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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

JOSE SALDANA, individually, and on behalf
of other members of the general public
similarly situated; THOMAS JOHNS,
individually, and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act,

Plaintiffs,

vs.

INTERNATIONAL E-Z UP INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendant.

Case No.: RIC1902873

Honorable Craig G. Riemer
Department 1

CLASS ACTION

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

[Plaintiffs' Compliance Chart in Support of
Renewed Motion for Preliminary Approval;
Declaration of Proposed Class Counsel (Edwin
Aiwazian); Declarations of Proposed Class
Representatives (Jose Saldana and Thomas
Johns); Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declaration of Defendant's
Chief Financial Officer (Katie Meltzer);
Declaration of Defendant's Counsel (Brent M.
Giddens); Declaration of Proposed Settlement
Administrator (Michael Bui); Declaration of
Proposed *Cy Pres* Recipient (Jessica Munoz);
and [Proposed] Order filed concurrently
herewith]

Reservation No. RES247987
Date: August 4, 2021
Time: 8:30 a.m.
Dept: 1

Complaint Filed: May 10, 2019
Trial Date: None Set

- 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 Attorneys' Fees, Litigation Costs, Enhancement Awards, and Settlement Administration Costs.

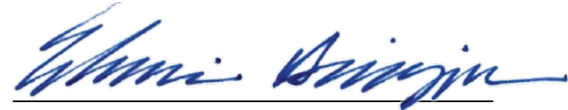
This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement, allow the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Compliance Chart, the Declarations of Proposed Class Representatives (Jose Saldana and Thomas Johns), Proposed Class Counsel (Edwin Aiwanian), Defendant's Chief Financial Officer (Katie Meltzer), Defendant's Counsel (Brent M. Giddens), Proposed Settlement Administrator (Michael Bui), and Proposed *Cy Pres* Recipient (Jessica Munoz) 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: July 7, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jose Saldana and Proposed Thomas Johns (together, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the First Amended Joint Stipulation of Class and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other allegedly aggrieved employees, on the one hand, and Defendant International E-Z up Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Fund of \$950,000 on a non-reversionary basis.¹ The Gross Settlement Fund includes the following: (1) the Net Settlement Amount, which is to be distributed to Settlement Class Members; (2) Enhancement Awards to Plaintiffs; (3) Attorneys’ Fees and Litigation Costs to Class Counsel; (4) allocation to the settlement of claims arising under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* (“PAGA Settlement Amount”) of which 75% will be paid to the Labor and Workforce Development Agency and 25% will be paid to Plaintiffs and Class Members who worked for Defendant within the time period from May 10, 2018 to May 8, 2020 (“Aggrieved Employees”); and (5) Settlement Administration Costs to the Settlement Administrator.²

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

All hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period May 10, 2015 to May 8, 2020 (“Class” or “Class Members”).³

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¹ Settlement Agreement, attached as “EXHIBIT 1” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ intro.

² *Id.*, ¶¶ I.d., I.p., I.s., I.ff., & I.ll.

³ *Id.*, ¶ I.e & I.i. See *id.*, ¶ I.ii for the definition of “Preliminary Approval Order.”

As of May 2020, the Class is currently estimated to consist of approximately two hundred eighty (280) individuals, of which one hundred and eighty-five (185) individuals are considered to be Aggrieved Employees.⁴

Class Members who do not submit a valid and timely written request to be excluded from the Class Settlement or completed Exclusion Form (“Settlement Class Members”) will receive a share of the Net Settlement Amount on a *pro rata* basis, based upon the number of weeks during the Class Period in which they worked one or more days (“Workweeks”).⁵ The Net Settlement Amount refers to the Gross Settlement Fund, less the following amounts subject to approval by the Court: Attorneys’ Fees, Litigation Costs, Settlement Administration Costs, Enhancement Awards, and PAGA Settlement Amount.⁶

The Settlement resolves the Released Class Claims of Settlement Class Members and Released PAGA Claims of the State of California.⁷

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement and provisional certification of the Class for settlement purposes and to address the requirements set forth in the Class Action Case Management Order #1 (“CMO”) issued by this Court, Plaintiffs also move for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).⁸

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant International E-Z up Inc. (“Defendant”) is a manufacturer of portable shelters for personal and professional use, such as camping, vacations, and sporting events. Plaintiff Jose Saldana is a former employee of Defendant and Plaintiff Thomas Johns is a current employee of Defendant.

⁴ Aiwazian Decl., ¶ 9; Declaration of Katie Melzer in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Melzer Decl.”), ¶ 9

⁵ Settlement Agreement, ¶ I.kk & I.pp. “Class Period” means the period from May 10, 2015 until May 8, 2020 or the date of preliminary approval, whichever is sooner. *Id.*, ¶ I.i.

⁶ *Id.*, ¶ I.y.

⁷ See *id.* at ¶ 5.01 for the full scope of the “Released Class Claims”; see *id.* ¶ 5.02 for the full scope of the “Released PAGA Claims”; see *id.* at ¶ 5.01 the definition of the “Released Parties.”

⁸ To address the Court’s CMO § H.3.k, a Compliance Chart is filed concurrently herewith.

On May 10, 2019, Plaintiff Saldana filed a Class Action Complaint for Damages (“Original Complaint”) in the Riverside County Superior Court, Case No. RIC1902873, thereby commencing the above-captioned action (the “Action”).

On July 1, 2019, Defendant filed its Answer to Plaintiff Saldana’s Original Complaint.

The Parties have actively litigated this matter since the Action was commenced on May 10, 2019. On December 11, 2019 and February 8, 2020, the Parties participated in mediation sessions conducted by Jeffrey Krivis, Esq., a well-respected mediator of complex wage-and-hour class and PAGA actions. The Parties have conducted significant investigation and informal discovery into the claims and engaged in extensive discussions about the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses thereto, to try to resolve the Action. With the aid of the mediator, substantial negotiations, and feedback provided by this Court in connection with the original settlement and motion seeking preliminary approval thereof, the Parties reached the Settlement described herein to resolve this Action in its entirety.

On March 25, 2021, the First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“First Amended Complaint”) was filed in the Action, adding Plaintiff Thomas Johns as a plaintiff in the Action and his cause of action under the California Private Attorneys General Act, California Labor Code § 2698, *et seq.* (“PAGA”).⁹

Plaintiffs’ core allegation is that Defendant has violated the California Labor Code and 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 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 and associated waiting-time penalties, failing to provide compliant wage statements, failing to keep

⁹ Originally, Plaintiff Saldana sought leave to file the First Amended Complaint, by way of his Motion for Preliminary Approval of Class Action Settlement that was filed on March 3, 2021 and noticed for hearing on March 25, 2021. The First Amended Complaint was not filed sooner because notice to the Labor and Workforce Development Agency was sent on behalf of Plaintiff Johns on December 30, 2020, and thus the waiting period under the PAGA statute, before the First Amended Complaint could be filed, was set to expire March 5, 2021.

complete and accurate payroll records, and failing to reimburse necessary business-related expenses, and thereby engaged in unfair business practices under California Business and Professions Code, § 17200, *et seq.* and conduct giving rise to civil penalties recoverable under PAGA. Plaintiffs contend that they and the Class Members are entitled to, *inter alia*, unpaid wages, statutory penalties, and attorneys’ fees, and that the State of California is entitled to civil penalties.

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

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Fund in the amount of \$950,000 to resolve the matter. Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Fund: (1) attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Fund (i.e., \$332,500 out of \$950,000) (“Attorneys’ Fees”) and reimbursement of actual costs and expenses in an amount not to exceed Forty Thousand Dollars (\$40,000) (“Litigation Costs”) to Class Counsel; (2) Enhancement Awards in an amount of up to \$7,500 to Plaintiff Saldana and \$5,000 to Plaintiff Johns (for a combined amount of \$13,500); (3) PAGA Settlement Amount of \$75,000, of which 75% will be distributed to the LWDA (“LWDA Payment”) and 25% will be distributed to Aggrieved Employees (“Net PAGA Payment”); and (4) Settlement Administration Costs, which are not to exceed Ten Thousand Dollars (\$10,000), to the Settlement Administrator.¹⁰ The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.¹¹ To the extent Settlement Administration Costs are awarded in an amount that is less than \$10,000,

¹⁰ Settlement Agreement, ¶¶ I.d., I.p., I.ff., 3.06(a).

¹¹ *Id.*, ¶ 3.06(d).

the unawarded amount will be a part of the Net Settlement Amount. The Net Settlement Amount will be distributed to Settlement Class Members and the Net PAGA Payment will be distributed to Aggrieved Employees without any reversion to Defendant.

The Settlement Administrator will determine each Settlement Class Member's *pro rata* share of the available Net Settlement Amount ("Individual Settlement Payment(s)"), by multiplying the value of the Net Settlement Amount by a ratio that is determined by dividing a Settlement Class Member's Workweeks by the Total Workweeks.¹² Each Individual Settlement Payment will be allocated as follows: one-third (1/3) to wages, which will be reported on an IRS Form W-2; and two-thirds (2/3) to penalties and interest, which will be reported on an IRS Form 1099.¹³ Settlement Class Members will be issued payment of their Individual Settlement Payments after reduction for the employee's share of taxes due on the portion of Individual Settlement Payments allocated to wages.¹⁴ Defendant will pay the employer's share of payroll taxes separately and in addition to the Gross Settlement Fund.¹⁵

The Settlement Administrator will determine each Aggrieved Employee's *pro rata* share of the Net PAGA Payment (i.e., 25% of the PAGA Settlement Amount) ("Individual PAGA Payment") by multiplying the PAGA Payment by a ratio that is determined by dividing an Aggrieved Employee's Pay Periods by the Total Pay Periods.¹⁶ Each Individual PAGA Payment will be allocated entirely as penalties and will be reported on IRS Form 1099.¹⁷

Individual Settlement Payments and Individual PAGA Payments may be combined into one check when applicable.¹⁸ Checks issued to Settlement Class Members and/or Aggrieved Employees that have not been cashed, deposited, or otherwise negotiated within one hundred eighty (180) calendar days after the date of issuance, will be cancelled and the funds associated such cancelled will be distributed to a cy pres recipient, Riverside CASA. Riverside CASA is a non-profit organization providing legal services to the indigent and primarily devotes its

¹² Settlement Agreement, ¶¶ 3.06(e).

¹³ *Id.*, ¶ 3.06(e).

¹⁴ *Ibid.*

¹⁵ Settlement, ¶ 3.06(e).

¹⁶ *Id.*, ¶ 3.06(e).

¹⁷ *Id.*, ¶ 3.06(e).

¹⁸ *Ibid.*

resources to protecting the workplace rights of California’s low-wage workers.¹⁹ Riverside CASA was selected as the proposed *cy pres* recipient because of the work it does in the workplace for low income and indigent individuals throughout California and specifically in Riverside County.²⁰ Neither the Parties, their attorneys, nor attorneys at their respective law firms have any relationship with the proposed *cy pres* recipient.²¹

A Class Member who wishes to opt out of the Class Settlement must complete and submit a timely Exclusion Form or written request to be excluded from the Class Settlement (“Opt-Out Request”) to the Settlement Administrator, postmarked or fax-stamped on or before the date that is forty-five (45) calendar days after the Notice Packet is first mailed (“Response Deadline”) or, in the case of a re-mailed Notice Packet, the Response Deadline will be extended by fifteen (15) calendar days.²² A written Opt-Out Request must: (1) contain the Class Member’s full name, telephone number, address, and the last four numbers of his or her Social Security number; (2) list the case name and number of the Action; and (3) clearly state that the Class Member wishes to be excluded from the Class Settlement.²³ The proposed Exclusion Form that is attached as “EXHIBIT 2” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement includes this information. Any Class Member who opts out of the Class Settlement will not be entitled to any recovery under the Class Settlement and will not be bound by the Class Settlement or have any right to object, appeal, or comment on the Class Settlement.²⁴ Class Members who worked for Defendant within the PAGA Period are Aggrieved Employees regardless of whether they submit a timely and valid Opt Out Request and will release the Released PAGA Claims and be issued an Individual PAGA Payment.²⁵

¹⁹ *Id.*, ¶ 3.06(e).

²⁰ See Declaration of Jessica Munoz (For Proposed Cy Pres Recipient Riverside CASA) (“Munoz Decl.”), ¶ 3.

²¹ Aiwazian Decl., ¶ 23; Declaration of Jose Saldana in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of Class Action Settlement (“Saldana Decl.”), ¶ 7; Declaration of Thomas Johns in Support of Plaintiffs’ Renewed Motion for Preliminary Approval of Class Action Settlement, ¶ 7 (“Johns Decl.”); Declaration of Brent M. Giddens in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, ¶ 3.

²² Settlement Agreement, ¶¶ 3.04(b). For the full definition of “Response Deadline,” see *id.*, ¶ 3.04(a). See also Exclusion Form attached as “EXHIBIT 2” to [Proposed] Order Granting Preliminary Approval of Class Action Settlement (“Proposed Order”) filed concurrently herewith.

²³ Settlement Agreement, ¶ 3.04(b).

²⁴ *Id.*, ¶ 3.04(b).

²⁵ *Ibid.*

Settlement Class Members who wish to object to the Class Settlement must complete and submit a complete and timely Objection Form or written objection to the Class Settlement (“Objection”) to the Settlement Administrator, mailed or postmarked on or before the Response Deadline, or appear at the Final Approval Hearing and make an oral objection.²⁶ To be valid, a written Objection must: (1) contain the Settlement Class Member’s full name, telephone number, address, and the last four numbers of his or her Social Security number; (2) list the case name and number of the Action; (3) clearly state that the Settlement Class Member objects to the Class Settlement; and (4) clearly state the factual and/or legal basis of their objection.²⁷ The proposed Objection Form that is attached as “**EXHIBIT 3**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement includes this information. Settlement Class Members who do not submit a complete and timely Objection in accordance with these requirements will be deemed to have waived all objections to the Class Settlement.²⁸

Class Members who wish to dispute the number of Workweeks credited to them as stated in the Class Notice that is mailed to them, may do so by submitting a written dispute to the Settlement Administrator (“Workweek Challenge”), postmarked or faxed no later than the Response Deadline. In order to be valid, a Workweek Challenge must: (1) contain the Class Member’s full name, telephone number, address, and the last four numbers of his or her Social Security number; (2) list the case name and number of the Action; (3) clearly state that the Class Member believes the Workweeks allocated to him or her is not correct; (4) clearly state the number of Workweeks the Class Member contends is correct; and (5) attach any written documentation to support the Class Member’s contention.²⁹ Any Workweek Challenge will be resolved by the Settlement Administrator.³⁰

V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

²⁶ Settlement Agreement, ¶ 3.04(c).

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Id.*, ¶ 3.04(a).

³⁰ *Ibid.*

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 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 Plaintiffs 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.

VI. 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 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 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 May 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 matter for class certification and trial.³¹

Prior to reaching the Settlement, Class Counsel conducted significant investigation into the facts of the case and engaged in extensive informal discovery and review and analysis of thousands of pages of documents and data produced by Defendant and obtained from other sources.³² The data and documents that Class Counsel reviewed and analyzed included, and was not limited to: Plaintiffs' employment records, sampling of time and payroll records, Employee Handbook, weekly Earnings Schedule, forms, internal memoranda (including, Building Hours and Card Access Areas and Employee Parking), Evaluation Guideline, Meal Break Waiver, Time Clock Missed Punch Request Form, acknowledgments (including Employee Payroll Swipe Card), Property Inspection Policy, Prohibited Time Clock Actions, and Defendant's operations and employment practices, procedures, and policies, among other information and documents.³³ Class Counsel interviewed Plaintiffs to gather facts and to identify potential witnesses.³⁴ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings and the production of documents and data.³⁵ Class Counsel also prepared for and attended court proceedings and settlement negotiations, among other tasks.³⁶ Class Counsel also drafted a mediation brief, and prepared for and attended two (2) sessions of mediation.

Prior to and during the settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the Action and various aspects of the Action, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and representative adjudication, the law relating to meal and rest periods, wage-and-hour enforcement, and PAGA representative claims as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁷ During all settlement discussions, the Parties conducted their negotiations at arm's

³¹ Aiwazian Decl., ¶¶ 11-13, 28.

³² *Id.*, ¶ 12.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Aiwazian Decl., ¶ 11.

length in an adversarial position.³⁸ Arriving at a settlement that was acceptable to both Parties was not easy and required the aid of an experienced mediator. Defendant and its counsel felt strongly about their ability to prevail on the merits, at certification and at trial, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.³⁹ After conducting extensive investigations, informal discovery, and settlement negotiations, the Parties have agreed that this case is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁰

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.⁴¹ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴² 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, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴³ 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.⁴⁴

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

The Settlement, which provides for a Gross Settlement Fund of \$950,000, represents a fair, adequate, and reasonable resolution of this case.⁴⁵ The Settlement was calculated using the information and class data provided by Defendant and obtained from other sources during the litigation and case investigation.⁴⁶

³⁸ *Ibid.*

³⁹ *Id.*, ¶¶ 16-18.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶¶ 11-13, 16-18.

⁴⁴ Aiwasian Decl., ¶¶ 6-7.

⁴⁵ *Id.*, ¶¶ 11, 13-14, 83.

⁴⁶ *Id.*, ¶¶ 11-13.

1 The Settlement takes into account the potential risks and rewards inherent in any case
2 and, in particular, in this case.⁴⁷ Here, Defendant asserted many arguments challenging the
3 strength of Plaintiffs' case. With respect to the overtime claims, Defendant contends that its
4 overtime policies and practices comply with the law and that it correctly calculated and paid
5 Class Members' regular rate of pay for purposes of paying overtime. Defendant argued that it
6 paid Class Members at least the California minimum wage for all hours worked. With respect
7 to the meal and rest break claims, Defendant argues that it has compliant meal and rest break
8 policies and practices and that it authorized and permitted the required breaks. Moreover,
9 Defendant contends that to the extent Plaintiffs sought to rely on time records showing any late,
10 short, or skipped meal periods, those records would not establish a meal period violation because
11 California law does not require employers to force employees to take meal periods—it simply
12 requires employers to authorize and permit the meal periods. Defendant also argues that it
13 timely paid Class Members during their employment and upon separation, and that Defendant
14 provided accurate and itemized wage statements to Class Members. Defendant contended that
15 it reimbursed Class Members for all business-related expenses.

16 In addition to these merits-based arguments, Defendant contends that Plaintiffs faced an
17 uphill battle with regard to class certification and proceeding on a representative basis.
18 Defendant contends that any overtime, meal period, rest period, minimum wage, wage
19 statement, final pay, and timely pay claims premised on off-the-clock work, and any business
20 expense reimbursement claims would require an individualized analysis that would preclude
21 certification. For example, Defendant contended that individualized inquiries would be required
22 to determine the number of short, late, or missed meal breaks per person; whether it was the
23 employee's choice to take each short, late, or missed meal; if and when employees performed
24 off-the-clock work; whether Defendant had actual or constructive knowledge of the off-the-
25 clock work; whether the business expense was incurred in direct consequence of the discharge
26 of duties or obedience to Defendant's directions; whether those expenditures were reasonable;
27 and whether Defendant was aware of and did not reimburse those expenses. Considering all of
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⁴⁷ *Id.*, ¶¶ 16-18.

the facts and circumstances of this case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁸

Assuming that the Attorneys' Fees, Litigation Costs, Enhancement Awards, PAGA Settlement Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Net Settlement Amount is estimated to be no less than \$480,000.⁴⁹ As discussed in Part III, *supra*, the entire Gross Settlement Fund will be fully paid out in accordance with the Settlement Agreement.⁵⁰ The amount of each Settlement Class Member's Individual Settlement Payment will be calculated and apportioned from the Net Settlement Amount based on his or her Workweeks and the amount of each Aggrieved Employee's Individual PAGA Payment will be calculated and apportioned from the Net PAGA Payment based on his or her Pay Periods.⁵¹ 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.⁵² 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 significant discovery and investigation have been completed. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

⁴⁸ Aiwazian Decl., ¶¶ 11, 13, & 79.

⁴⁹ *Id.*, ¶ 14.

⁵⁰ Settlement Agreement, ¶ 3.06(a).

⁵¹ *Id.*, ¶ 3.06(d)-(e).

⁵² Aiwazian Decl., ¶¶ 11, 13, & 79.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant investigations and informal discovery, and exchanged a large volume of documents, data, and information prior to engaging in mediation and settlement discussions.⁵³ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of the strength of Defendant's defenses thereto.⁵⁴ As outlined in the Declaration of Edwin Aiwarzian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁵

VII. 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.⁵⁶ 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 duplication, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable

⁵³ Aiwarzian Decl., ¶¶ 11-13, 18.

⁵⁴ *Id.*, ¶¶ 18, 33, 38, 42, 50, & 54.

⁵⁵ *Id.*, ¶¶ 11-13, 16-18, 25-78.

⁵⁶ Settlement Agreement, ¶ 3.01.

1 to class certification for settlement purposes as discussed below.

2 **A. The Class Is Ascertainable and Sufficiently Numerous.**

3 “Ascertainability is required in order to give notice to putative class members as to whom
4 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
5 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
6 by describing a set of common characteristics sufficient to allow a member of that group to
7 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
8 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
9 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

10 This Action involves a class of approximately two hundred eighty (280) individuals.⁵⁷
11 This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
12 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as
13 joinder is not practical at that point). Further, all Class Members can and will be identified by
14 Defendant to the Settlement Administrator through a review of Defendant’s employment
15 records regarding individuals it employed as hourly-paid or non-exempt employees in
16 California. As such, the Class is ascertainable and sufficiently numerous.

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

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

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28

⁵⁷ Aiwazian Decl., ¶ 9; Melzer Decl., ¶ 9.

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in this lawsuit—including, *inter alia*: whether Defendant properly tracked, calculated, and paid overtime to Class Members; whether Defendant paid Class Members at least minimum wage for all hours worked; whether Defendant authorized and permitted compliant meal and rest breaks; whether Defendant timely paid wages during employment and provided accurate itemized wage statements to Class Members; whether Defendant timely paid final wages upon Class Members’ separation of employment; and whether Class Members incurred reasonable business expenses and, if so, whether Defendant reimbursed them.

Based on documents and information obtained in this case, Plaintiffs contend that all of the Class Members were subject to the same uniform operations and employment practices, policies, and procedures during the time period at issue.⁵⁸ Plaintiffs’ claims arise from Defendant’s alleged uniform policies and systematic schemes, 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 compliant wage statements, failing to keep complete and accurate payroll records, and failing to reimburse necessary business-related expenses.⁵⁹

Plaintiffs also contend that Defendant’s recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁰ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to

⁵⁸ Aiwazian Decl., ¶ 16.

⁵⁹ *Id.*, ¶¶ 16, 25, 29, 35, 40, 46-47, 53, 56, 60, & 67.

⁶⁰ *Ibid.*

1 them from Defendant during the time period at issue.⁶¹ Defendant denies all of these allegations
2 and contends that it complied with California wage-and-hour requirements both in its policies
3 and through its practices, raising defenses in response to each of Plaintiffs' claims.

4 Plaintiffs maintain (and Defendant denies) that the outcome of this litigation would be
5 determined by Defendant's alleged uniform operations and employment policies and procedures
6 that applied across its hourly-paid or non-exempt employees in California during the Class
7 Period. Accordingly, the Court should certify the Class for settlement purposes only.

8 ///

9 **VIII. APPOINTMENT OF CLASS COUNSEL AND WHY THE ALLOCATIONS FOR**
10 **ATTORNEYS' FEES AND LITIGATION COSTS ARE APPROPRIATE**

11 Class Counsel has litigated the Action since May 10, 2019 and was actively preparing
12 the matter for class certification and trial.⁶² The ongoing work has been extensive, demanding,
13 and ultimately successful in achieving a substantial settlement resolution. Class Counsel
14 conducted extensive investigations into the facts of the case and informal discovery, including,
15 and not limited to, reviewing a large volume of documents and data produced by Defendant and
16 obtained from other sources.⁶³ Class Counsel also interviewed and obtained information from
17 Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation
18 calculations, and met and conferred with Defendant's counsel regarding the pleadings and the
19 production of documents and data.⁶⁴ Counsel for the Parties also undertook extensive settlement
20 discussions, including and not limited to, two (2) sessions of mediation.⁶⁵

21 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
22 experience to obtain a great result.⁶⁶

23 The Settlement establishes a Gross Settlement Fund of \$950,000, and provides for Class
24 Counsel to apply to the Court for an award in an amount not to exceed thirty-five percent (35%)

26 ⁶¹ *Ibid.*

27 ⁶² Aiwazian Decl., ¶¶ 11-13.

28 ⁶³ *Id.*, ¶ 12.

⁶⁴ *Ibid.*

⁶⁵ *Id.*, ¶ 11.

⁶⁶ Aiwazian Decl., ¶¶ 6-7.

of the Gross Settlement Fund (i.e., \$332,500) for attorneys’ fees and reimbursement of actual costs and expenses not to exceed \$40,000.⁶⁷ The amount allocated toward Attorneys’ Fees under the Settlement is appropriate in light of various factor, including: the risk that Class Counsel took in bringing and litigating this case; the extensive time, effort, and expense that Class Counsel dedicated to the case; the skill and determination that Class Counsel has shown; the results that Class Counsel has achieved throughout the litigation; the value of the Settlement that Class Counsel has achieved for the Class Members; and the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The amount allocated toward Litigation Costs under the Settlement is appropriate because Class Counsel has incurred reasonable expenses in the commencement and prosecution of the Action and engaged in extensive settlement negotiations (which included preparation and attendance at two mediations). The proposed Notice provides the Class Members with information about the amount allocated toward Attorneys’ Fees and Litigation Costs, and that Attorneys’ Fees and Litigation Costs will be sought, as provided for by the Settlement.⁶⁸

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. The contemplated thirty-five percent attorneys’ fees provided for by the Settlement is reasonable because 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

⁶⁷ Settlement Agreement, ¶ 3.06(b).

⁶⁸ *Id.*, Exh. A.

1 and the settlement agreement provides that the defendant agrees to paying the attorneys a
2 percentage of the same, as is the case here, use of that percentage method is appropriate. *Id.* at
3 32.

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

11 Courts award fees to serve as an economic incentive for lawyers to undertake litigation,
12 and thereby enhance and facilitate access to the judicial system for adjudication of meritorious
13 claims, and to deter wrongdoing. This is especially true in situations where multiple similar
14 alleged wrongs would not be economically feasible to pursue individually, such as here. See A.
15 Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

16 The contemplated attorneys' fees percentage is reasonable when taking into account the
17 facts and circumstances surrounding the case, and that, historically, courts have awarded fees as
18 high as fifty percent (50%) of the settlement. *Newberg*, § 14.03; *see also In re Ampicillin*
19 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp.494 (awarding attorneys' fees in the amount of 45%
20 of the \$7.3 million settlement amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film*
21 *Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement
22 amount as attorneys' fees); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
23 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
24 actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Riverside County Superior Court Case No.
25 BC262247 (May 2005) (wage and hour); *see also Moore v. IKEA*, Riverside Superior Court
26 Case No. BC263646 (Sept. 2006) (wage and hour); *see also Resendez v. Bridgestone Retail*
27 *Operations, LLC*, Los Angeles County Superior Court, Case No. BC596892 (June 2016) (citing
28 *Chavez, supra*, 162 Cal.App.4th at 66, n.11) (approving a fee award of one-third of the

1 settlement amount of \$950,000, in a PAGA action, because it was “reasonable and consistent
2 with fee awards in class action cases”).

3 In the present case, Class Counsel has borne all of the risks and costs of litigation and
4 will not receive any compensation until recovery is obtained.⁶⁹ Class Counsel is experienced in
5 complex wage-and-hour litigation and used that experience to obtain a great result for Plaintiffs,
6 the Class, and the State of California.

7 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
8 and further argument at the time of filing Plaintiffs’ motion for final approval of the Settlement
9 and application for attorneys’ fees and costs and at the Final Approval Hearing. Considering
10 the work performed, the risks incurred, results obtained, and experience of Class Counsel in
11 handling similar matters, the Attorneys’ Fees and Litigation Costs provided for by the
12 Settlement and to be requested by Class Counsel after notice has been provided to the Class and
13 the Class has had an opportunity to comment, are well within the range of reasonableness.

14 **IX. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

20 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
21 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
22 members to make an informed decision about their participation.” *Manual for Complex*
23 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice⁷⁰ describes the Settlement,
24 the deadlines and procedures to submit an Objection, Opt-Out Request, and/or Workweek
25 Challenge, and the date and time set for the Final Approval Hearing.⁷¹ The proposed Class
26 Notice recognizes that the Court has not yet granted final approval of the Settlement and apprises

27 ⁶⁹ Aiwazian Decl., ¶ 19.

28 ⁷⁰ Settlement Agreement, Exh. A.

⁷¹ *Ibid.*

Class Members of, *inter alia*, how Individual Settlement Payments and Individual PAGA Payments are calculated and the number of Workweeks and/or Pay Periods credited to them.⁷²

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality—as well as this Court’s Case Management Order #1, Section H. 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.

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

After obtaining and considering bids from competing settlement administrators, the Parties selected Simpluris to administer the Settlement.⁷³ Simpluris is well experienced in the administration of class action and PAGA settlements.⁷⁴

The Settlement Administrator will translate the Class Notice, Exclusion Form, and Objection Form (i.e., Notice Packet) into Spanish⁷⁵ and mail both an English and a Spanish version of the Notice Packet to each Class Member by first-class United States mail.⁷⁶ The Settlement Administrator will re-mailed Notice Packets to forwarding addresses or addresses located through skip-tracing and receive Opt-Out Requests, Objections, and Workweek Challenges.⁷⁷

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 thereon; undertake required tax reporting; mail the payment checks to Settlement Class

⁷² *Ibid.*

⁷³ *See* Aiwarzian Decl., ¶ 15.

⁷⁴ Declaration of Michael Bui on Behalf of Simpluris, Inc. (Proposed Settlement Administrator) (“Bui Decl.”), ¶¶ 3-4.

⁷⁵ Based on information provided by Defendant, Class Members are known to be proficient in English and/or Spanish. Melzer Decl., ¶ 5.

⁷⁶ Settlement Agreement, ¶ 3.02.

⁷⁷ *Ibid.*

Members and Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees, Litigation Costs, Enhancement Awards, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁷⁸ The Settlement Administration Costs are currently estimated not to exceed Ten Thousand Dollars (\$10,000) and will be paid out of the Gross Settlement Fund, subject to approval by the Court.⁷⁹

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

XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice Packet, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁰

Within five (5) calendar days after the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for all Class Members: full names, last known mailing addresses, telephone numbers, Social Security Numbers, beginning and ending dates of employment, and the number of Workweeks and Pay Periods ("Class List").⁸¹

Within ten (10) calendar days after the Preliminary Approval Date, the Settlement Administrator will updated addresses using the United States Postal Service's NCOALink system and mail the Notice Packet to the Class Members via first-class United States mail.⁸² Class Members will have until the Response Deadline (i.e., 45 calendar days after the date on which the Notice Packet is initially mailed) or, in the event of a re-mailed Notice Packet, an additional fifteen (15) calendar days, to submit an Opt-Out Request, Objection, and/or

⁷⁸ *Ibid.*; Aiwazian Decl., ¶ 15.

⁷⁹ Settlement Agreement, ¶ 3.06(a).

⁸⁰ Settlement Agreement, ¶ 3.03.

⁸¹ *Id.*, ¶ I.g.

⁸² *Id.*, ¶ 3.03.

Workweek Challenge to the Settlement Administrator.⁸³

Defendant will pay the Gross Settlement Fund to the Settlement Administrator within ten (10) calendar days after the Court grants final approval of the Settlement.⁸⁴ Within ten (10) calendar days after the Effective Date, the Settlement Administrator will distribute: (1) Individual Settlement Payments to Settlement Class Members and Individual PAGA Payments to Aggrieved Employees; (2) the LWDA Payment to the LWDA; (3) the Court-approved Enhancement Awards to Plaintiffs; and (4) the Court-approved Attorneys' Fees and Litigation Costs to Class Counsel. The Settlement Administrator will remit to itself the Court-approved Settlement Administration Costs within fifteen (15) calendar days of the Effective Date.⁸⁵

The Settlement Administrator will post the Final Approval Order and Judgement on its website for a period of sixty (60) calendar days.⁸⁶

The Individual Settlement Payment and Individual PAGA Payment checks issued to Settlement Class Members and/or Aggrieved Employees will remain valid and negotiable for one hundred and eighty (180) calendar days from the date listed on the check, and thereafter, will be cancelled.⁸⁷ All funds associated with such cancelled checks will be transmitted to Riverside CASA.⁸⁸

XII. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT AWARDS

Plaintiffs Jose Saldana and Thomas Johns respectfully request that the Court appoint them as Class Representatives and preliminarily approve the request for Enhancement Awards in an amount up to \$7,500 to Plaintiff Saldana and \$5,000 to Plaintiff Johns, as provided for by the Settlement.⁸⁹ 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

⁸³ *Id.*, ¶¶ 3.03 & 3.04(a)-(c).

⁸⁴ *Id.*, ¶ 3.06(e). See *id.*, ¶ I.o for the definition of "Effective Date."

⁸⁵ Settlement Agreement, ¶¶ 3.06(b), 3.06(c), 3.06(d), 3.06(e), & 3.06(f).

⁸⁶ Settlement Agreement, ¶ 3.06(j).

⁸⁷ *Id.*, ¶ 3.06(e).

⁸⁸ *Ibid.*

⁸⁹ *Id.*, ¶ 3.06(c).

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

7 The contemplated Enhancement Awards to Plaintiffs are fair and appropriate. Plaintiffs
8 spent a substantial amount of time and effort in producing relevant documents and past
9 employment records and providing the facts and evidence necessary to attempt to prove the
10 allegations.⁹⁰ Plaintiffs were available whenever Class Counsel needed them and actively tried
11 to obtain and provide information that would benefit the Class.⁹¹ Accordingly, it is appropriate
12 and just for Plaintiffs to each receive a reasonable Enhancement Award for their services on
13 behalf of the Class, in addition to their Individual Settlement Payment and Individual PAGA
14 Payment (if applicable).

15 **XIII. CONCLUSION**

16 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
17 approval of the Settlement; conditionally certify the Class for settlement purposes; appoint and
18 designate Edwin Aiwazian, Esq., Arby Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers for
19 Justice, PC as Class Counsel; appoint and designate Plaintiffs Jose Saldana and Thomas Johns
20 as Class Representatives; appoint Simpluris, Inc. as Settlement Administrator; preliminarily
21 approve the allocations for Attorneys' Fees and Litigation Costs, Enhancement Awards,
22 Settlement Administration Costs, and PAGA Settlement Amount; approve the Class Notice,
23 Exclusion Form, and Objection Form and direct the mailing of the Notice Packet to the Class;
24 approve the manner and method for Class Members to request exclusion from the Class
25 Settlement and object to the Class Settlement; schedule a Final Approval Hearing to take place
26
27

28 ⁹⁰ Aiwazian Decl., ¶ 20; Saldana Decl., ¶¶ 3-4; Johns Decl., ¶¶ 3-4.

⁹¹ Aiwazian Decl., ¶ 20; Saldana Decl., ¶¶ 3, 4, & 6; and Johns Decl., ¶¶ 3, 4, & 6.

1 in approximately August 2021; and permit the filing of a memorandum that exceeds the page
2 limit.

3 Dated: July 7, 2021

LAWYERS for JUSTICE, PC

4
5 By:


Edwin Aiwanian
Attorneys for Plaintiffs