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

CYNTHIA BARRAGAN, individually, and
on behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys Act;

Plaintiff,

v.

TIBURCIO VASQUEZ HEALTH CENTER,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Reservation ID: 175335461842

Case No.: RG20078693

Honorable Michael Markman
Department 23

CLASS ACTION

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

[Declaration of Class Counsel (Vartan
Madoyan); Declaration of Proposed Class
Representative (Cynthia Barragan); and
[Proposed] Order filed concurrently
herewith]

Date: September 17, 2024
Time: 10:00 a.m.
Department: 23

Complaint Filed: October 20, 2020
FAC Filed: June 29, 2021
SAC Filed: September 10, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on September 17, 2024 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Michael Markman in Department 23 of the Superior Court of California for the County of Alameda, located at Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, California 94612, Plaintiff Cynthia Barragan (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement (“Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Vartan Madoyan, 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, Class Counsel Fees Payment and Class Counsel Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Settlement Administration Payment to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Cynthia Barragan as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement Agreement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc., as the Settlement Administrator; and
- 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

1 for the Class Counsel Fees Payment and Class Counsel Expenses Payment to Class
2 Counsel, Class Representative Service Payment to Plaintiff, and Settlement
3 Administration Payment to the Settlement Administrator.

4 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
5 of Court, which require approval by the Court of a class action settlement and permit the Court
6 to extend the page limit for memoranda.

7 This motion is based upon the following memorandum of points and authorities, the
8 Agreement, the Declaration of Proposed Class Counsel (Vartan Madoyan) and Proposed Class
9 Representative (Cynthia Barragan) in support thereof, the pleadings and other records on file
10 with the Court in this matter, and such evidence and oral argument as may be presented at the
11 hearing on this motion.

12
13 Dated: August 5, 2024

LAWYERS for JUSTICE, PC

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15 By: 
16 Vartan Madoyan
17 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Cynthia Barragan (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement”) entered into by and between Plaintiff, individually and on behalf of the Class Members and the State of California with respect to the Aggrieved Employees, on the one hand, and Defendant Tiburcio Vasquez Health Center, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of One Million Five Hundred and Fifty Thousand Dollars and Zero Cents (\$1,550,000.00) (“Gross Settlement Amount”).¹ The Gross Settlement Amount includes the following: (1) Individual Class Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Service Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Cynthia Barragan³; (3) the Class Counsel Fees Payment and Class Counsel Expenses Payment to Class Counsel, consisting of attorneys’ fees up to the amount of one-third (1/3) of the Gross Settlement Amount, or \$516,666.67, and reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)⁴; (4) the Settlement Administration Payment to the Settlement Administrator in the amount currently estimated not to exceed Ten Thousand Dollars and No Cents (\$10,000.00);⁵ (5) PAGA Payment of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$150,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$50,000.00) (“PAGA Payout Fund”) will be distributed to all current and former hourly, nonexempt employees employed by Defendant in

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Vartan Madoyan (“Madoyan Decl.”), ¶¶ 4.1.

² *Id.*, ¶¶ 1.18.

³ *Id.*, ¶¶ 4.2.2.

⁴ *Id.*, ¶¶ 4.2.3 & 4.2.4.

⁵ *Id.*, ¶¶ 4.2.1.

California at any time during the PAGA Period (“Aggrieved Employees”) on a *pro rata* basis, based on their PAGA Pay Periods during the PAGA Period.⁶

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

Any current or former, hourly, nonexempt employee employed by Defendant in California at any time during the Class Period and includes both Participating Class Members and Non-Participating Class Members (Class” or “Class Members”).⁷

Based on information previously provided by Defendant, the Class is estimated to consist of at least 146 individuals who worked a total of at least 19,269 workweeks during the Class Period, and there are at least 105 PAGA Employees who worked a total of at least 4,499 pay periods during the PAGA Period.⁸

Class Members who do not submit a timely and valid Request for Exclusion (“Participating Class Member”) will receive a *pro rata* share of the Net Settlement Amount (“Individual Class Payment”) on a *pro rata* basis based upon any week during which a Class Member worked for Defendant for at least one day, during the Class Period (“Workweeks”).⁹

Aggrieved Employees will receive a *pro rata* share of the PAGA Payout Fund (25% of the PAGA Payment) based on any pay period during which an Aggrieved Employee worked for Defendant for at least one day, during the PAGA Period (“PAGA Pay Periods”) (“Individual PAGA Payment”).¹⁰

The Settlement resolves the Participating Class Members’ Release of Plaintiff and Participating Class Members, and the Aggrieved Employees’ Release of Plaintiff, the State of California and Aggrieved Employees, against the Released Parties.¹¹

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the

⁶ Settlement Agreement, ¶¶ 4.2.5 (a)-(b) & 1.2. “PAGA Period” is defined as the period from August 11, 2019, through the date of Preliminary Approval or ninety (90) days after both Parties execute this Agreement, whichever is first. *See id.*, ¶ 1.27.

⁷ *Id.*, ¶ 1.7. “Class Period” is defined as the period from October 20, 2016, through the date of Preliminary Approval or ninety (90) days after both Parties execute this Agreement, whichever is first, *See id.*, 1.9.

⁸ Madoyan Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 1.18, 1.29 & 1.36.

¹⁰ *Id.*, ¶¶ 1.19 & 1.24.

¹¹ *See id.* at ¶¶ 6.3 & 6.4 and *id.* at ¶ 1.31, for the definition of the “Released Parties.”

filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides a variety of health care and family support services in Central and Southern Alameda. Defendant maintains eight primary care clinics in the area and is headquartered in Hayward, California. Plaintiff is a former employee of Defendant.

On August 11, 2020, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code that were alleged to be violated (the “PAGA Notice”).

On October 20, 2020, Plaintiff commenced the Action by filing a Class Action Complaint for Damages & Enforcement Under the Privat Attorneys General Act, California Labor Code § 2698, et seq.

On June 29, 2021, Plaintiff filed First Amended Complaint for Damages & Enforcement Under the Privat Attorneys General Act, California Labor Code § 2698, et seq.

On September 10, 2021, Plaintiff filed Second Amended Complaint for Damages & Enforcement Under the Privat Attorneys General Act, California Labor Code § 2698, et seq (“Operative Complaint”).

Plaintiff’s core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, the Class Members, and Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to pay reporting time pay, failing to timely pay wages during employment and upon termination of employment, failing to pay one day’s rest in seven, failing to give notice of material terms of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business-related expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff contends that she, the Class

Members, and Aggrieved Employees are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On January 12, 2021 and September 27, 2023, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Requests for Admissions, (Set One); Special Interrogatories, (Sets One and Two); and Form Interrogatories, (Set One), on Defendant. Plaintiff also noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant.

The Parties have actively litigated the Action since it was commenced over three (3) years ago. The Parties participated in a formal, full-day mediation conducted by Francis J. Ortman Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount (\$1,550,000.00) (i.e., the Gross Settlement Amount) to resolve the Participating Class Members' Release of Plaintiff and Participating Class Members, and the Aggrieved Employees' Release of Plaintiff, the State of California and Aggrieved Employees, against the Released Parties.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed Five Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$516,666.67) (i.e., up to 1/3 of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to Class Counsel (collectively referred to as the "Class Counsel Fees Payment" and "Class Counsel Expenses Payment"); (2) Settlement Administration Payment, which are currently estimated not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) to the Settlement Administrator ("Settlement Administration Payment"); (3) PAGA Payment of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00), of which seventy-five percent (75%)

¹² Settlement Agreement, ¶¶ 6.3 & 6.4.

(i.e., \$150,000.00) will be distributed to the LWDA and twenty-five percent (25%) (i.e., \$50,000.00) (“PAGA Payout Fund”) will be distributed to the Aggrieved Employees on a *pro rata* basis, based on their PAGA Pay Periods during the PAGA Period; and (4) payment in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Cynthia Barragan (“Class Representative Service Payment”).¹³ The Parties have agreed to retain Simpluris, Inc., (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member’s share of the available Net Settlement Amount (i.e., Individual Class Payment), in accordance with the Agreement and as follows:

Individual Class Payments shall be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks collectively worked by all Participating Class Members during the Class Period, and (b) multiplying the result by number of Workweeks worked by each individual Participating Class Members. One day worked in a given Workweek will be credited as a Workweek for purposes of this calculation. Therefore, the value of each Individual Class Payment ties directly to the amount of Class Period Workweeks that he or she worked.¹⁴

The Settlement Administrator will determine each Aggrieved Employee’s share of the PAGA Payout Fund (i.e., Individual PAGA Payment), in accordance with the Agreement and as follows:

The Settlement Administrator will divide the amount of the PAGA Payout Fund (currently estimated to be \$50,000.00) by the total number of pay periods collectively worked by all Aggrieved Employees during the PAGA Period and multiply the result by the number of Pay Periods each Aggrieved Employee worked during the PAGA Period. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Individual PAGA Payment ties directly to the amount of PAGA Period pay periods that he or she worked.¹⁵

Each Individual Settlement Share will be allocated as twenty percent (20%) for alleged unpaid wages, which will be reported on an IRS Form W-2; forty percent (40%) as alleged unpaid interest; and forty percent (40%) as alleged civil and statutory penalties, which will be reported on an IRS Form 1099.¹⁶ Plaintiff and each Participating Class Member bear the full responsibility for payment of any taxes or withholdings that are found to be owed from the

¹³ Settlement Agreement, ¶ 4.3.; see also *id.*, ¶¶ 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5.

¹⁴ *Id.*, ¶ 4.3.1.

¹⁵ *Id.*, ¶ 4.2.5(c).

¹⁶ *Id.*, ¶ 4.3.3.

Individual Class Payments.¹⁷ Defendant will separately pay the employer’s share of payroll taxes with respect to the wage portion of Individual Class Payments in addition to the Gross Settlement Amount.¹⁸

The face of each check shall prominently state the date when the check will be voided, which will be one hundred and eighty (180) calendar days after the date of mailing (“Void Date”).¹⁹ The Settlement Administrator will cancel all checks not cashed by the void date.²⁰ For any Settlement Group Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Settlement Administrator shall transmit the funds represented by such checks to Centro Legal De La Raza, consistent with Code of Civil Procedure Section 384, subd. (b) (“Cy Pres Recipient”).²¹

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Settlement Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed).²² To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.²³

A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member’s election to be excluded from the Settlement and includes the Class Member’s name, address and email address or telephone number.²⁴ Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement.²⁵ Non-Participating Class Members who are

¹⁷ Settlement Agreement, ¶ 4.3.3.

¹⁸ *Id.*, ¶¶ 4.1.

¹⁹ *Id.*, ¶ 5.5.3.

²⁰ *Ibid.*

²¹ *Id.*, ¶ 5.5.4.

²² *Id.*, ¶¶ 8.5.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, ¶ 8.5.2.

Aggrieved Employees are deemed to release the claims of this Agreement and are eligible for an Individual PAGA Payment.²⁶

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fee Payment, Class Counsel Expense Payment and/or Class Representative Service Payment.²⁷ Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.²⁸ A Participating Class Member who elects to send a written objection to the Settlement Administrator must do so not later than sixty (60) calendar days after the Settlement Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).²⁹ Non-Participating Class Members have no right to object to any of the class action components of the Settlement.³⁰

Each Class Member or Aggrieved Employee shall have sixty (60) calendar days after the Settlement Administrator mails the Class notice (plus an additional 14 calendar days for Class Member whose Class Notice is re-mailed) to challenge the number of Class Period Workweeks and/or PAGA Pay Periods (if any) allocated to them in the Class Notice.³¹ The Class Member may challenge the allocation by communicating with the Settlement Administrator via fax, email, or mail.³²

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at

²⁶ Settlement Agreement, ¶ 8.5.3.

²⁷ *Id.*, ¶ 8.7.

²⁸ *Id.*, ¶ 8.7.1.

²⁹ *Ibid.*

³⁰ *Id.*, ¶ 8.7.2.

³¹ *Id.*, ¶ 8.6.

³² *Ibid.*

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 Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the 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 of showing 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 October 20, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³³

Prior to reaching the Settlement, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the

³³ Madoyan Decl., ¶¶ 11-13.

exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.³⁴ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members' time and pay data, including Timesheets, Payroll Records, job description, new hire checklist, Earning Statements, Defendant's Employee Handbook, company policy acknowledgements (including, but not limited to, TVHC Policy Acknowledgements, Final Paycheck Acknowledgement), operations and employment practices, forms (including, but not limited to, Confidentiality and Non-Disclosure Agreement, Agreement to Return TVHC Property, Uniform Allowance Request), and policies and procedures (including, but not limited to, Call In Procedure for Reporting Absences and Tardiness, TVHC Service Excellence Standards), among other information and documents.³⁵ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁶ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties.³⁷ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁸ Class Counsel also researched and drafted Plaintiff's mediation brief, related exhibits and damages analyses, and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁹

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Francis J. Ortman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁴⁰ In the course of litigation and in connection with mediation and settlement discussions, the Parties exchanged class and aggrieved employee information and engaged in an intensive discussion regarding their

³⁴ *Id.*, ¶ 12.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Madoyan Decl., ¶ 12.

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶ 11.

1 evaluations of the case and various aspects of the case, including but not limited to, the risks and
2 delays of further litigation, the risks to the Parties of proceeding with class certification and/or
3 representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-
4 and-hour enforcement, and PAGA representative claims, as well as the evidence produced and
5 analyzed, and the possibility of appeals, among other things.⁴¹ During all settlement discussions,
6 the Parties conducted their negotiations at arm's length in an adversarial position.⁴² Arriving at
7 a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt
8 strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class
9 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴³ After
10 conducting investigations, formal and informal discovery, extensive settlement negotiations,
11 and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-
12 suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the
13 costs and risks to both sides that would attend further litigation.⁴⁴

14 The Settlement takes into account the strengths and weaknesses of each side's position
15 and the uncertainty of how the case might have concluded at certification and trial.⁴⁵ The Parties
16 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁶
17 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
18 the Class Members' employment with Defendant and performed significant research into the
19 applicable law, concerning class certification, PAGA representative actions, off-the-clock
20 theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and
21 damages, and Defendant's defenses thereto, as well as facts discovered.⁴⁷ The Parties have
22 reached the Settlement based on this large volume of facts, evidence, and investigation. In
23
24

25 ⁴¹ Ibid.

26 ⁴² Ibid.

27 ⁴³ Ibid.

28 ⁴⁴ Ibid.

⁴⁵ *Id.*, ¶ 17-18.

⁴⁶ Madoyan Decl., ¶ 12.

⁴⁷ *Id.*, ¶¶ 11-13 & 16-18.

1 addition, Class Counsel has extensive experience in employment class actions, including
2 significant experience in California wage-and-hour litigation.⁴⁸

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

4 The Settlement, which provides for a Gross Settlement Amount of One Million Five
5 Hundred and Fifty Thousand Dollars and Zero Cents (\$1,550,000.00), represents a fair,
6 adequate, and reasonable resolution of the matter.⁴⁹ The Settlement was calculated using the
7 information and data uncovered during litigation, case investigation, as well as the formal and
8 informal exchange of information.⁵⁰ The Settlement takes into account the potential risks and
9 rewards inherent in any case and, in particular, in the case at issue.⁵¹ Moreover, considering all
10 of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and
11 adequate recovery for the Class, Aggrieved Employees, and the State of California.⁵²

12 Assuming that the Class Counsel Fee Payment, Class Counsel Expenses Payment, Class
13 Representative Service Payment, PAGA Payment, and Settlement Administration Payment are
14 approved by the Court and paid in the full amounts provided for by the Settlement, the
15 Settlement provides for a Net Settlement Amount to Class Members that is currently estimated
16 to be Seven Hundred Eighty-Eighty Thousand Three Hundred Thirty-Three Hundred Dollars
17 and Thirty-Three Cents (\$788,333.33).⁵³ Additionally, as to PAGA, 75% of the PAGA Payment,
18 (i.e., \$150,000.00), will be distributed to the LWDA, and 25% of the PAGA Amount, (i.e.,
19 \$50,000.00) (“PAGA Payout Fund”), will be distributed to the Aggrieved Employees. As
20 discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the
21 Participating Class Members, and the PAGA Payment will be fully paid out to the LWDA and
22 the Aggrieved Employees, in accordance with the Agreement. The amount of each Participating
23 Class Member’s Individual Class Payments will be calculated based on his or her Workweeks
24 and each Aggrieved Employee’s Individual PAGA Payment will be calculated based on his or
25

26 ⁴⁸ *Id.*, ¶¶ 2-7.

27 ⁴⁹ *Id.*, ¶¶ 11, 13, 14, & 21.

28 ⁵⁰ *Id.*, ¶¶ 11-13.

⁵¹ *Id.*, ¶¶ 16-18.

⁵² *Id.*, ¶¶ 11, 13, & 21.

⁵³ Madoyan Decl., ¶ 14.

her PAGA Pay Periods.⁵⁴ 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.⁵⁵ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information in the course of litigation and in connection with mediation and settlement negotiations.⁵⁶ 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 Defendant’s defenses thereto.⁵⁷ As outlined in the Declaration of Vartan Madoyan, Class Counsel performed an extensive analysis of the claims pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

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⁵⁴ Settlement Agreement, ¶¶ 4.2.5(c) & 4.3.1.

⁵⁵ Madoyan Decl., ¶¶ 11, 13, & 21.

⁵⁶ Madoyan Decl., ¶¶ 11-13 & 18.

⁵⁷ *Id.*, ¶ 18.

⁵⁸ *Id.*, ¶¶ 11-13 & 16-18.

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

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁹ 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 so 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, Plaintiff’s claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

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

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed Plaintiff 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.

⁵⁹ Settlement Agreement, ¶ 3.3.

Based on information provided by Defendant, the Class is estimated to consist of at least 146 individuals.⁶⁰ This class is therefore 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 salaried property-level "managers," or persons who held similar job titles and/or performed similar job duties in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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 the operative complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and

⁶⁰ Madoyan Decl., ¶ 9.

employment practices, policies, and procedures during the time period at issue.⁶¹ Plaintiff's claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff 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 pay reporting time pay, failing to pay one day's rest in seven, failing to give notice of material terms of employment failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶²

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶³ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁴

Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across their salaried property-level "managers," or persons who held similar job titles and/or performed similar job duties who were employed by Defendant in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEE PAYMENT AND CLASS COUNSEL EXPENSES PAYMENT

Class Counsel has litigated the matter for over four (4) years and was actively preparing the matter for class certification and trial.⁶⁵ 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 conducted formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests

⁶¹ Madoyan Decl., ¶ 16.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Madoyan Decl., ¶¶ 11-13.

1 onto Defendant.⁶⁶ Class Counsel also noticed the depositions of Defendant's Person Most
2 Knowledgeable designees. Class Counsel reviewed a large volume of documents and data⁶⁷ and
3 also interviewed and obtained information from Plaintiff, Defendant, and other sources,
4 researched applicable law, undertook damages/valuation calculations, and met and conferred
5 with Defendant's counsel regarding the pleadings, discovery, and the production of documents
6 and data prior to mediation.⁶⁸ Counsel for the Parties also undertook extensive settlement
7 discussions, which included participating in a formal, full-day mediation.⁶⁹

8 Class Counsel are well-experienced in wage-and-hour class action litigation and used that
9 experience to obtain a great result for the Class.⁷⁰

10 The Settlement establishes a Gross Settlement Amount of One Million Five Hundred and
11 Fifty Thousand Dollars and Zero Cents (\$1,550,000.00), and provides for Class Counsel to apply
12 to the Court for Class Counsel Fee Payment and Class Counsel Expenses Payment, consisting
13 of attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount
14 (i.e., \$516,666.67) and an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents
15 (\$25,000.00) for costs and expenses.⁷¹ The attorneys' fees provided for by the Settlement is
16 commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2)
17 the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and
18 determination that Class Counsel has shown, (4) the results that Class Counsel has achieved
19 throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the
20 Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote
21 its time and efforts to this matter. The proposed Class Notice provides Class Members with
22 information about the amount allocated toward the Class Counsel Fee Payment and Class
23 Counsel Expenses Payment, and that an award of the Class Counsel Fee Payment and Class
24 Counsel Expenses Payment will be sought, as provided for by the Settlement.⁷²

25 ⁶⁶ *Id.*, ¶ 12.

26 ⁶⁷ *Ibid.*

27 ⁶⁸ *Ibid.*

28 ⁶⁹ *Id.*, ¶ 11.

⁷⁰ *Id.*, ¶¶ 6-7.

⁷¹ Settlement Agreement, ¶¶ 4.2.3 & 4.2.4.

⁷² Settlement Agreement, Exh. A.

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

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

21 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
22 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
23 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
24 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
25 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
26 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
27 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
28 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class

actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷³

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Class Counsel Fee Payment and Class Counsel Expenses Payment and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice⁷⁴ describes the Settlement, the deadlines and procedures to mail a written objection to the Class Settlement or present the objection orally, at the Final Approval Hearing, and mail a Request for Exclusion from the Class Settlement, and/or mail a dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.⁷⁵

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the

⁷³ Madoyan Decl., ¶ 19.

⁷⁴ Settlement Agreement, Exh. A.

⁷⁵ Settlement Agreement, Exh. A.

proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁶ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁷ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Class Payments and Individual PAGA Payments are calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.⁷⁸

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

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

The Parties have selected Simpluris, Inc., (“Simpluris” or “Settlement Administrator”) to administer the Settlement. The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁷⁹ Not later than three (3) business days after the Settlement Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Settlement Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.⁸⁰ If the USPS does not provide a forwarding address, the Settlement Administrator shall conduct an address search, and re-mail the Class Notice to the most current address obtained.⁸¹ The deadlines for Class Members’ written objections, Challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ *Id.*, ¶ 8.4.1.

⁸⁰ Settlement Agreement ¶ 8.4.2.

⁸¹ Ibid.

in the Class Notice for all Class Members whose notice is re-mailed.⁸² The Settlement Administrator will receive and process Requests for Exclusion, written objections, and any disputes regarding Workweeks and/or PAGA Pay Periods.⁸³

The Settlement Administrator Requests for Exclusion, objections, and disputes regarding Workweeks and/or PAGA Pay Periods; provide necessary reports and declarations; print, mail and re-mail (if necessary) the Class Notice to Class Members and Aggrieved Employees, calculate, subtract, and transmit necessary taxes and withholdings; prepare and submit informational and other tax filings and documents, issue 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, provide necessary reports and declarations,; issue and transmit all payments provided for by the Settlement, including and not limited to, mailing Individual Class Payments to Participating Class Members and Individual PAGA Payments to Aggrieved Employees; and perform any other usual and customary duties for administering a class action settlement.⁸⁴ The Settlement Administration Payment are currently estimated to be no more than Ten Thousand Dollars and Zero Cents (\$10,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁵

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁶

⁸² *Id.*, ¶ 8.4.3.

⁸³ *Ibid.*

⁸⁴ Settlement Agreement, ¶ 8; Madoyan Decl., ¶ 15.

⁸⁵ Settlement Agreement, ¶ 4.2.1; Madoyan Dec., ¶ 15.

⁸⁶ Settlement Agreement, ¶ 8.4.1.

No later than fifteen (15) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member and Aggrieved Employee: full name, last known mailing address, Social Security number, and number of Class Periods Workweeks and PAGA Period Pay Periods (collectively, "Class Data").⁸⁷

No later than fourteen (14) calendar days after receiving the Class Data, the Settlement Administrator will mail the Class Notice to all Class Members and Aggrieved Employees identified in the Class Data, via first-class USPS mail.⁸⁸ If the USPS does not provide a forwarding address, the Settlement Administrator shall conduct an address search, and re-mail the Class Notice to the most current address obtained.⁸⁹ Not later than three (3) business days after the Settlement Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Settlement Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.⁹⁰ The deadlines for Class Members' written objections, Challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed.⁹¹

As soon as practicable and no later than three (3) business days following the Effective Date, the Settlement Administrator shall provide to Defendant complete wiring instructions for the Gross Settlement Amount.⁹² Defendant shall fund the Gross Settlement Amount by transmitting the sum into an escrow account to be established by the Settlement Administrator (the Escrow Account").⁹³ Defendant shall fund the Gross Settlement Amount in two (2) installments as follows: Defendant shall transmit its first payment in the amount of Seven Hundred Seventy Five Thousand Dollars and Zero Cents (\$775,000.00) into the Escrow

⁸⁷ *Id.*, ¶¶ 1.6 & 8.2.

⁸⁸ *Id.*, ¶ 8.4.1.

⁸⁹ *Id.*, ¶ 8.4.2.

⁹⁰ *Ibid.*

⁹¹ *Id.*, ¶ 8.4.3.

⁹² Settlement Agreement, ¶ 5.1.

⁹³ *Id.*, ¶ 5.2.

Account no later than thirty (30) days after the Effective Date of this Agreement.⁹⁴ Defendant shall transmit its second payment in the amount of Seven Hundred Seventy Five Thousand Dollars and Zero Cents (\$775,000.00) into the Escrow Account no later than ninety (90) calendar days after the date of Defendant's First Installment Payment.⁹⁵

Within fourteen (14) calendar days after Defendant transmits its Second Installment Payment, the Settlement Administrator will mail checks for all Individual Class Payments and Individual PAGA Payments.⁹⁶ Within fourteen (14) calendar days after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator will make the Settlement Administration Payment and LWDA Payment.⁹⁷ Within twenty-one (21) calendar days after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator will mail checks for Class Counsel Fee Payment, Class Counsel Expense Payment and Class Representative Service Payment.⁹⁸

The face of each check shall prominently state the date when the check will be voided, which will be one hundred and eighty (180) calendar days after the date of mailing ("Void Date").⁹⁹ The Settlement Administrator will cancel all checks not cashed by the void date.¹⁰⁰ For any Settlement Group Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Settlement Administrator shall transmit the funds represented by such checks to Centro Legal De La Raza, consistent with Code of Civil Procedure Section 384, subd.(b) ("Cy Pes Recipient").¹⁰¹

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENT

Plaintiff Cynthia Barragan respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Service Payment in an

⁹⁴ *Id.*, ¶ 5.2.1.

⁹⁵ *Id.*, ¶ 5.2.2.

⁹⁶ *Id.*, ¶ 5.5.

⁹⁷ *Id.*, ¶¶ 5.6 & 5.7.

⁹⁸ *Id.*, ¶ 5.8.

⁹⁹ *Id.*, ¶ 5.5.3.

¹⁰⁰ *Ibid.*

¹⁰¹ Settlement Agreement, ¶ 5.5.4.

amount up to Ten Thousand Dollars and Zero Cents (\$10,00.00) to Plaintiff.¹⁰² It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal 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 Class Representative Service Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.¹⁰³ Plaintiff risked retaliation and notoriety that is inherent in suing one's employer, and yet Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.¹⁰⁴ Accordingly, it is appropriate and just for Plaintiff to receive Class Representative Service Payment for her services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to her individual class payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Cynthia Barragan as Class Representative; appoint Simpluris as Settlement Administrator; preliminarily approve the allocations for Class Counsel Fee Payment, Class Counsel Expenses Payment, Class Representative Service Payment, PAGA Payment, and

¹⁰² *Id.*, ¶ 4.2.2.

¹⁰³ Madoyan Decl., ¶ 20; Declaration of Cynthia Barragan in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Barragan Decl."), ¶ 4.

¹⁰⁴ Madoyan Decl., ¶ 20; Barragan Decl., ¶¶ 3-6.

Settlement Administration Payment; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Respectfully Submitted,

Dated: August 5, 2024

LAWYERS for JUSTICE, PC

By:



Vartan Madoyan
Attorneys for Plaintiff