, 2019, January 13, 2020, February 21, 2020, and April 14, 2020 Defendant provided
26 responses and objections to Plaintiff Montgomery and former plaintiff Spencer Sumisaki’s
27 written discovery requests, and on October 20, 2019 and July 22, 2020, Defendant served
28 objections to the notices of deposition.

On April 6, 2020, Defendant propounded Special Interrogatories (Set One), Requests for Production of Documents (Set One), Form Interrogatories-General (Set One), and Form Interrogatories-Employment Law (Set One) on Plaintiff Montgomery and former plaintiff Spencer Sumisaki, and on June 5, 2020, Plaintiff Montgomery and former plaintiff Spencer Sumisaki provided their responses to the discovery requests. On July 9, 2020, Defendant propounded a Demand for Inspection to Plaintiff Montgomery and former plaintiff Spencer Sumisaki, and on August 10, 2020, Plaintiff Montgomery and former plaintiff Spencer Sumisaki provided their responses to the discovery requests. Furthermore, Class Counsel prepared for and took the deposition for Defendant's Human Resources Director on July 30, 2020. Parties also engaged in a *Belaire-West* privacy notice and opt-out process with a neutral third-party, Simpluris, Inc. (the same third-party proposed as the Settlement Administrator), and after the process was completed, the class contact information was produced to Plaintiffs' Counsel in April 2020.

On August 27, 2020, Plaintiff Montgomery and former plaintiff Spencer Sumisaki filed a Request for Dismissal of Plaintiff Spencer Sumisaki's Individual Claims in this Action Without Prejudice. On September 15, 2020, the Court issued an Order, granting the dismissal of former plaintiff Spencer Sumisaki's individual claims without prejudice.

On September 8, 2020, Plaintiff Montgomery provided supplemental responses to Defendant's Special Interrogatories (Set One), Requests for Production of Documents (Set One), Form Interrogatories-General (Set One), and Form Interrogatories-Employment Law (Set One). On September 10, 2020, Defendant propounded Special Interrogatories (Set Two) and Requests for Production of Documents (Set Two) on Plaintiff Montgomery, and on October 9, 2020, Plaintiff Montgomery provided his responses to the discovery requests. On October 23, 2020, Plaintiff Montgomery provided further supplemental responses to Defendant's Requests for Production of Documents (Set One).

On November 20, 2020, Plaintiff Montgomery filed a Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* in the Action, adding a cause of action under the Private Attorneys

General Act (“PAGA”) and adding Nadia Morales and Nina Williams as named plaintiffs (“Operative Complaint”). On December 22, 2020, Defendant filed an Answer to Plaintiffs’ Second Amended Complaint.

On June 15, 2021, Defendant noticed the depositions of Plaintiffs Montgomery, Morales, and Williams. Class Counsel prepared for and defended the depositions of Plaintiffs Nina Williams, Davian Montgomery, and Nadia Morales, which took place on July 7, 2021, July 11, 2021, and July 12, 2021, respectively, and worked with Plaintiffs to object to and respond to requests for production of documents propounded by Defendant in connection with their depositions.

Plaintiffs’ core allegation is that Defendant has violated the California Labor Code and applicable Industrial Welfare Commission Wage Orders by engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The Parties have actively litigated the Action since it was commenced on April 10, 2019. On July 21, 2021, the Parties participated in a formal, full-day mediation conducted by Jeffrey A. Ross, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator’s evaluation, through further settlement

discussions, and following a mediator's proposal, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay the Maximum Settlement Amount to resolve Plaintiffs and Settlement Class Members' Settled Claims against Released Parties, and to resolve the Settled PAGA Claims of the State of California, with respect Plaintiffs and PAGA Members, against Released Parties.¹² Subject to approval by the Court, the Net Distribution Fund will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees in an amount not to exceed 38% of the Maximum Settlement Amount (i.e., one million one hundred forty thousand dollars and no cents (\$1,140,000.00) if the Maximum Settlement Amount is \$3,000,000) ("Attorneys' Fees") and reimbursement of costs and expenses in an amount not to exceed one hundred twenty thousand dollars and no cents (\$120,000.00) ("Attorney's Costs") to Class Counsel; (2) settlement administration costs, which are currently estimated not to exceed twenty five thousand dollars and no cents (\$25,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA allocation in the amount of four hundred and thirty thousand dollars and no cents (\$430,000.00) ("PAGA Allocation"), which will be distributed 75% to the Labor Workforce Development Agency ("LWDA Payment") and 25% to PAGA Members on a *pro rata* basis ("Individual PAGA Payment(s)"); and (4) payments in the amount of up to ten thousand dollars and no cents (\$10,000.00) each to Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams (for a combined total of \$30,000) ("Service Payments").¹³ The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

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

¹² Settlement Agreement, § 50.

¹³ *Id.*, §§ 18 and 20; see also, §§ 3, 4, 34, 24, and 31.

- a. The Settlement Administrator will calculate each Settlement Class Member's number of Qualifying Workweeks and the total aggregate number of Qualifying Workweeks of all Settlement Class Members ("Qualifying Workweek(s)").¹⁴
- b. The Settlement Administrator will divide the Net Distribution Fund by the total number of Qualifying Workweeks, resulting in the value of a single Qualifying Workweek. Each Settlement Class Member's Individual Settlement Payment will then be determined by multiplying each individual Settlement Class Member's number of Qualifying Workweeks by the value of a single Qualifying Workweek.¹⁵

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

- c. The Settlement Administrator will calculate each PAGA Member's number of Qualifying PAGA Workweeks and the total aggregate number of Qualifying PAGA Workweeks of all PAGA Members ("Qualifying PAGA Workweek(s)").¹⁶
- d. The Settlement Administrator will divide the Net PAGA Distribution Amount by the total number of Qualifying PAGA Workweeks, resulting in the value of a single Qualifying PAGA Workweek. Each PAGA Member's Individual PAGA Payment will then be determined by multiplying each individual PAGA Member's number of Qualifying PAGA Workweeks by the value of a single Qualifying PAGA Workweek.¹⁷

Each Settlement Class Member's Individual Settlement Payment will be allocated as follows: twenty-five percent (25%) as wages (the "wage portion"), which will be reported on an IRS Form W-2; and the remaining seventy-five percent (75%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁸ Settlement Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.¹⁹ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Payments ("Employer Payroll Taxes") in addition to the Maximum Settlement Amount.²⁰

¹⁴ *Id.*, § 53.g.i.

¹⁵ *Id.*, § 53.g.iii.

¹⁶ *Id.*, § 53.f.i.

¹⁷ *Id.*, § 53.f.iii.

¹⁸ *Id.*, § 55.a.

¹⁹ *Ibid.*

²⁰ *Id.*, § 53.e.

Each PAGA Member's Individual PAGA Payment will be designated one hundred percent (100%) as penalties and will be reported on an IRS Form 1099 (if required).

The Individual Settlement Payment issued to Settlement Class Members and Individual PAGA Payment checks issued to PAGA Members will be negotiable for ninety (90) calendar days from the date of issuance.²¹ Checks that are not negotiated within the 90-day period will be cancelled.²² The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to Katherine and George Alexander Community Law Center, a jointly-selected non-profit organization, in compliance with California Code of Civil Procedure section 384.²³

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must notify the Settlement Administrator in writing ("Opt Out Request").²⁴ To be timely, the Class Member must mail a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice ("Response Deadline").²⁵ An Opt Out Request must: (1) contain the full name, address, and telephone number of the Class Member requesting exclusion from the Class Settlement and the case name and number of the Action; (2) be signed by the Class Member; (3) be postmarked or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at the specified address or fax number; and (4) contain a statement clearly indicating that he or she wishes to opt out of the Class Settlement.²⁶ Class Members who submit a valid and timely Opt Out Request will not be bound by the Class Settlement.²⁷ Opt Out Requests do not apply to the PAGA Settlement; PAGA Members will be bound to the PAGA Settlement (i.e., the settlement and release of Settled PAGA Claims) irrespective of whether they exclude themselves from the Class Settlement.²⁸

²¹ *Id.*, § 63.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Id.*, § 22.

²⁵ *Id.*, § 30.

²⁶ *Id.*, § 22.

²⁷ *Id.*, § 59.a.

²⁸ *Id.*, § 57.d.

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) may object to the Class Settlement.²⁹ Settlement Class Members who wish to object to the Class Settlement must submit a written objection to the Settlement Administrator on or before the Response Deadline.³⁰ The objection must: (1) contain the full name, address, and telephone number of the Settlement Class Member objecting and the case name and number of the Action; (2) be signed by the Settlement Class Member; (3) be postmarked or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at the specified address or fax number; and (4) give the legal and factual basis for objection to the Class Settlement.³¹

Class Members who wish to dispute the number of Qualifying Workweeks and/or Qualifying PAGA Workweeks credited to them in their Class Notice may do so by submitting a dispute in writing to the Settlement Administrator on or before the Response Deadline.³² The letter must: (1) contain the full name, address, and telephone number of the Class Member and the case name and number of the Action; (2) be signed by the Class Member; (3) be postmarked or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at the specified address or fax number; (4) clearly state the number of Qualified Workweeks and/or Qualified PAGA Workweeks he or she believes is correct; and (5) attach any documents the Class Member has to support his or her position that they be credited with the contended number of Qualified Workweeks and/or Qualified PAGA Workweeks.³³

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve

²⁹ *Id.*, § 57.e.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Id.*, § 58.

³³ *Ibid.*

or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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.

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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 April 10, 2019. 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.³⁴

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³⁴ Aiwazian Decl., ¶¶ 11-13.

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 Defendant.³⁵ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs and other Class Members' employment records, a detailed sampling of Class Members' time and pay data, multiple iterations of Defendant's Employee Handbook, company policy acknowledgements, job descriptions, new hire checklists, and Defendant's operations and employment practices, policies, procedures, and forms (including but not limited to those regarding Worker's Compensation Form, Employee Handbook Acknowledgement Form, Time & Attendance Policy Acknowledgement Form, California Meal Period Waiver, Missed Punch Form, Employee Counseling Notice, Timecard Exception Log, Time Clock Procedures, Work Schedules, Attendance and Punctuality, Rest Breaks and Meal Periods, Employee Classification, Change to Classification, Overtime and Payday, Performance Reviews, New Hire Audit, Attendance Records, Counseling Notices, Unpaid Suspension, and Dress, Appearance and Personal Hygiene), among other information and documents.³⁶ Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.³⁷ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto, noticed the depositions of Defendant's Person Most Knowledgeable designees and a percipient witness, and worked with Plaintiffs to provide responses and supplemental responses to multiple sets of discovery requests that were propounded by Defendant.³⁸ Class Counsel prepared for and took the deposition of Defendant's Person Most Knowledgeable witness and prepared for and defended the deposition of Plaintiffs Montgomery, Morales, and Williams.³⁹ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, *Belaire-West* process, and the production of documents and

³⁵ Aiwazian Decl., ¶ 12.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

1 data prior to the mediation.⁴⁰ Class Counsel also drafted Plaintiffs' mediation brief and prepared
2 for and attended court proceedings, settlement negotiations, and the mediation, among other
3 tasks.⁴¹

4 The Parties engaged in extensive settlement negotiations and participated in a formal,
5 full-day mediation conducted by Jeffrey A. Ross, Esq. a well-respected mediator experienced in
6 mediating complex labor and employment matters.⁴² Prior to and during the mediation and
7 settlement discussions, the Parties exchanged class information and engaged in an intensive
8 discussion regarding their evaluations of the case and various aspects of the case, including but
9 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
10 with class certification and/or representative adjudication, the law relating to off-the-clock
11 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as
12 well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴³
13 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
14 adversarial position.⁴⁴ Arriving at a settlement that was acceptable to both Parties was not easy.
15 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
16 certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class
17 certification and prevail at trial.⁴⁵ After conducting investigations, significant formal and
18 informal discovery, extensive settlement negotiations, and with the aid of the mediator's
19 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
20 issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that
21 would attend further litigation.⁴⁶

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25 ⁴⁰ *Ibid.*

26 ⁴¹ *Ibid.*

27 ⁴² Aiwazian Decl., ¶ 11.

28 ⁴³ *Id.*, ¶ 11.

⁴⁴ *Ibid.*

⁴⁵ Aiwazian Decl., ¶¶ 11, 16-18.

⁴⁶ *Ibid.*

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁷ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁸ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁹ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁵⁰

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

The Settlement, which provides for a Maximum Settlement Amount of three million dollars and no cents (\$3,000,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁵¹ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁵² The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵³ Moreover, considering all of the facts and circumstances of the **Action**, the Settlement represents a fair, reasonable, and adequate recovery for the Class, State of California, and PAGA Members.⁵⁴

Assuming that the Maximum Settlement Amount remains at \$3,000,000, and assuming Attorneys' Fees, Attorneys' Costs, Service Payments, PAGA Allocation, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁰ *Id.*, ¶¶ 6-7.

⁵¹ Aiwazian Decl., ¶¶ 11, 13, 14 & 21.

⁵² *Id.*, ¶¶ 11-13.

⁵³ *Id.*, ¶¶ 16-18.

⁵⁴ *Id.*, ¶¶ 11, 13, & 21.

the Settlement, the Settlement provides for a Net Distribution Fund that is currently estimated to be one million seven hundred forty five thousand dollars and no cents (\$1,745,000.00).⁵⁵ As discussed in Part III, *supra*, the entire Net Distribution Fund 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 Payment will be calculated based on his or her Qualifying Workweeks.⁵⁶ Additionally, the entire PAGA Allocation of \$430,000 will be distributed to the Labor and Workforce Development Agency and PAGA Members in accordance with the PAGA statute. 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, State of California, and PAGA Members.⁵⁷ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁸ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop

⁵⁵ *Id.*, ¶ 14.

⁵⁶ Settlement Agreement, § 53.g.

⁵⁷ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁵⁸ *Id.*, ¶¶ 11-13 & 18.

valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁹ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁶⁰

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶¹ California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

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

⁵⁹ *Id.*, ¶ 18.

⁶⁰ *Id.*, ¶¶ 11-13 & 16-18.

⁶¹ Settlement Agreement, § 49.

1 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
2 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
3 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

4 Based on information provided by Defendant, as of November 29, 2021, the Class
5 consists of approximately two thousand and fifty-four (2,054) individuals.⁶² This class is
6 sufficiently numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35
7 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is
8 not practical at that point). Further, all Class Members can and will be identified by Defendant
9 to the Settlement Administrator through a review of Defendant’s employment records regarding
10 hourly-paid or non-exempt employees in California during the Class Period. As such, the Class
11 is ascertainable and sufficiently numerous.

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

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

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

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28 ⁶² Aiwazian Decl., ¶ 9.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶³ Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁴

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁵ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁶

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

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

Class Counsel has litigated the matter for over two years, and was actively preparing the matter for class certification and trial.⁶⁷ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. As discussed above, Class Counsel conducted extensive investigations into the facts of the case and formal and informal

⁶³ Aiwazian Decl., ¶ 16.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Aiwazian Decl., ¶¶ 11-13.

discovery, including, and not limited to, engaging in extensive formal written discovery and depositions. Class Counsel reviewed thousands of pages of documents and data⁶⁸ and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, *Belaire-West* process, discovery, and the production of documents and data prior to mediation.⁶⁹ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷⁰

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷¹

The Settlement establishes a Maximum Settlement Amount of three million dollars and no cents (\$3,000,000.00)⁷², and provides for Class Counsel to apply to the Court for attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Maximum Settlement Amount (i.e., \$1,140,000.00 if the Maximum Settlement Amount is \$3,000,000) and an amount not to exceed one hundred twenty thousand dollars and no cents (\$120,000.00) for costs and expenses.⁷³ 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 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 (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 attorneys' fees and reimbursement of litigation costs and expenses, and that an

⁶⁸ *Id.*, ¶ 12.

⁶⁹ *Ibid.*

⁷⁰ *Id.*, ¶ 11.

⁷¹ *Id.*, ¶¶ 6-7.

⁷² But see Settlement Agreement, § 69 (providing for *pro rata* increase of the Maximum Settlement Amount depending on the Workweeks count).

⁷³ Settlement Agreement, §§ 18, 3 and 4.

award of attorneys' fees and reimbursement of litigation costs and expenses will be sought, as provided for by the Settlement.⁷⁴

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).

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'

⁷⁴ *Id.*, Exh. A.

1 fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around
2 one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
3 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
4 actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case
5 No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior
6 Court Case No. BC263646 (Sept. 2006) (wage and hour).

7 Class Counsel has borne all of the risks and costs of litigation and will not receive any
8 compensation until recovery is obtained.⁷⁵

9 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
10 and further argument at the time of filing Plaintiffs' motion for final approval of the Settlement
11 and application for the attorneys' fees and reimbursement of litigation costs and expenses, and
12 at the Final Approval Hearing. Considering the work performed and the risks incurred, the
13 attorneys' fees and reimbursement of litigation costs and expenses provided for by the
14 Settlement, and to be requested by Class Counsel, are well within the range of reasonableness.

15 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.**

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

21 The proposed Class Notice⁷⁶ describes the Settlement, the deadlines and procedures to
22 file and serve an objection to the Class Settlement, mail a request for exclusion from the Class
23 Settlement, and/or mail a dispute regarding Qualifying Workweeks and/or Qualifying PAGA
24 Workweeks, and the date and time set for the Final Approval Hearing.⁷⁷

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27 ⁷⁵ Aiwazian Decl., ¶ 19.

28 ⁷⁶ Settlement Agreement, Exh. A.

⁷⁷ *Ibid.*

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁸ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁹ The proposed Class Notice also apprises the Class Members and PAGA Members of, *inter alia*, how their Individual Settlement Payment and/or Individual PAGA Payment is calculated and the number of Qualifying Workweeks and/or Qualifying PAGA Workweeks credited to them.⁸⁰

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

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

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁸¹ Any undeliverable Class Notice that is returned to the Settlement Administrator with a forwarding address or if a Class Member personally provides an updated address to the Settlement Administrator on or before the Response Deadline, will be re-mailed to the forwarding address by First-Class U.S. mail.⁸² With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Settlement Agreement, § 57.c.

⁸² *Id.*, § 58.f.i.

Settlement Administrator shall conduct a search of the National Change of Address database and, if an alternate address that is likely to be more current is located, proceed to re-mail the Class Notice by First-Class U.S. mail to the alternate address.⁸³ The Settlement Administrator will receive and process Opt Out Requests, objections to the Class Settlement, and any Workweeks Disputes.⁸⁴

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Payments; mail the Individual Settlement Payment to Settlement Class Members and Individual PAGA Payment checks to PAGA Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees, Attorney's Costs, Service Payments, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁵ The Settlement Administration Costs are currently estimated to be twenty five thousand dollars and no cents (\$25,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁸⁶

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁷

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⁸³ *Ibid.*

⁸⁴ *Id.*, § 58.g.

⁸⁵ *Ibid.*; Aiwazian Decl., ¶ 15.

⁸⁶ Settlement Agreement, § 53.c.

⁸⁷ Settlement Agreement, § 57.c.

Within fifteen (15) calendar days after notice of entry of the Preliminary Approval Order, Defendant shall provide to the Settlement Administrator a data file that identifies for each Class Member, his/her full name, last-known address, Social Security number, and the number of Qualifying Workweeks and, if applicable, Qualifying PAGA Workweeks for each Class Member (collectively, “Class List”).⁸⁸

Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁹ If a Class Notice is returned to the Settlement Administrator with a forwarding address or if a Class Member personally provides an updated address to the Settlement Administrator on or before the Response Deadline, the Settlement Administrator will re-send the Class Notice to the forwarding address.⁹⁰ If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address by conducting a search of the National Change of Address Database, and re-mail the Class Notice to the Class Member.⁹¹ Class Members will have until the applicable Response Deadline to mail an Opt Out Request, submit a Workweeks Dispute, and/or to file and serve an objection to the Class Settlement.⁹²

Defendant will make a deposit of the Maximum Settlement Amount, together with an amount sufficient to pay Employer Payroll Taxes, into an account established by the Settlement Administrator, within fourteen (14) business days of the Effective Date.⁹³ Within fourteen (14) calendar days after the Maximum Settlement Amount has been deposited by Defendant, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Individual PAGA Payments to PAGA Members; (3) the Court-approved Service Payments to Plaintiffs; (3) the Court-approved Attorneys’ Fees and Attorney’s Costs to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁹⁴

⁸⁸ *Id.*, § 57.a.

⁸⁹ *Id.*, § 57.c.

⁹⁰ *Id.*, § 58.f.

⁹¹ *Ibid.*

⁹² *Id.*, §§ 22, 21, and 58.

⁹³ *Id.*, § 62.

⁹⁴ *Id.*, §§ 62.b.-c.

The Individual Settlement Payment and Individual PAGA Payment checks will remain negotiable for ninety (90) calendar days from the date of their issuance.⁹⁵ Checks that are not negotiated within the 90-day period will be cancelled.⁹⁶ The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Katherine and George Alexander Community Law Center.⁹⁷

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR SERVICE PAYMENTS

Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Service Payments in the amounts of up to ten thousand dollars and no cents (\$10,000.00) each to Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams (for a combined total of \$30,000).⁹⁸ 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 a service payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Service Payments are fair and appropriate. Plaintiffs 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.⁹⁹ For example, all three Plaintiffs prepared for and appeared for deposition, all three Plaintiffs objected to and provided

⁹⁵ *Id.*, § 64.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Id.*, § 31.

⁹⁹ Aiwazian Decl., ¶ 20; Declaration of Davian Montgomery in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Montgomery Decl."), ¶¶ 4-5; Declaration of Nadia Morales in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Morales Decl."), ¶¶ 4-5; Declaration of Nina Williams in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Williams Decl."), ¶¶ 4-5.

response to requests for production of documents propounded by Defendant in connection with their depositions, and Plaintiff Montgomery provided response to additional formal written discovery requests propounded by Defendant. Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.¹⁰⁰ Accordingly, it is appropriate and just for Plaintiffs to each receive a Service Payment for their services on behalf of the Class, in addition to their Individual Settlement Payments and/or Individual PAGA Payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request 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 Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams as Class Representatives; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees, Attorney's Costs, Service Payments, PAGA Allocation, 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 May 24, 2022.

Dated: January 5, 2022

LAWYERS for JUSTICE, PC

By:


Edwin Aiwanian
Attorneys for Plaintiffs

¹⁰⁰ Aiwanian Decl., ¶ 20; Montgomery Decl., ¶¶ 3-6; Morales Decl., ¶¶ 3-6; Williams Decl., ¶¶ 3-6.