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

(UNLIMITED JURISDICTION)

JENICA COLE, SHAUNA ADAMS,
KASSANDRA MENDIVIL, RICHARD
BAUTISTA, MICHAEL NEVAREZ, JOE
NUNEZ, and HUNTER MEELEE, on behalf of
themselves and all others similarly situated, and as
“aggrieved employees” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

STRATEGIC GREEN PARTNERS LLC DOING
BUSINESS AS AUTHENTIC 760, a California
limited liability company; IGS SOLUTIONS LLC,
a California limited liability company; SHRYNE
GROUP, INC., a California corporation; STIIIZY,
LLC, a California limited liability company;
IRONWORKS COLLECTIVE, INC., DOING
BUSINESS AS BLAZE, a California corporation;
TONY HUANG, an individual; and DOES 1–50,
inclusive,

Defendant(s).

Case No. CV2021-0426

**PLAINTIFFS KASSANDRA
MENDIVIL, RICHARD BAUTISTA,
JENICA COLE, SHAUNA ADAMS,
MICHAEL NEVAREZ, JOE NUNEZ,
AND HUNTER MEELEE’S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: February 9, 2024
Hearing Time: 9:00 a.m.
Hearing Dept.: 14, The Honorable Dav
Rosenberg

Action filed: March 12, 2021

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiffs Jenica Cole, Shauna Adams, Kassandra Mendivil, Richard Bautista, Michael
5 Nevarez, Joe Nunez, and Hunter Meelee, and all others similarly situated (collectively
6 “Plaintiffs”) submit this memorandum of points and authorities in support of their unopposed
7 motion for preliminary approval of the Class Action Settlement (the “Settlement”)², which
8 provides for a Gross Settlement Amount (“GSA”) of \$4,280,000.00 in compromise of all disputed
9 claims on behalf of all persons employed as hourly, nonexempt employees in California by
10 Defendants Strategic Green Partners LLC doing business as Authentic 760, IGS Solutions LLC,
11 Shryne Group, Inc., STIIIZY, LLC, and Ironworks Collective, Inc., doing business as Blaze
12 (collectively “Defendants”) at any time between January 28, 2017 and the date of preliminary
13 approval of this Settlement (or as otherwise limited as detailed further herein). Through this
14 Motion, Plaintiffs respectfully request for this Court to (1) provisionally certify the below-defined
15 Class for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve
16 the Settlement; (3) preliminarily appoint Plaintiffs as Class Representatives; (4) appoint counsel
17 for Plaintiffs as Class Counsel; (5) approve the proposed notice procedures and related forms; and
18 (6) schedule a final approval hearing.

19 This Court should grant Plaintiffs’ motion because: (1) for settlement purposes, the
20 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
21 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
22 reasonableness, and adequacy; (3) for settlement purposes, Plaintiffs are adequate to serve as
23 Class Representatives; (4) Plaintiffs’ attorneys are adequate to serve as Class Counsel; (5) the
24 proposed notice procedures, and related forms, fully comport with due process and adequately
25 apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to allow
26 Settlement Class members an opportunity to be heard regarding the Settlement and to give it
27 finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiffs’ Motion
28 in its entirety and preliminarily approve the Settlement.

² The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”), which is submitted herewith under a separate cover.

II. BACKGROUND

Defendants are cannabis growers and retailers. Declaration of David Spivak (“DS”), ¶ 4. Defendants employed Plaintiffs in various hourly non-exempt positions between January 28, 2017 and the present. *Id.*

A. The Claims and Procedural History

On September 21, 2020, Plaintiff Kassandra Mendivil notified Defendants and the California Labor and Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations committed by Defendants. DS, ¶ 5, Ex. 2. On November 24, 2020, January 6, 2021, March 18, 2021, January 3, 2022, and January 21, 2022, Plaintiffs Michael Nevarez, Jenica Cole and Shauna Adams, Hunter Meelee, Richard Bautista, and Joe Nunez, respectively, notified Defendants and the LWDA of alleged Labor Code violations. On December 22, 2023, Plaintiffs Jenica Cole and Shauna Adams notified the LWDA and Defendants in writing of all alleged Labor Code violations committed by Defendants (and subject to release per ¶ 1.40 of the Settlement), including Labor Code sections 201, 201.5, 202, 203, 204, 221, 226, 226.7, 227.3, 232, 233, 246, 246.5, 248, 248.2, 351, 353, 432, 510, 512, 551, 552, 1174, 1182.11, 1182.12, 1194, 1197, 1198, 1198.5, 2350, 2699, 2800, 2802, 2804, 2810.5, 6300, 6400, 6401, 6402, and 6403. DS, ¶ 5, Ex. 4; and Declaration of Daniel F. Gaines (“DFG”), ¶ 9, Ex. B.

On March 12, 2021, Plaintiffs Jenica Cole and Shauna Adams commenced this Action by filing a Complaint alleging a claims pursuant to PAGA against Defendants for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related claims. November 13, 2023, Plaintiffs Jenica Cole and Shauna Adams filed a First Amended Complaint adding the other Plaintiffs and Defendants as parties and alleging causes of action against Defendants for failure to pay employees all earned wages, failure to pay overtime, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify and/or reimburse for business expenses, failure to issue proper wage statements, failure to maintain accurate employment and/or payroll records, failure to provide payroll records, failure to provide access to personnel files, failure to timely pay wages, failure to pay gratuities, unlawful tip collection, failure to pay vacation pay, failure to provide sick leave and sick pay including COVID-19 sick leave and sick pay, failure to provide sick leave without precondition, failure to

1 provide seating, failure to provide a place of employment that was safe and healthful, wrongful
2 termination for failure to obtain business use vehicle insurance, retaliation for whistleblower
3 complaints under California Labor Code section 1102.5 for failure to obtain business use vehicle
4 insurance, failure to provide one day's rest in seven days, and unfair competition under Business
5 & Professions Code sections 17200, *et seq.* The First Amended Complaint consists of all theories
6 of recovery subject to release under ¶ 1.39 of the Settlement. The First Amended Complaint is
the operative complaint in this Action (the "Operative Complaint.").

7 **B. Mediation**

8 Over a period of time spanning the date the Mendivil action was filed in September 2020
9 through June 15, 2022, the Parties engaged in an informal, voluntary exchange of information in
10 the context of privileged settlement discussions to facilitate an early mediation. Defendants
11 produced Plaintiffs' entire personnel files (including policies and agreements they signed and
12 acknowledged), copies of relevant company written policies, time-keeping records, email
13 messages, and paycheck data and records for the putative class, and more detailed time and
14 payroll data for a random sample of putative class members specifically selected by Plaintiffs'
counsel. DS, ¶ 9.

15 On June 15, 2022, following much of the foregoing informal discovery and exchange of
16 information, the Parties participated in a mediation session presided over by Mediator Steven
17 Pearl, an experienced class action mediator. During the mediation, the Parties had a full day of
18 productive negotiations and reached agreement on a class-wide settlement during the second
19 mediation session. During the mediation session, each side, represented by their respective
20 counsel, recognized the risk of an adverse result in the Action and, following a proposal
21 recommended by the mediator for the material terms of the Settlement, agreed to settle the Action
22 and all other matters covered by this Agreement pursuant to the terms and conditions of this
23 Agreement. DS, ¶ 9. After further negotiations over the terms of the long-form Settlement
Agreement, the Parties executed the Settlement on September 22, 2023. DS, ¶ 9, Ex. 1.

24 **C. Defendants' Financial Condition**

25 At the mediation, it became clear that that Defendants had insufficient resources to cover
26 the full extent of liability. DS ¶ 10. As part of the settlement negotiations, Defendants revealed
27 that they are heavily leveraged. *Id.* The information provided was sufficient to demonstrate the
28 financial condition of the Defendants. Based on such records, each Plaintiff, on their own behalf

1 and on behalf of the Class Members, has agreed to settle the lawsuit on the terms set forth in the
2 Settlement. *Id.*

3 **III. OVERVIEW OF THE SETTLEMENT**

4 **A. Settlement Class Definition**

5 The Settlement defines the call as all persons employed as hourly, nonexempt employees
6 of Defendants Strategic Green Partners LLC doing business as Authentic 760, IGS Solutions
7 LLC, Shryne Group, Inc., STIIIZY, LLC, and Ironworks Collective, Inc., doing business as Blaze
8 (collectively “Defendants”) in California at any time between January 28, 2017 through the date
9 of preliminary approval of this Settlement, with a provision to shorten the class period based on
10 an escalator provision limited the workweeks encompassed by the Settlement.

11 **B. Monetary Terms**

12 “Gross Settlement Amount” means \$4,280,000.00 which is the total amount Defendants
13 agree to pay under the Settlement except as provided in Paragraph 9’s escalator provision. The
14 Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
15 Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class
16 Representative Service Payments and the Administrator’s Expenses. Defendants will pay the
17 Gross Settlement Amount in four (4) installment payments. Settlement, ¶ 1.22. Defendants
18 promise to pay \$4,280,000.00 and no more as the Gross Settlement Amount and to separately pay
19 any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.
20 Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior
21 to the deadlines stated in Paragraph 4.3 of the Agreement. The Administrator will disburse the
22 entire Gross Settlement Amount without asking or requiring Participating Class Members or
23 Aggrieved Employees to submit any claim as a condition of payment. None of the Gross
24 Settlement Amount will revert to Defendant. *Id.* ¶ 3.1.

25 **1. Escalator Clause**

26 Based on their records, Defendants estimate that, as of the date of the Settlement
27 Agreement, (1) there are approximately 4,761 Class Members and 158,000 total Work Weeks
28 during the period of January 28, 2017 through June 7, 2022. These numbers would be expected
to increase proportionately for the passage of time through the Class Period end date. Before the
Parties seek or a Party seeks Court approval of the Settlement, the Administrator will advise
Plaintiffs’ counsel of Defendants’ report of the total number of Work Weeks during the Class
Period. If the number of Class Member Work Weeks as of the Class Period end date exceeds the

1 referenced 158,000 weeks worked by more than 15% (i.e. more than 181,700 weeks), the Gross
2 Settlement Amount, including attorney fees, will increase proportionally according to the number
3 of additional Work Weeks in excess of the 15%. However, if the total number of Class Members
4 Work Weeks as of the Class Period end date exceeds the referenced 158,000 weeks worked by
5 more than 15%, Defendants will have the option, at Defendants' election, to cap the number of
6 total Work Weeks and cut off the Class Period as of the date when the 15% benchmark is reached,
7 without any increase, proportional or otherwise, to the Gross Settlement Amount or any attorneys'
8 fees. *Id.*, ¶ 9.

9 **2. PAGA Penalties**

10 "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the
11 Gross Settlement Amount, allocated 25% (\$107,000.00) to the Aggrieved Employees to be paid
12 on a pro-rated basis as Individual PAGA Payments and the remaining 75% (\$321,000.00) to the
13 LWDA as the LWDA PAGA Payment in settlement of the PAGA claims. *Id.*, at ¶1.34.

14 **3. Class Counsel Fees Payment**

15 "Class Counsel Fees Payment" means the amount allocated to Class Counsel for
16 reimbursement of reasonable attorneys' fees incurred to prosecute the Actions. *Id.*, at ¶1.7. The
17 GSA includes a Class Counsel Fees Payment of not more than 35% of the GSA, which is currently
18 estimated to be \$1,498,000.00. *Id.*, at ¶3.2.2.

19 On August 14, 2023, the Plaintiffs and their counsel entered into a fee sharing agreement.
20 See DS ¶ 45, Exhibits 12 and 13.

21 **4. Class Counsel Expenses**

22 "Class Counsel Litigation Expenses Payment" means the amount allocated to Class
23 Counsel for reimbursement of expenses incurred to prosecute the Actions. *Id.*, at ¶1.7. The GSA
24 includes a Class Counsel Litigation Expenses Payment of not more than \$60,000.00. *Id.*, at ¶3.2.2.

25 **5. Class Representative Service Payments**

26 "Class Representative Service Payments" means the payments to the Class
27 Representatives for initiating the Actions and providing services in support of the Actions. *Id.*, at
28 ¶1.17. The GSA includes Class Representative Service Payments to each of the Class
Representatives of not more than \$20,000.00 (in addition to any Individual Class Payments and
any Individual PAGA Payments the Class Representatives are entitled to receive as a Participating
Class Members). Defendants will not oppose any Plaintiff's request for a Class Representative
Service Payment that does not exceed these amounts. As part of the motion for Class Counsel

1 Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any
2 and all Class Representative Service Payments no later than sixteen (16) court days prior to the
3 Final Approval Hearing. If the Court approves a Class Representative Service Payment less than
4 the amount requested, the Administrator will retain the remainder in the Net Settlement Amount.
5 The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Each
6 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
Representative Service Payment. *Id.*, at ¶ 3.2.1.

7 **6. The Administrator's Expenses**

8 “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed to
9 appoint to administer the Settlement. *Id.*, at ¶1.2. “Administration Expenses Payment” means the
10 amount the Administrator will be paid from the Gross Settlement Amount to reimburse its
11 reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid
12 submitted to the Court in connection with Preliminary Approval of the Settlement. *Id.*, at ¶1.3.
13 The GSA includes an Administrator Expenses Payment not to exceed \$80,000.00 except for a
14 showing of good cause and as approved by the Court. To the extent the Administration Expenses
15 are less or the Court approves payment less than \$80,000.00, the Administrator will retain the
remainder in the Net Settlement Amount. *Id.*, at ¶ 3.2.3.

16 **C. Timing of Payments**

17 Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts
18 necessary to fully pay Defendants’ share of payroll taxes by transmitting the funds to the
Administrator as follows:

- 19 1. Within 90 calendar days of the Court’s final approval order, Defendants shall pay
20 the first of four installment payments on the Gross Settlement Amount into the Settlement
21 Account. The first installment payment shall be in the amount of \$1,480,000.00.
- 22 2. Within 180 calendar days of the first installment payment, Defendants shall pay
23 the second installment payment in the amount of \$1,000,000.00 towards the Gross Settlement
24 Amount into the Settlement Account.
- 25 3. Within 180 calendar days of the second installment payment, Defendants shall pay
26 the third installment payment in the amount of \$1,000,000.00 towards the Gross Settlement
27 Amount into the Settlement Account.

1 4. Within 180 calendar days of the third installment payment, Defendants shall pay
2 the fourth and final installment payment in the amount of \$800,000.00 towards the Gross
3 Settlement Amount into the Settlement Account.

4 5. Within 30 calendar days of each installment payment, the Administrator will make
5 a pro rata distribution of the Individual Class Payments, Individual PAGA Payments, LWDA
6 PAGA Payment, Class Representative Service Payments, the Class Counsel Fees Payment, the
7 Class Counsel Litigation Expenses Payment, and the Administrator's expenses. *Id.*, ¶ 4.3.

8 Disbursements of the pro rata portions of the Class Counsel Fees Payment, the Class
9 Counsel Litigation Expenses Payment, and the Class Representative Service Payments shall not
10 precede disbursement of pro rata portions of the Individual Class Payments and Individual PAGA
11 Payments. *Id.*

12 **D. Calculation of Settlement Shares**

13 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by
14 the total number of Work Weeks worked by all Participating Class Members during the Class
15 Period and (b) multiplying the result by each Participating Class Member's Work Weeks. *Id.*, ¶
16 3.2.4. The Administrator will calculate each Individual PAGA Payment by (a) dividing the
17 amount of the Aggrieved Employees' 25% share of PAGA Penalties \$107,000.00 by the total
18 number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
19 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
20 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
21 Individual PAGA Payment. *Id.*, ¶ 3.2.5.1.

22 **E. Apportionment of Settlement Shares**

23 20.00% of each Participating Class Member's Individual Class Payment will be allocated
24 to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
25 withholding and will be reported on an IRS W-2 Form. The remaining 80.00% of each
26 Participating Class Member's Individual Class Payment will be allocated to settlement of claims
27 for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to
28 wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume
full responsibility and liability for any employee taxes owed on their Individual Class Payment.
Id., ¶ 3.2.4.1. Aggrieved Employees assume full responsibility and liability for any taxes owed
on their Individual PAGA Payment. *Id.*, ¶ 3.2.5.1. If the Court approves PAGA Penalties of less
than the amount requested, the Administrator will allocate the remainder to the Net Settlement

1 Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. *Id.*,
2 ¶ 3.2.5.2.

3 **F. The Releases**

4 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
5 fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
6 Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as
7 follows:

8 Each Plaintiff and his/her respective former and present spouses, representatives, agents,
9 attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released
10 Parties from all claims, transactions, or occurrences that occurred during the Class Period,
11 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged,
12 based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or
13 reasonably could have been, alleged based on facts contained in the Operative Complaint,
14 Plaintiffs' PAGA Notices, or ascertained during the Actions and released under 6.2, below
15 ("Plaintiffs' Releases"). *Id.*, ¶ 6.1. Plaintiffs' Releases do not extend to any claims or actions to
16 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
17 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
18 on occurrences outside the Class Period. Each Plaintiff acknowledges that he/she may discover
19 facts or law different from, or in addition to, the facts or law that each Plaintiff now knows or
20 believes to be true but agrees, nonetheless, that each Plaintiff's Release shall be and remain
21 effective in all respects, notwithstanding such different or additional facts or his/her discovery of
22 them.

23 For purposes of each Plaintiff's Release, each Plaintiff expressly waives and relinquishes
24 the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which
25 reads:

26 A general release does not extend to claims that the creditor releasing party does not know
27 or suspect to exist in his or her favor at the time of executing the release, and that if known
28 by him or her would have materially affected his or her settlement with the debtor
Released Party.

1 *Id.*, ¶ 6.1.1.

2 All Participating Class Members, on behalf of themselves and their respective former and
3 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
4 Released Parties from (i) all claims that were alleged, or reasonably could have been alleged,
5 based on the Class Period and the facts stated in the Operative Complaint and ascertained in the
6 course of the Actions including, failure to pay wages, unauthorized and unlawful wage
7 deductions, failure to pay overtime, failure to provide meal periods, failure to authorize and permit
8 rest periods, failure to indemnify and/or reimburse for business expenses, failure to issue proper
9 wage statements, failure to timely pay wages, failure to maintain accurate required employment
10 and payroll records, failure to provide payroll records, failure to provide access to personnel files,
11 failure to pay gratuities, unlawful tip collection, failure to pay vacation pay, failure to provide
12 sick leave and sick pay including COVID-19 sick leave and sick pay, failure to provide sick leave
13 without precondition, failure to provide seating, failure to provide a place of employment that
14 was safe and healthful, failure to provide one day's rest in seven days, wrongful termination for
15 failure to obtain business use vehicle insurance, retaliation for whistleblower complaints under
16 California Labor Code section 1102.5 for failure to obtain business use vehicle insurance, and
17 unfair competition under Business & Professions Code sections 17200, et seq.. Except as set forth
18 in Section 6.3 of this Agreement, Participating Class Members do not release any other claims,
19 including claims for vested benefits, wrongful termination for reasons other than failure to obtain
20 business use vehicle insurance and/or for retaliation for whistleblower complaints for failure to
21 obtain business use vehicle insurance, violation of the Fair Employment and Housing Act,
22 unemployment insurance, disability, social security, workers' compensation, or claims based on
23 facts occurring outside the Class Period. *Id.*, ¶ 6.2.

24 All Non-Participating Class Members who are Aggrieved Employees are deemed to
25 release, on behalf of themselves and their respective former and present representatives, agents,
26 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
27 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
28 Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course
of the Actions including, failure to pay wages, unauthorized and unlawful wage deductions,
failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify

1 for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure
2 to maintain required payroll records, and related claims. *Id.*, ¶ 6.3.

3 **G. Notice and Claims Process and Procedures**

4 Not later than 15 days after the Court grants Preliminary Approval of the Settlement,
5 Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a
6 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must
7 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement
8 and for no other purpose, and restrict access to the Class Data to Administrator employees who
9 need access to the Class Data to effect and perform under this Agreement. The Parties shall
10 communicate these requirements to the Administrator and secure the Administrator's agreement.
11 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
12 Class Data omitted class member identifying information and to provide corrected or updated
13 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
14 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
15 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
16 to missing or omitted Class Data. *Id.*, ¶ 4.2.

17 No later than three (3) business days after receipt of the Class Data, the Administrator
18 shall notify Class Counsel that the list has been received and state the number of Class Members,
19 PAGA Members, Work Weeks, and Pay Periods in the Class Data. *Id.*, ¶ 8.4.1.

20 Using best efforts to perform as soon as possible, and in no event later than 14 days after
21 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
22 Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish
23 translation, if applicable, substantially in the form attached to the Agreement as Exhibit A. DS
24 Decl., ¶ 51. The first page of the Class Notice shall prominently estimate the dollar amounts of
25 any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,
26 and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these
27 amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses
28 using the National Change of Address database. *Id.*, ¶ 8.4.2.

Not later than three (3) business days after the Administrator's receipt of any Class Notice
returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any
forwarding address provided by the USPS. If the USPS does not provide a forwarding address,

1 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to
2 the most current address obtained. The Administrator has no obligation to make further attempts
3 to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a
second time. *Id.*, ¶ 8.4.3.

4 The deadlines for Class Members' written objections, Challenges to Work Weeks and/or
5 Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60
6 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed.
7 The Administrator will inform the Class Member of the extended deadline with the re-mailed
8 Class Notice. *Id.*, ¶ 8.4.4.

9 If the Administrator, any of the Defendants, or Class Counsel is contacted by or otherwise
10 discovers any persons who believe they should have been included in the Class Data and should
11 have received Class Notice, the Parties will expeditiously meet and confer in person or by
12 telephone, and in good faith. In an effort to agree on whether to include them as Class Members.
13 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
14 Members, and the Administrator will send, via email or overnight delivery, a Class Notice
15 requiring them to exercise options under this Agreement not later than 14 days after receipt of
Class Notice, or the deadline dates in the Class Notice, whichever are later. *Id.*, ¶ 8.4.5.

16 **1. Class Member Disputes**

17 Each Class Member shall have 60 days after the Administrator mails the Class Notice
18 (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the
19 number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in
20 the Class Notice. The Class Member may challenge the allocation by communicating with the
21 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
22 Member to submit supporting documentation. In the absence of any contrary documentation, the
23 Administrator is entitled to presume that the Work Weeks contained in the Class Notice are
24 correct so long as they are consistent with the Class Data. The Administrator's determination of
25 each Class Member's allocation of Work Weeks and/or Pay Periods shall be final and not
26 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
27 copies of all challenges to calculation of Work Weeks and/or Pay Periods to Defense Counsel and
Class Counsel and the Administrator's determination the challenges. *Id.*, ¶ 8.6.

2. Opting Out

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). 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. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. *Id.*, ¶ 8.5.1.

The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge. *Id.*, ¶ 8.5.2.

Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement. *Id.*, ¶ 8.5.3.

Every Class Member who submits a valid and timely Request for Exclusion shall be deemed 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. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment. *Id.*, ¶ 8.5.4.

3. Objecting

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 Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payments. *Id.*, ¶ 8.7.1.

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. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator’s mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). *Id.*, ¶ 8.7.2. Non-Participating Class Members have no right to object to any of the class action components of the Settlement. *Id.*, ¶ 8.7.3.

H. Uncashed Checks

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). *Id.*, ¶ 4.3.9.

IV.5 CERTIFICATION OF THE CLASS IS APPROPRIATE

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative’s claims are typical of the class’ claims; and (4) the representative will fairly and adequately represent the class’ interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover, in the settlement context, the Court can use a lesser standard to determine the appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

A. The Settlement Class Is Objectively Ascertainable

A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiffs maintain that the above-defined Class is ascertainable because its members may be identified by reference to Defendants’ records and Defendants have agreed to share the relevant information from their records to

1 facilitate the settlement process. DS, ¶ 11; Settlement, § 2.4. Therefore, the Settlement Class is
2 ascertainable.

3 **B. The Membership of the Settlement Class Is Sufficiently Numerous**

4 The Settlement Class has sufficiently numerous members to render joinder impractical.
5 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
6 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are more than 4,700 Class
7 Members. DS, ¶ 12. Plaintiffs maintain that it would be impractical and economically inefficient
8 to require each Class Member to separately maintain an individual action or be joined as a named
9 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
11 the Settlement Class' membership is sufficiently numerous. DS, ¶ 12. *See Daar v. Yellow Cab*
12 *Co.* (1967) 67 Cal.2d 695.

13 **C. Class Members Share a Well-Defined Community of Interest**

14 The community of interest requirement “embodies three factors: (1) predominant common
15 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
16 (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v.*
17 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have uniform
18 or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App.
19 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and practice .
20 . . in order to assess whether that common behavior toward similarly situated plaintiffs renders
21 class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

22 To justify certification, the class proponent ““must show ... that questions of law or fact
23 common to the class predominate over the questions affecting the individual members”” *See,*
24 *Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank,*
25 *FA v. Superior Court*, 248 Cal. 4th 906, 913 (2001)). In light of the more lenient standard for
26 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
27 the claims of the class Members all stem from the same sources. DS, ¶ 13.

28 In this case, Plaintiffs assert all class members were subject to the same or similar
operations and employment policies, practices, and procedures. The claims arise from
Defendants’ alleged policy-driven failure to pay wages, unauthorized and unlawful wage
deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to
indemnify for business expenses, failure to issue proper wage statements, failure to timely pay

1 wages, failure to maintain required payroll records, and related labor law violations, all of which
2 Plaintiffs claim constitute unfair business practices and give rise to PAGA penalties. Plaintiffs
3 assert that common questions include, but are not limited to: (1) Whether Defendants failed to
4 pay all wages earned to class members for all hours worked at the correct rates of pay; (2) Whether
5 Defendants failed to provide the class with all meal and rest periods in compliance with California
6 law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they
7 failed to provide the class with one or more meal or rest periods in compliance with California
8 law; (4) Whether Defendants failed to indemnify the class for all necessary business expenditures
9 incurred during the discharge of their duties; (5) Whether Defendants knowingly and intentionally
10 failed to provide the class with accurate wage statements; (6) Whether Defendants willfully failed
11 to provide the class with timely final wages; and (7) Whether Defendants engaged in unfair
12 competition within the meaning of Business and Professions Code section 17200, *et seq.*, with
respect to the class. DS, ¶ 13. Therefore, common questions predominate.

13 **D. Each Plaintiff is Typical of the Settlement Class**

14 The class representatives must be similarly situated to the rest of the purported class. *See*
15 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
16 that the class representative must have identical interests with the class members. The only
17 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
18 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
19 Plaintiffs’ claims and the claims alleged on behalf of the class”). Plaintiffs contend that their
20 claims are typical for the purposes of certifying the Settlement Class. Plaintiffs asserts that they,
21 like absent Class Members similarly classified as non-exempt, hourly employees, were subject to
22 the same relevant policies and procedures governing their compensation, hours of work and meal
23 and rest periods. Because Plaintiffs contend that they were subject to the same general course of
24 conduct as absent Class Members, resolving the common questions as they apply to Plaintiffs will
25 determine Defendants’ *prima facie* liability to all Class Members. Moreover, Plaintiffs’ claims
could potentially be subject to the same primary affirmative defenses as those of absent Class
Members. Accordingly, Plaintiffs’ claims are typical of the Class. DS, ¶ 14.

26 **E. Each Plaintiff Will Adequately Represent the Settlement Class**

27 The adequacy requirement is met where the plaintiff is represented by counsel qualified
28 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’
interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the

1 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
2 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 15.

3 First, Class Counsel have supplied the Court with declarations to show that they are
4 adequate to represent the Settlement Class and that they have significant experience in
5 employment litigation generally, and wage and hour and employment-related class action
6 litigation specifically. See DS, ¶¶ 17-24; Declarations of Walter L. Haines ¶ 3, Daniel F. Gaines
7 ¶¶ 2-5, Harout Messrelian ¶ 2, Mathew Mann ¶¶ 4-10 Chantal Renee McCoy Payton ¶¶ 4-11,
8 Marcus Joseph Bradley ¶¶ 11-15, Frank H. Kim ¶¶ 4-6, and Helen Kim ¶¶ 4-7. Thus, Plaintiffs'
counsel are adequate to serve as Class Counsel.

9 Second, each Plaintiff contends that she/he is an adequate class representative. Each
10 Plaintiff and the Class Members have strong and co-extensive interests in this litigation because
11 they all worked for Defendants during the relevant time period, allegedly suffered the same
12 alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict
13 of interest between any Plaintiff and the Class Members. DS, ¶ 15. Moreover, each Plaintiff has
14 demonstrated his/her commitment to the Settlement Class by, among other things, retaining
15 experienced counsel, providing counsel with documents and extensively speaking with them to
16 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
17 well as exposing him/herself to the risk of attorneys' fees and costs awards against him/her if this
18 lawsuit had been unsuccessful. DS, ¶ 16. Thus, each Plaintiff is adequate to serve as settlement
19 class representative. Accordingly, this Court should find that Plaintiffs and their counsel are
adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

20 **F. Class Action Treatment Is the Superior Means For Resolving The Claims Of**
21 **The Class Members**

22 Plaintiffs further contend that a class action is also superior to other means adjudicating
23 the issues in this action. The predominance of common legal and factual questions shows that this
24 Court could fairly adjudicate the claims of Class Members through a single class action. In view
25 of the *theoretical* alternatives that proposed class members could potentially utilize—
26 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
27 claims through the Division of Labor Standards Enforcement (where there would be relatively
28 little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
superior to all of them. Thus, this consideration supports conditional class action treatment for
purposes of this Settlement only. DS, ¶ 25.

1 **V. INTRODUCTION THE COURT SHOULD GRANT PRELIMINARY**
2 **APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND**
3 **REASONABLE**

4 **A. Legal Standard**

5 A class action settlement requires court approval. California Rules of Court (“CRC”),
6 Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a
7 written motion for preliminary approval, the proposed class settlement, and the proposed class
8 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
9 hearing where class members may be heard regarding the settlement, and at which evidence and
10 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
11 The decision to approve or reject a class settlement is committed to the Court’s broad discretion.
12 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
13 class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

14 **B. The Settlement Is Presumptively Fair**

15 In assessing preliminary approval, a court evaluates if the settlement process has certain
16 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
17 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
18 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
19 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
20 48 Cal.App.4th at 1794.

21 The class settlement here satisfies all of these factors. DS, ¶ 26. The Settlement resulted
22 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
23 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
24 weaknesses of their respective cases and Defendants’ estimated exposure. *Id.*

25 Defendants deny the allegations in the Operative Complaint, deny any failure to comply
26 with the laws identified in in the Operative Complaint, deny any and all liability for the causes of
27 action alleged, and deny that Plaintiffs have suffered any damages. Settlement, ¶ 2.1. Plaintiffs
28 prepared “damages” estimates in advance of the mediation. DS, ¶ 8, Ex. 9. In advance of the
mediation, Plaintiffs determined Defendants’ maximum exposure for restitution and penalties to
be approximately \$134,889,551.60 (consisting of \$3,457,984.86 in unpaid wages, \$3,009,632.79
in missed meal period premium wages, \$9,122,602.13 in missed rest break premium wages,
\$4,321,650.00 for wage statement penalties, \$10,403,865.72 for waiting time penalties, and
\$99,781,600.00 for civil penalties). Plaintiffs calculated the damages based on the number of

workweeks and pay periods provided by Defendants, Plaintiffs’ reports, and the sample data, in consultation with their statistician expert. *Id.* Plaintiffs also considered the possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members, or file for bankruptcy protection if pushed too hard. Defendants also represented that they had interviewed their employees regarding Plaintiffs’ claims, all of whom would provide declarations, under penalty of perjury, that were favorable to Defendants with respect to the relevant factual issues at issue in Plaintiffs’ action. Plaintiffs’ Counsel applied discounts to the maximum exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendants would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 3.17% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.³ *Id.*

Plaintiffs are aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.⁴ DS, ¶ 38. PAGA penalty awards are often

³ See, e.g., *In re Newbridge Networks* ¶ Litig., 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum potential recovery asserted by either party.”).

⁴ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,

The plain language of PAGA provides that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a “circumstance” of the case under the term’s ordinary meaning. The weight given to that circumstance is greater in this case because

1 small even for egregious, intentional violations of the Labor Code.⁵ *Id.* For instance, on October
2 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by
3 very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving*
4 *Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*
5 (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a
6 PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar
7 result could occur here. *Id.*

8 Plaintiffs' initial estimates do not realistically account for the risks outlined below or the
9 risk that a class will not be certified. *Id.* Therefore, Plaintiffs believe a class settlement for
10 \$4,280,000.00 is fair and reasonable, particularly when Defendants' financial concerns are
11 considered. *Id.*

12 **C. The Settlement Satisfies the Kullar Factors for Approval**

13 The *Kullar* case sets forth several factors a court should consider in determining whether
14 to approve a class settlement. These factors include: (1) the strength of plaintiff's case;
15 (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of
16 maintaining class action status through trial; (4) the amount offered in settlement; (5) the
17 extent of discovery completed and stage of the proceedings; (6) the experience and views
18 of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
19 members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the
20 Settlement satisfies each of these factors.

21 Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'
22 individual claims except for one. As a general matter, it would be excessively punitive
23 for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed
24 the damages caused by that injury or set of injuries.

25 *Id.*, fn. 9. The district court further stated, "Virgin "has not presented any evidence that the full
26 penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened."
27 *Id.*

28 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
awarded approximately \$102 million in damages, primarily based on the defendants' failures to
comply with the requirements of California Labor Code section 226.

⁵ In 2012, Plaintiffs' Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court
case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The
plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
the PAGA.

1 **1. Evaluation of Plaintiffs’ Case**

2 **a. Risks Associated With the Arbitration Agreements**

3 The arbitration agreements entered into between Defendants on the one hand, and the
4 Class Members, on the other, present a significant risk to the success of Plaintiffs’ class action
5 litigation. DS ¶ 28. According to Defendants, the majority of the Class entered into arbitration
6 agreements with Defendants. *Id.* As the arbitration agreements in question restrict potential
7 litigants from bringing class and PAGA actions against Defendants, Plaintiffs would be
8 effectively barred from pursuing claims on behalf of the Class in Court. *Id.* Thus, there is a
9 significant risk the Court could determine that those Class Members who have not entered into
10 arbitration agreements with Defendants do not constitute a sufficiently numerous class to justify
11 class action treatment. As such, by continuing to trial on class-wide claims, Plaintiffs would run
12 the high risk of suffering defeat due to the existence of the arbitration agreement. Moreover, the
13 arbitration agreements would pose danger to any class certification motion brought by Plaintiffs.
14 Because different defenses would apply to some Class Members and not others – i.e., the
15 existence of signed arbitration agreements – there is a risk that the Court could determine that
16 Plaintiffs’ claims present too many individualized inquiries to justify class certification. *Id.*

15 **b. Risks Associated with Defendants’ Financial Condition**

16 Defendants’ financial condition was the key factor in reaching this Settlement. DS, ¶ 29.
17 Due to Defendants’ financial condition, even if Plaintiffs prevailed on all claims at trial, they may
18 never recover the damages due to the risk of insolvency. A very large class action judgment would
19 almost certainly put the company out of business and/or would interfere with the Defendants’
20 ability to carry out their contractual obligations. *Id.* In short, the “poor financial health of [the
21 defendant will] seriously increase [] the chance that Plaintiffs would be left with nothing if they
22 continued to litigate their claims.” *Torrise v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
23 1376 (the financial condition of defendant predominated in assessing the reasonableness of
24 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
25 concerning defendant’s financial stability “strongly supports the reasonableness of the
26 settlement”); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S. App. LEXIS 10259 at *11
27 (finding potential insolvency to be additional risk that favors approval of a class action
28 settlement). Accordingly, Defendants’ financial distress supports this settlement. *Id.*

1 **c. Risks Associated with the Unpaid Wages Claim**

2 There is a risk that Plaintiffs’ recovery for unpaid wages would be extremely limited at
3 best, largely because Defendants’ written policies throughout the relevant time period prohibited
4 off-the-clock work. DS, ¶ 30. Off-the-clock claims are difficult where a defendant requires in its
5 written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation*
6 *Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to
7 be compensable). *Id.* In their written employment policies, Defendants mandate that employees
8 must record all time worked accurately on their time records and strictly prohibit employees from
9 performing any work off-the-clock. DS, ¶ 30. Moreover, while Defendants dispute that off-the-
10 clock work occurred, they contend that any time spent off the clock was *de minimis*. The
11 California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested
12 that irregular and minute periods of time may still be subject to a *de minimis* defense even if
13 compensable. (Stating that “We do not decide whether there are circumstances where
14 compensable time is so minute or irregular that it is unreasonable to expect the time to be
15 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here
16 because the time spent off the clock were minute and insignificant. Accordingly, a large award of
17 penalties seems unlikely with respect to this claim. *Id.*

18 The difficulty inherent in proving that off-the-clock work occurred poses a significant
19 hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to prove this claim.
20 Generally, a court will not certify a class unless it can determine an appropriate classwide
21 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiffs
22 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
23 the lack of records indicating when such off-the-clock work may have taken place. Individualized
24 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
25 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
26 risk that the Court would consider this evidentiary showing insufficient as a classwide
27 methodology. DS, ¶ 31.

28 **d. Risks Associated with the Meal Period Claims**

 There are risks to Plaintiffs’ meal period claim. DS, ¶ 32. Defendants contend that, to
establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
“reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal

breaks and ensure no work thereafter is performed.” *Id.* At 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

Defendants contend they did not impede or discourage Plaintiffs, or any other employees, from taking their meal or rest periods. DS, ¶ 33. Defendants’ policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. *Id.* The time records that comprise the random sample Defendants produced to Plaintiffs for purposes of mediation show that meal periods were taken the vast majority of the time. *Id.* Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendants or each of the employees concerned. Accordingly, there is a significant risk that the value of Plaintiffs’ meal period claim would be substantially reduced at trial. *Id.*

e. Risks Associated with the Rest Break Claims

There are risks to Plaintiffs’ rest period claim. DS, ¶ 34. Employers are not required to record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendants’ written policies on meal and rest periods are consistent with the Wage Order. *Id.* Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.* Plaintiffs will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant case law makes such claims risky from a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

f. Risks Associated with the Failure to Indemnify Claim

There is a risk that the Court may consider Plaintiffs’ claims as to Defendants’ alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify

1 the class. DS, ¶ 35. Plaintiffs allege that Defendants required Plaintiffs and the Class Members
2 to use their personal items including cellular phones, computers and other electronic devices,
3 vehicles, and tools, and failed to indemnify them for these business expenses. *Id.* Defendants
4 presented evidence that they have supplied their employees with tools, equipment, and other
5 supplies and had an expense reimbursement policy. As such, there is a risk that the Court may
6 consider Plaintiffs' claims to be individual in nature and unfit for class wide resolution. *Id.*

7 **g. Risks Associated with the Statutory "Wage Statement"**
8 **Penalty Claims**

9 Plaintiffs also assert claims for wage statement violations, untimely wage violations, and
10 PAGA penalties. Under Labor Code section 226, wage statements must include various
11 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
12 DS, ¶ 36.

13 Here, Plaintiffs' wage statement claim has the same underlying risks as the above claims,
14 as it is derivative of them. *Id.* On their face, the wage statements issued by Defendants comply
15 with the requirements of Labor Code § 226.

16 **h. Risks Associated with The Waiting Time Penalties Claim**

17 Plaintiffs' claim for untimely wages is predicated on Labor Code section 201 to 203. Like
18 the claim under Labor Code ¶ 226, Plaintiffs must establish that the late payments were willful.
19 The evidence of good faith Defendants put forth will defeat this claim.

20 **i. Risks Associated With the PAGA Claim**

21 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
22 penalty. Lab. Code § 2699I(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
23 Cal.App⁴th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid
24 defenses to the Labor Code claims underlying Plaintiffs' PAGA allegations. Thus, the PAGA
25 claims likewise face significant uncertainty. DS, ¶ 38. There is a risk that the Court would
26 consider the maximum civil penalty available to be confiscatory. This is particularly the case
27 considering Defendants' financial condition. *Id.* Moreover, the current COVID-19 pandemic
28 could motivate the Court to further reduce the penalty award to avoid what it may consider a
confiscatory taking. *Id.*

This uncertainty increases Plaintiffs' risk of pursuing the PAGA claims and required a
significant discount for settlement purposes. DS, ¶ 39. For mediation purposes, Plaintiffs' counsel
estimated a maximum exposure of approximately \$99,781,600.00 in civil penalties. This estimate

1 did not take into account any of the risks discussed above and assumed a violation for every single
2 pay period. *Id.* Plaintiffs’ counsel also assessed multiple penalties for the same pay period for the
3 same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although
4 two federal district court decisions held that “stacking” PAGA penalties in this fashion may be
5 appropriate to determine the amount in controversy for purposes of removal jurisdiction,
6 Plaintiffs’ counsel is not aware of any California state courts awarding plaintiffs multiple PAGA
7 penalties for the same violation for the same pay period under different Labor Code provisions.
8 *Id.* This may be because the PAGA does not provide for what many employers characterize as
claim splitting and not merely stacking. *Id.*

9 **i. Risks Associated With A Pick-Up Stix Campaign**

10 An employer enjoys the right to settle a putative class member’s disputed wage claims
11 individually, without the consent or involvement of class counsel. DS, ¶ 42. (See *Chindarah v.*
12 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch
13 a “pick off” settlement campaign to pursue individual release agreements from the Class
14 Members, thereby potentially narrowing the size of the Settlement Class – 69 members - until it
15 is no longer numerous enough for class certification. *Id.* Plaintiffs, then, may not have sufficient
16 number of employees to represent. This led to a significant reduction of claim value in settlement
negotiations. *Id.*

17 While the evidence gathered through Plaintiffs’ discovery supports the merits of the
18 claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation
19 presents significant risks that support a downward departure from Defendants’ estimated liability
20 exposure. DS, ¶ 43. In view of the risks, the Settlement reflects Plaintiffs’ estimate of the total
21 amount of damages, monetary penalties or other relief that the Class could reasonably expect to
22 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
23 It also represents a fair, adequate, and reasonable compromise amount for these claims and
24 warrants preliminary approval. *Id.*, *Torrison v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
25 1376 (the financial condition of defendant predominated in assessing the reasonableness of
26 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
27 concerning defendant’s financial stability “strongly supports the reasonableness of the
28 settlement”); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
WL 2465049, * 3.

2. Allocation of the PAGA Payment

The settlement of PAGA penalties in the sum of \$428,000.00, of which 75% (\$321,000.00) will be paid to the LWDA and 25% (\$107,000.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. DS, ¶ 44. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements “negotiate[] a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.Ap⁵th 504, 528-529 (affirming trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA Payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA Payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.Ap⁴th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA Payment in a case involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 (approving PAGA Payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

3. Presence of Governmental Participant

As required under Labor Code section 2699(l)(2), Plaintiff Mendivil transmitted a copy of the Settlement and these motion papers to the LWDA at the same time they were filed with the Court. DS, ¶ 54, Ex. 17.

1 **4. Reaction of Class Members to Proposed Settlement**

2 If the settlement is preliminarily approved, Class Members will be provided with the Class
3 Notice (attached as Exhibit A to the Settlement) and an opportunity to object. DS, ¶ 51. The
4 parties' proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and
5 will allow Class Members to make informed responses to the proposed settlement. *Id.*

6 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
7 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
8 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
9 **COMPARED TO OTHER CLASS MEMBERS**

10 The Individual Settlement Payments will be paid to each Class Member based on his or
11 her eligible Work Weeks compared to the total Work Weeks. DS, ¶ 50, Settlement § 3.2.4.
12 Because this method compensates Class Members based on the extent of their potential injuries,
13 in that Class Members who worked for Defendants longer would have been subject to more
14 alleged violations, it is fair, adequate, and reasonable. *Id.*

15 **VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS'**
16 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

17 The Settlement states Class Counsel may seek attorneys' fees of \$1,498,000.00 (35% of
18 the GSA) and up to \$60,000.00 for actual reasonable litigation costs and expenses incurred in
19 prosecuting the Action. Settlement § 3.2.2. These amounts are reasonable, given the facts and
20 circumstances of the case. DS, ¶¶ 46-48.

21 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
22 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
23 *Beneficial Cal., Inc.* (2000) 82 Cal. App 4th 19, 41. Indeed, it is long settled that the "experienced
24 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
25 *v. Moses* (2001) 24 Cal 4th 1122, 1132. California law provides that attorney fee awards should
26 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
27 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Ca1 5th 480, 503 (citing *Lealao, supra*, 82
28 Cal.Ap^p4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)
of the common fund. *Laffitte, supra*, 1 Ca1 5th 480. Many courts have similarly approved fee
awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*
(9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D.
Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
Litig. (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

1 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
2 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
3 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
4 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned
5 down to devote time to this matter. DS, ¶ 47. Class Counsel interviewed and obtained information
6 from putative class members, met and conferred with Defendants' counsel on numerous
7 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
8 Defendants and obtained through other sources, researched applicable law, and provided
estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

9 Class Counsel have borne all the risks and costs of litigation and will receive no
10 compensation until recovery is obtained. DS, ¶ 48. Class Counsel are well-experienced in wage-
11 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
12 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
13 the requested fees and costs are reasonable and should be awarded. *Id.*

14 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO EACH**
15 **PLAINTIFF SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
16 **ADEQUATE, AND REASONABLE**

17 Courts routinely approve incentive awards to compensate named plaintiffs for the services
18 they provide and the risks they incur during class action litigation, often in much higher amounts
19 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.Ap⁴ 715, 726
20 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
21 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
22 enhancement award). The Settlement provides that each Plaintiff may seek a Class Representative
23 Service Payment of \$20,000.00. This amount is entirely reasonable given Plaintiffs' efforts in this
24 action and the risks each of them undertook on behalf of Class Members. DS, ¶ 49. Each Plaintiff
25 has devoted many hours advancing the interests of the Settlement Class. Each Plaintiff has done
26 this by, among other things, retaining experienced counsel, providing them with information
27 about his/her work history with Defendants and Defendants' policies and practices with respect
28 to the wage and hour claims at issue, participating in mediation, and being actively involved in
the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this,
each Plaintiff has been exposed to significant risks, including the risk of an order to pay
Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§

218.5-218.6). The efforts and risks that each Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payments are fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 49.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE

With regard to the settlement administration costs provision, it is reasonable. Before agreeing to Simpluris, Inc. and its bid of \$50,000.00, the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. DS, ¶¶ 52-53, Exs. 14, 15, and 16. Thus, the settlement administration costs provision should be given preliminary approval.

X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR RIGHTS

This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, § 4.37. Although there are current employee Class Members, it is uncertain whether Defendants’ records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. DS, ¶ 51.

With respect to its content, “[The] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152. The purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among

1 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
2 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
3 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
4 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
5 individual Settlement Class Member's estimated payment. Additionally, the Class Notice will
6 include the number of Work Weeks a Class Member had during the Class Period. Accordingly,
7 the Notice should be approved because describes the Settlement with sufficient clarity and
8 specificity to explain to Class Members what this action is about, their rights under the Settlement,
and how to exercise those rights. DS, ¶ 51.

9 **XI. CONCLUSION**

10 For the reasons stated above, this Court should grant Plaintiffs' Motion in its entirety and
11 adopt the proposed order submitted concurrently herewith.

12 Respectfully submitted,

13
14 THE SPIVAK LAW FIRM

15 Dated: January 12, 2024

By: 

16 DAVID G. SPIVAK
17 MAYA CHEAITANI, Attorneys for
18 Plaintiff(s), KASSANDRA
19 MENDIVIL, and all others similarly
20 situated
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