

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff Jose Saldana and Proposed Plaintiff Thomas Johns

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;

Plaintiff,

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

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declarations of Proposed
Class Representatives (Jose Saldana and
Thomas Johns); Declaration of Proposed
Settlement Administrator (Michael Bui);
Declaration of Proposed *Cy Pres* Recipient
(Jessica Munoz); and [Proposed] Order filed
concurrently herewith]

Date: March 25, 2021
Time: 8:30 a.m.
Dept: 1

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

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

PLEASE TAKE NOTICE that on March 25, 2021 at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Craig G. Riemer in Department 1 of the Superior Court of California for the County of Riverside, located at 4050 West Main Street, Riverside, California 92501, Plaintiff Jose Saldana and Proposed Plaintiff Thomas Johns (together “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting Plaintiff Saldana leave to file the [Proposed] First Amended Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“First Amended Complaint”) which is attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement
- Granting preliminary approval of the proposed class and representative action settlement described herein and as set forth in the Joint Stipulation of Class and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, 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, Litigation Costs, Enhancement Awards, and Settlement Administration Costs;
- Certifying the Class for settlement purposes;
- Appointing Plaintiff Jose Saldana and Proposed Plaintiff Thomas Johns as Class Representative;
- Appointing Edwin Aiwarzian, Esq., Arby Aiwarzian, Esq., and Joanna Ghosh, Esq. of Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), Exclusion Form, and Objection Form (together, “Notice Packet”), attached as

1 “EXHIBIT 2,” “EXHIBIT 3,” and “EXHIBIT 4,” respectively, to the [Proposed]
2 Order Granting Preliminary Approval of Class Action Settlement;

- 3 • Directing the mailing of the Notice Packet to the Class Members;
- 4 • Approving the proposed deadlines for the notice and settlement administration
- 5 process;
- 6 • Approving Simpluris, Inc. as the Settlement Administrator; and
- 7 • Scheduling a hearing to consider whether to grant final approval of the Settlement, at
- 8 which time the Court will also consider whether to grant final approval of the requests
- 9 for Attorneys’ Fees, Litigation Costs, Enhancement Awards, and Settlement
- 10 Administration Costs.

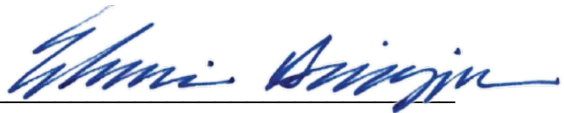
11 This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
12 of Court, which require approval by the Court of a class action settlement, allow the Court to
13 preliminarily certify a class for settlement purposes, and permit the Court to extend the page
14 limit for memoranda.

15 This motion is based upon the following memorandum of points and authorities, the
16 Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwarzian),
17 Proposed Class Representatives (Jose Saldana and Thomas Johns), Proposed Settlement
18 Administrator (Michael Bui), and Proposed *Cy Pres* Recipient (Jessica Munoz) in support
19 thereof, the pleadings and other records on file with the Court in this matter, and such evidence
20 and oral argument as may be presented at the hearing on this motion.

21 Dated: March 3, 2021

LAWYERS for JUSTICE, PC

22
23 By:



Edwin Aiwarzian
Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND	2
IV.	SUMMARY OF THE SETTLEMENT TERMS.....	4
V.	LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS.....	7
VI.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT ...	8
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.....	9
B.	The Settlement Is Fair, Reasonable, and Adequate.	11
C.	The Settlement Is of Significant Value.	13
VII.	CERTIFICATION OF THE CLASS IS APPROPRIATE	14
A.	The Class Is Ascertainable and Sufficiently Numerous.	14
B.	The Class Members Share a Well-Defined Community of Interest.	15
VIII.	APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND LITIGATION COSTS	17
IX.	THE PROPOSED CLASS NOTICE IS ADEQUATE.....	19
X.	APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT ADMINISTRATOR	20
XI.	PROPOSED DEADLINES FOR THE NOTICE PROCESS	21
XII.	APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT AWARDS.....	22
XIII.	CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

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

1	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	7
2	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	23
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	7, 8, 9
4	Statutes	
5	Cal. Code Civ. Proc. § 1781.....	19
6	Cal. Code Civ. Proc. § 1781(f).....	7
7	Other Authorities	
8	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	8
9	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	21
10	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	13
11	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	18
12	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	20
13	Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	20
14	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	19
15	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	20
16	Rules	
17	Fed. R. Civ. P. 23(c)(2)	20
18	Fed. R. Civ. P. 23(e).....	22
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

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 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 Class Period (“Class” or “Class Members”).³

The Class is currently estimated to consist of approximately two hundred eighty (247) individuals as of May 2020.⁴

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.”

⁴ Aiwazian Decl., ¶ 9.

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 Aggrieved Employees, against the Released Parties.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 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 Proposed Plaintiff Thomas Johns is a current employee of Defendant.

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”).

///

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.* ¶ 8.z 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 section H.3.k, a Compliance Chart is attached as “EXHIBIT 2” to Aiwazian Declaration filed concurrently herewith.

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

2 The Parties have actively litigated this matter since the Action was commenced on May
3 10, 2019. On December 11, 2019 and February 8, 2020, the Parties participated in mediation
4 sessions conducted by Jeffrey Krivis, Esq., a well-respected mediator of complex wage-and-
5 hour class and PAGA actions. The Parties have conducted significant investigation and
6 informal discovery into the claims and engaged in extensive discussions about the strengths and
7 weaknesses of Plaintiffs' claims and Defendant's defenses thereto, to try to resolve the Action.
8 With the aid of the mediator, and after substantial negotiations, the Parties reached the
9 Settlement described herein to resolve this Action in its entirety.

10 The Parties have agreed that Plaintiff Saldana will file an amended complaint to add
11 Plaintiff Johns and a cause of action under PAGA and effectuate the terms of the Settlement. As
12 such, Plaintiff respectfully requests leave to file the First Amended Class Action Complaint for
13 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
14 2698, *Et Seq.* ("First Amended Complaint") so that the terms of the Settlement Agreement and
15 the intent of the Parties may be effectuated.

16 Plaintiffs' core allegation is that Defendant has violated the California Labor Code by
17 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
18 of, *inter alia*, failing to pay overtime and minimum wages, failing to provide compliant meal
19 and rest periods and associated premium pay, failing to timely pay wages during employment
20 and upon termination of employment and associated waiting-time penalties, failing to provide
21 compliant wage statements, failing to keep complete and accurate payroll records, and failing to
22 reimburse necessary business-related expenses, and thereby engaged in unfair business practices
23 under California Business and Professions Code, § 17200, *et seq.* and conduct giving rise to
24 civil penalties recoverable under the California Private Attorneys General Act, California Labor
25 Code § 2698, *Et Seq.* ("PAGA"). Plaintiffs contend that they and the Class Members are entitled
26 to, *inter alia*, unpaid wages, penalties (including, and not limited to, penalties pursuant to
27 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. 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 ("PAGA Payment"); and (4) Settlement Administration Costs, which are not to exceed Ten Thousand Dollars (\$10,000), to the Settlement Administrator.⁹ The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.¹⁰ The Net Settlement Amount will be distributed to Settlement Class Members and the 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.¹¹ Each Individual Settlement Payment will be allocated as follows: one-third (1/3) to wages, which will be reported on an IRS

⁹ Settlement Agreement, ¶¶ I.d., I.p., I.ff., 3.06(a).

¹⁰ *Id.*, ¶ 3.06(d).

¹¹ Settlement Agreement, ¶¶ 3.06(e).

Form W-2; and two-thirds (2/3) to penalties and interest, which will be reported on an IRS Form 1099.¹² 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.¹³ Defendant will pay the employer's share of payroll taxes separately and in addition to the Gross Settlement Fund.¹⁴

The Settlement Administrator will determine each Aggrieved Employee's *pro rata* share of the 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.¹⁵ Each Individual PAGA Payment will be allocated entirely as penalties and will be reported on IRS Form 1099.¹⁶

Individual Settlement Payments and Individual PAGA Payments may be combined into one check when applicable.¹⁷ Checks issued to Settlement Class Members and/or Aggrieved Employees that are undeliverable or uncashed one hundred eighty (180) calendar days after the date of issuance, will be cancelled and the funds associated will be distributed to Riverside CASA, which is a non-profit organization providing legal services to the indigent and is primarily devoted its resources to protecting the workplace rights of California's low-wage workers.¹⁸ Riverside CASA was selected as the proposed *cy pres* recipient because this nonprofit organization because of the work it does in the workplace for low income and indigent individuals throughout California and specifically in Riverside County.¹⁹ Counsel for the Parties are not aware of any relationship between the proposed *cy pres* recipient and any attorney at their respective law firms.²⁰

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

¹² *Id.*, ¶ 3.06(e).

¹³ *Ibid.*

¹⁴ Settlement, ¶ 3.06(e).

¹⁵ *Id.*, ¶ 3.06(e).

¹⁶ *Id.*, ¶ 3.06(e).

¹⁷ *Ibid.*

¹⁸ *Id.*, ¶ 3.06(e).

¹⁹ See Declaration of Jessica Munoz (For Proposed Cy Pres Recipient Riverside CASA) ("Munoz Decl."), ¶ 3.

²⁰ Aiwasian Decl., ¶ 23.

1 (“Opt Out Request”) to the Settlement Administrator, postmarked or fax-stamped on or before
2 the date that is forty-five (45) calendar days after the Notice Packet is first mailed (“Response
3 Deadline”) or, in the case of a re-mailed Notice Packet, the Response Deadline will be extended
4 by fifteen (15) calendar days.²¹ A written Opt Out Request must: (1) contain the Class Member’s
5 name, telephone number, address, and the last four numbers of his or her Social Security
6 number; (2) list the case name and number of the Action; and (3) clearly state that the Class
7 Member wishes to be excluded from the Class Settlement.²² The proposed Exclusion Form that
8 is attached as “**EXHIBIT 3**” to the [Proposed] Order Granting Preliminary Approval of Class
9 Action Settlement includes this information. Any Class Member who opts out of the Class
10 Settlement will not be entitled to any recovery under the Class Settlement and will not be bound
11 by the Class Settlement or have any right to object, appeal, or comment on the Settlement.²³
12 Class Members who worked for Defendant within the PAGA Period will remain Aggrieved
13 Employees regardless of whether they submit a timely and valid Opt Out Request and will
14 release the Released PAGA Claims and receive an Individual PAGA Payment.²⁴

15 Settlement Class Members who wish to object to the Class Settlement must complete
16 and submit a valid and timely Objection Form or written objection to the Class Settlement
17 (“Objection”) to the Settlement Administrator, mailed or postmarked on or before the Response
18 Deadline, or appear at the Final Approval Hearing and make an oral objection.²⁵ To be valid, a
19 written Objection must: (1) contain the Settlement Class Member’s name, telephone number,
20 address, and the last four numbers of his or her Social Security number; (2) list the case name
21 and number of the Action; (3) clearly state that the Settlement Class Member objects to the Class
22 Settlement; and (4) clearly state the factual and/or legal basis of their objection.²⁶ The proposed
23 Objection Form that is attached as “**EXHIBIT 4**” to the [Proposed] Order Granting Preliminary
24

25 ²¹ Settlement Agreement, ¶¶ 3.04(b). For the full definition of “Response Deadline,” see *id.*, ¶ 3.04(a). See also
26 Exclusion Form attached as “EXHIBIT 3” to [Proposed] Order Granting Preliminary Approval of Class Action
Settlement (“Proposed Order”) filed concurrently herewith.

27 ²² Settlement Agreement, ¶ 3.04(b).

²³ *Id.*, ¶ 3.04(b).

²⁴ *Ibid.*

28 ²⁵ Settlement Agreement, ¶ 3.04(c).

²⁶ *Ibid.*

Approval of Class Action Settlement includes this information. Settlement Class Members who do not submit a timely and valid Objection in accordance with these requirements will be deemed to have waived all objections to the Class Settlement.²⁷

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by submitting a written dispute to the Settlement Administrator (“Workweek Challenge”), postmarked or faxed to the Settlement Administrator no later than the Response Deadline. In order to be valid, a Workweek Challenge must: (1) contain the Class Member’s 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.²⁸ Any Workweek Challenge will be resolved by the Settlement Administrator.²⁹

V. 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 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.

²⁷ *Ibid.*

²⁸ *Id.*, ¶ 3.04(a).

²⁹ *Ibid.*

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

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

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties, and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

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

1 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
2 and the court is free to engage in a balancing and weighing of the factors depending on the
3 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
4 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
5 at 1027 (citation omitted).

6 The proponent of the settlement has the burden to show that it is fair and reasonable.
7 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
8 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
9 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
10 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
11 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
12 1151.

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

15 The Parties actively litigated the Action since it was commenced on May 10, 2019. Both
16 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
17 claims, and Class Counsel was actively preparing the matter for class certification and trial.³⁰

18 Prior to reaching the Settlement, Class Counsel conducted significant investigation into
19 the facts of the case and engaged in extensive informal discovery and review and analysis of
20 thousands of pages of documents and data produced by Defendant and obtained from other
21 sources.³¹ The data and documents that Class Counsel reviewed and analyzed included, and
22 was not limited to: Plaintiffs’ employment records, sampling of time and payroll records,
23 Employee Handbook, weekly Earnings Schedule, forms, internal memoranda (including,
24 Building Hours and Card Access Areas and Employee Parking), Evaluation Guideline, Meal
25 Break Waiver, Time Clock Missed Punch Request Form, acknowledgments (including
26 Employee Payroll Swipe Card), Property Inspection Policy, Prohibited Time Clock Actions, and
27

28 ³⁰ Aiwazian Decl., ¶¶ 11-13, 28.

³¹ *Id.*, ¶ 12.

Defendant's operations and employment practices, procedures, and policies, among other information and documents.³² Class Counsel interviewed Plaintiffs to gather facts and to identify potential witnesses.³³ 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.³⁴ Class Counsel also prepared for and attended court proceedings and settlement negotiations, among other tasks.³⁵ 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.³⁶ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁷ 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.³⁸ 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.³⁹

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Aiwazian Decl., ¶ 11.

³⁷ *Ibid.*

³⁸ *Id.*, ¶¶ 16-18.

³⁹ *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.⁴⁰ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴¹ 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.⁴² 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.⁴³

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.⁴⁴ The Settlement was calculated using the information and class data uncovered and provided by Defendant during the litigation and case investigation.⁴⁵

The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this case.⁴⁶ Here, Defendant asserted many arguments challenging the strength of Plaintiffs' case. With respect to the overtime claims, Defendant contends that its overtime policies and practices comply with the law and that it correctly calculated and paid Class Members' regular rate of pay for purposes of paying overtime. Defendant argued that it paid Class Members at least the California minimum wage for all hours worked. With respect to the meal and rest break claims, Defendant argues that it has compliant meal and rest break policies and practices and that it authorized and permitted the required breaks. Moreover, Defendant contends that to the extent Plaintiffs sought to rely on time records showing any late,

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Id.*, ¶¶ 11-13, 16-18.

⁴³ Aiwasian Decl., ¶¶ 6-7.

⁴⁴ *Id.*, ¶¶ 11, 13-14, 83.

⁴⁵ *Id.*, ¶¶ 11-13.

⁴⁶ *Id.*, ¶¶ 16-18.

1 short, or skipped meal periods, those records would not establish a meal period violation because
2 California law does not require employers to force employees to take meal periods—it simply
3 requires employers to authorize and permit the meal periods.

4 Defendant also argues that it timely paid Class Members during their employment and
5 upon separation, and that Defendant provided accurate and itemized wage statements to Class
6 Members. Defendant contended that it reimbursed Class Members for all business-related
7 expenses.

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

22 Assuming that the Attorneys' Fees, Litigation Costs, Enhancement Awards, LWDA
23 Payment, and Settlement Administration Costs are approved by the Court and paid in the full
24 amounts provided for by the Settlement, the Net Settlement Amount is estimated to be no less
25 than \$480,000.⁴⁸ As discussed in Part III, *supra*, the entire Gross Settlement Fund will be fully
26 paid out in accordance with the Settlement Agreement.⁴⁹ The amount of each Settlement Class

27 ⁴⁷ Aiwazian Decl., ¶¶ 11, 13, & 79.

28 ⁴⁸ *Id.*, ¶ 14.

⁴⁹ Settlement Agreement, ¶ 3.06(a).

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 PAGA Payment based on his or her Pay Periods.⁵⁰ 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.⁵¹ 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.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery, and exchanged a large volume of documents, data, and information prior to engaging in mediation and settlement discussions.⁵² 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.⁵³ 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.⁵⁴

⁵⁰ *Id.*, ¶ 3.06(d)-(e).

⁵¹ Aiwazian Decl., ¶¶ 11, 13, & 79.

⁵² Aiwazian Decl., ¶¶ 11-13, 18.

⁵³ *Id.*, ¶¶ 18, 33, 38, 42, 50, & 54.

⁵⁴ *Id.*, ¶¶ 11-13, 16-18, 25-78.

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.⁵⁵ 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 to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

///

///

⁵⁵ Settlement Agreement, ¶ 3.01.

This Action involves a class of approximately two hundred eighty (280) individuals.⁵⁶ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding individuals it employed as hourly-paid or non-exempt employees in California. As such, the Class is ascertainable and sufficiently numerous.

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

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

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: 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

⁵⁶ Aiwazian Decl., ¶ 9.

1 itemized wage statements to Class Members; whether Defendant timely paid final wages upon
2 Class Members' separation of employment; and whether Class Members incurred reasonable
3 business expenses and, if so, whether Defendant reimbursed them.

4 Based on documents and information obtained in this case, Plaintiffs contend that all of
5 the Class Members were subject to the same uniform operations and employment practices,
6 policies, and procedures during the time period at issue.⁵⁷ Plaintiffs' claims arise from
7 Defendant's alleged uniform policies and systematic schemes, with respect to Plaintiffs and the
8 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
9 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
10 to timely pay wages during employment and upon termination of employment, failing to provide
11 compliant wage statements, failing to keep complete and accurate payroll records, and failing to
12 reimburse necessary business-related expenses.⁵⁸

13 Plaintiffs also contend that Defendant's recordkeeping practices with respect to Plaintiffs
14 and the Class Members were substantially the same during the time period at issue.⁵⁹ As a result,
15 Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to
16 them from Defendant during the time period at issue.⁶⁰ Defendant denies all of these allegations
17 and contends that it complied with California wage-and-hour requirements both in its policies
18 and through its practices, raising defenses in response to each of Plaintiffs' claims.

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

23 ///

24 ///

25 ///

26
27 ⁵⁷ Aiwazian Decl., ¶ 16.

28 ⁵⁸ *Id.*, ¶¶ 16, 25, 29, 35, 40, 46-47, 53, 56, 60, & 67.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

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

Class Counsel has litigated the Action since May 10, 2019 and was actively preparing the matter for class certification and trial.⁶¹ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery, including, and not limited to, reviewing a large volume of documents and data produced by Defendant and obtained from other sources.⁶² Class Counsel 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 and the production of documents and data.⁶³ Counsel for the Parties also undertook extensive settlement discussions, including two (2) sessions of mediation.⁶⁴

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result.⁶⁵

The Settlement establishes a Gross Settlement Fund of \$950,000, and provides for Class Counsel to apply to the Court for an award in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Fund (i.e., \$332,500) for attorneys' fees and reimbursement of actual costs and expenses not to exceed \$40,000.⁶⁶ The Attorneys' Fees and Litigation Costs provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating this 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

⁶¹ Aiwazian Decl., ¶¶ 11-13.

⁶² *Id.*, ¶ 12.

⁶³ *Ibid.*

⁶⁴ *Id.*, ¶ 11.

⁶⁵ Aiwazian Decl., ¶¶ 6-7.

⁶⁶ Settlement Agreement, ¶ 3.06(b).

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.⁶⁷

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 amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film*

⁶⁷ *Id.*, Exh. B.

1 Corp. (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement
2 amount as attorneys' fees). California courts routinely approve class action attorneys' fee
3 awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162
4 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in
5 marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*,
6 Riverside County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v.*
7 *IKEA*, Riverside Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

8 Class Counsel has borne all of the risks and costs of litigation and will not receive any
9 compensation until recovery is obtained.⁶⁸

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

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

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

22 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
23 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class
24 members to make an informed decision about their participation." *Manual for Complex*
25 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice⁶⁹ describes the Settlement,
26 the deadlines and procedures to submit an Objection, Opt Out Request, and/or Workweek
27

28 ⁶⁸ Aiwasian Decl., ¶ 19.

⁶⁹ Settlement Agreement, Exh. B.

Challenge, and the date and time set for the Final Approval Hearing.⁷⁰ The proposed Class Notice recognizes that the Court has not yet granted final approval of the Settlement and appraises Class Members of, *inter alia*, how their Individual Settlement Payment and Individual PAGA Payment are calculated and the number of Workweeks and/or Pay Periods credited to them.⁷¹

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.⁷² Simpluris is well experienced in the administration of class action and PAGA settlements.⁷³

The Settlement Administrator will translate the Class Notice, Exclusion Form, and Objection Form (i.e., Notice Packet) into Spanish and mail both an English and a Spanish version of the Notice Packet to each Class Member by first-class United States mail.⁷⁴ 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.⁷⁵

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *See* Aiwasian Decl., ¶ 15.

⁷³ Declaration of Michael Bui on Behalf of Simpluris, Inc. (Proposed Settlement Administrator) (“Bui Decl.”), ¶¶ 3-4.

⁷⁴ Settlement Agreement, ¶ 3.02.

⁷⁵ *Ibid.*

taxes thereon; undertake required tax reporting; mail the payment checks to Settlement Class Members and/or 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.⁷⁶ 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.⁷⁷

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.⁷⁸

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").⁷⁹

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.⁸⁰ 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

⁷⁶ *Ibid.*; Aiwazian Decl., ¶ 15.

⁷⁷ Settlement Agreement, ¶ 3.06(a).

⁷⁸ Settlement Agreement, ¶ 3.03.

⁷⁹ *Id.*, ¶ I.g.

⁸⁰ *Id.*, ¶ 3.03.

1 additional fifteen (15) calendar days, to submit an Opt Out Request, Objection, and/or
2 Workweek Challenge to the Settlement Administrator.⁸¹

3 Defendant will pay the Gross Settlement Fund to the Settlement Administrator within
4 ten (10) calendar days after the Court grants final approval of the Settlement.⁸² Within ten (10)
5 calendar days after the Effective Date, the Settlement Administrator will distribute: (1)
6 Individual Settlement Payments to Settlement Class Members and Individual PAGA Payments
7 to Aggrieved Employees; (2) the LWDA Payment to the LWDA; (3) the Court-approved
8 Enhancement Awards to Plaintiff; and (4) the Court-approved Attorneys' Fees and Litigation
9 Costs to Class Counsel. The Settlement Administrator will remit to itself the Court-approved
10 Settlement Administration Costs within fifteen (15) calendar days of the Effective Date.⁸³

11 The Settlement Administrator will post the Final Approval Order and Judgement on its
12 website for a period of sixty (60) calendar days.⁸⁴

13 The Individual Settlement Payment and Individual PAGA Payment checks issued to
14 Settlement Class Members and/or Aggrieved Employees will remain valid and negotiable for
15 one hundred and eighty (180) calendar days from the date listed on the check, and thereafter,
16 will be cancelled.⁸⁵ All funds associated with such cancelled checks will be transmitted to
17 Riverside CASA.⁸⁶

18 **XII. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR**
19 **ENHANCEMENT AWARDS**

20 Plaintiff Jose Saldana and Proposed Plaintiff Thomas Johns respectfully request that the
21 Court appoint them as Class Representative and preliminarily approve the request for
22 Enhancement Awards in an amount up to \$7,500 to Plaintiff Saldana and \$5,000 to Plaintiff
23 Johns as provided for by the Settlement.⁸⁷ It is within the Court's discretion to award payment
24 to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal.

25 ⁸¹ *Id.*, ¶¶ 3.03 & 3.04(a)-(c).

26 ⁸² *Id.*, ¶ 3.06(e). See *id.*, ¶ I.o for the definition of "Effective Date."

27 ⁸³ Settlement Agreement, ¶¶ 3.06(b), 3.06(c), 3.06(d), 3.06(e), & 3.06(f).

28 ⁸⁴ Settlement Agreement, ¶ 3.06(j).

⁸⁵ *Id.*, ¶ 3.06(e).

⁸⁶ *Ibid.*

⁸⁷ *Id.*, ¶ 3.06(c).

1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an Enhancement Awards 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 contemplated Enhancement Awards to Plaintiffs 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.⁸⁸ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁸⁹ Accordingly, it is appropriate and just for Plaintiffs to each receive a reasonable Enhancement Award for their services on behalf of the Class, in addition to their Individual Settlement Payment and Individual PAGA Payment.

XIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; appoint and designate Edwin Aiwazian, Esq., Arby Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers for Justice, PC as Class Counsel; appoint and designate Plaintiffs Jose Saldana and Thomas Johns as Class Representatives; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Litigation Costs, Enhancement Awards, Settlement Administration Costs, and PAGA Payment; approve the Class Notice, Exclusion Form, and Objection Form and direct the mailing of the Notice Packet to the Class; approve the manner and method for Class Members to request exclusion from the Class Settlement and

⁸⁸ Aiwazian Decl., ¶ 20; Declaration of Jose Saldana in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Saldana Decl."), ¶¶ 3-4; Declaration of Thomas Johns in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Johns Decl."), ¶¶ 3-4.

⁸⁹ Aiwazian Decl., ¶ 20; Saldana Decl., ¶¶ 3,4, & 6; and Johns Decl., ¶¶ 3,4, & 6.

object to the Class Settlement as contained herein and within the Notice Packet; schedule a Final Approval Hearing to take place in approximately August 2021; and permit the filing of a memorandum that exceeds the page limit.

Dated: March 3, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiffs