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DENISE RIVAS, on behalf of herself and others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA CLARA**
13

14 DENISE RIVAS, on behalf of herself and
15 others similarly situated,

16 Plaintiff,

17 vs.

18 8X8, INC., a Delaware corporation; and
DOES 1 through 50, inclusive

19 Defendants.
20

Case No. 20CV370842
Consolidated with Case No. 20CV374192

Judge: Hon. Sunil R. Kulkarni

Department: 1

CLASS ACTION

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of Eric
Springer; Declaration of Denise Rivas;
Declaration of Emil Davtyan; Memorandum of
Points and Authorities; and [Proposed] Order]*

Date: June 9, 2022
Time: 1:30 p.m.
Dept.: 1

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California, and the Ninth Circuit Court of Appeals. I am the managing attorney of David Yeremian & Associates, Inc., counsel for Plaintiff Denise Rivas (“Plaintiff”) on behalf of herself and similarly situated employees of Defendant 8X8, Inc. (“Defendant”). I and my firm are referred to herein as Class Counsel. I have personal knowledge of the facts herein and if called as a witness, I could and would competently testify.

QUALIFICATIONS AND ADEQUACY OF CLASS COUNSEL

3. My firm is well qualified because of our experience, knowledge, and resources to act as counsel and represent Plaintiff and the putative class in this action. My practice is exclusively focused on employment matters, with a substantial percentage devoted to litigating wage, hour, and working-conditions violations on a class-wide basis.

3. My firm is well qualified because of our experience, knowledge, and resources to act as counsel and represent Plaintiff and the putative class in this action. My practice is exclusively focused on employment matters, with a substantial percentage devoted to litigating wage, hour, and working-conditions violations on a class-wide basis.

4. I graduated from UC Berkeley in 1997 and received my law degree and MBA from UCLA in 2001. I am a member of the Los Angeles County Bar Association and the California Employment Lawyers Association. I have been honored as a Super Lawyers Rising Star in 2009, 2010, 2012-2015. I have been named and honored as a Super Lawyer since 2016.

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DECLARATION OF DAVID YEREMIAN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL

1 represented employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel
2 (including in the Central, Southern, Eastern and Northern Districts of California), and I have
3 obtained six and seven figure settlements against a range of defendants, including Fortune 500
4 companies. These cases have involved the gamut of wage-and-hour claims, including claims for
5 failure to pay minimum wages, unpaid wages and overtime, inaccurate pay statements, and failure
6 to pay timely wages - similar to claims at issue in the present matter.

7 6. I am experienced in prosecuting employment matters, particularly class actions. In
8 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
9 class-action lawsuits pending in various state and federal jurisdictions throughout California.

10 7. My extensive experience in litigating employment wage and hour matters has been
11 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
12 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
13 wage and hour litigation requires skill and knowledge concerning the constantly evolving
14 substantive law (state and federal), as well as the procedural law of class action litigation. In this
15 action, I am fully equipped to use the skills and knowledge I have developed through more than a
16 decade of prosecuting and defending wage and hour class actions to fairly and adequately
17 represent the interests of the Class. Therefore, on the account of my resources, experience, and
18 knowledge, I am well qualified to act as Class Counsel and represent Plaintiff and the putative
19 Class Members in this action.

20 8. In the last several years I have had several contested class cases certified. When
21 necessary we pursue cases on appeal. Owing to my experience, I am well qualified to evaluate the
22 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated
23 over 100 class action settlements, including many involving the same issues presented in this
24 case. A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis*
25 *v. Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);
26 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead
27 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size
28 approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400;

1 lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead
2 counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx.
3 860; lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead
4 counsel); *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600;
5 lead counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx.
6 300; lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead
7 counsel); *Utlely v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead
8 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead
9 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead
10 counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel);
11 *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel);
12 *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead
13 counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel);
14 *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479;
15 class size approx 60; lead counsel).

16 9. For purposes of this motion, the “Class” or “Class Members” consist of all current and
17 former non-exempt hourly California employees of Defendant in the state of California employed
18 during the Class Period. The Class Period is the period from September 25, 2016, through the
19 date of preliminary approval of the Settlement. I do not believe that I have any conflicts of
20 interest with the Class or with the Class Representative. I am not related to the Class
21 Representative. I have not previously represented Defendant in any matter. I respectfully submit
22 that I, and David Yeremian & Associates, Inc. are well suited to act as Class Counsel in this
23 action, and we have and will continue to vigorously represent the interests of the Class Members.

24 **PROCEDURAL HISTORY**

25 10. On September 25, 2020, Plaintiff filed a class action complaint against Defendant in
26 the Superior Court for the State of California, in Santa Clara, Case Number 20CV370842,
27 alleging: (1) failure to pay minimum wages; (2) failure to pay wages and overtime under Labor
28 Code § 510; (3) meal-period liability under Labor Code § 226.7; (4) rest-break liability under

1 Labor Code § 226.7; (5) violation of Labor Code § 226(a); (6) failure to keep required payroll
2 records under Labor Code §§ 1174 and 1174.5; (7) violation of Labor Code § 221; (8) penalties
3 pursuant to Labor Code § 203; (9) violation of Business & Professions Code § 17200 *et seq.*; (10)
4 failure to make proper disclosure in violation of the FCRA (“Class Action”). On October 29,
5 2020, Defendant timely removed to United States District Court, Northern District of California,
6 where the case was assigned to Judge Lucy H. Koh, Case No. 5:20-cv-07607-LHK. On December
7 1, 2020, Plaintiff filed the PAGA Action against Defendant in the Superior Court for the State of
8 California, in Santa Clara, Case Number 20CV374192 alleging one cause of action based on the
9 following claims: (1) penalties under the PAGA for failure to pay minimum wages; (2) civil
10 penalties under the PAGA for failure to pay wages and overtime under Labor Code § 510; (3)
11 civil penalties under the PAGA for meal period liability under Labor Code §§ 512 and 226.7; (4)
12 penalties under the PAGA for rest break liability under Labor Code §§ 226.7 and 512; (5)
13 penalties under the PAGA for failure to provide accurate itemized wage statements under Labor
14 Code § 226(a) and keep accurate payroll records under Labor Code § 1174; and (6) penalties
15 under the PAGA for failure to timely pay all wages owed in violation of Labor Code §§ 203 and
16 204 (“PAGA Action”). Defendant filed an Answer on January 26, 2021. On November 30, 2021
17 the Court remanded the Class Action to the Superior Court for the State of California, in Santa
18 Clara and on February 8, 2022 the Class Action was consolidated with the PAGA Action.

19 **INVESTIGATION AND DISCOVERY**

20 11. I have participated in all discovery, mediation and negotiations since the inception of
21 Plaintiff’s case. Before filing the lawsuit, Class Counsel investigated and researched the facts and
22 circumstances underlying the pertinent issues and the law applicable thereto. This required
23 thorough discussions and interviews between Class Counsel and Plaintiff Denise Rivas, as well as
24 preliminary research into the various legal issues involved in the case. After conducting their
25 initial investigation, Class Counsel determined that Plaintiff Denise Rivas’ claims were well-
26 suited for class and representative action adjudication owing to what appeared to be a common
27 course of conduct affecting a similarly situated group of employees.

28 12. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts

1 and claims giving rise to the action, including: (1) conducting informal discovery, and meeting
2 and conferring with defense counsel about same; (2) reviewing and analyzing time and pay
3 records as well as employment handbooks, Plaintiff's personnel files, relevant policies and other
4 documentation; (3) researching the applicable law and potential defenses; (4) constructing
5 damage models based on interpretations of California law; and (5) reviewing information
6 provided by Defendant at the mediation. The Class enumerated in this action is ascertainable
7 because the Class Members may be readily identified by reference to Defendant's records that
8 will be provided to the administrator for purposes of settlement. Defendant have agreed to share
9 the information from these records with the Class Action Administrator in order to identify and
10 contact the Class Members. I understand there are approximately 450 total Class Members.

11 13. Defendant, for their part, vigorously contested liability, the amount of claimed
12 damages, and the propriety of class certification. After Class Counsel analyzed the relevant
13 documents and other gathered data, Class Counsel believed that this case was appropriate for
14 resolution via mediation. Given the high level of risk present for both sides, the parties elected to
15 mediate Plaintiff's claims and explore the possibility of settlement.

16 14. On September 24, 2021, the parties mediated this case with the Steve Rottman, Esq., a
17 respected and highly experienced mediator in wage and hour class actions. During mediation,
18 Plaintiff's and Defendant's counsel discussed all aspects of the case, including the risks of
19 litigation and the risks to both parties of proceeding with a motion for class certification as well as
20 the law relating to off-the-clock work, meal and rest breaks, and wage statements. Defendant's
21 counsel represented that Defendant would not be able to afford defending against the lawsuit at
22 trial if the case did not settle. As a result of the mediation, the parties agreed to settle the lawsuit
23 according to the terms set forth in the Settlement Agreement. From Class Counsel's review of the
24 facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and
25 Class Counsel's own prior litigation experience, Class Counsel believes that the recovery for each
26 class member is fair and reasonable taking into consideration the amounts received in other wage
27 and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of
28 each Class Member's claim to the settlement award he or she will receive. Further, and based on

1 the settlement negotiations, which were extensive and conducted in good faith and at arm's length
2 between attorneys with substantial experience litigating class actions and wage and hour cases,
3 the Settlement Agreement was the product of a non-collusive settlement process in which the
4 parties were forced to make significant compromises in the interest of reaching a full and
5 complete settlement of the lawsuit.

6 **SUMMARY OF SETTLEMENT**

7 15. The parties have executed a Joint Stipulation of Class Action and PAGA Claims
8 ("Settlement Agreement" or "Settlement") attached hereto and incorporated herein as **Exhibit A**.
9 Defendant have agreed to pay \$1,000,000 ("Maximum Settlement Amount") on a non-
10 reversionary basis to settle and release all claims asserted by Plaintiff in the operative complaint
11 on behalf of the proposed Class. (Exh. A, ¶ 18.)

12 16. The Settlement Agreement defines the "Class" or "Class Members" as all current and
13 former non-exempt hourly California employees of Defendant in the state of California employed
14 during the Class Period. (Exh. A, ¶ 6.) However, it does not include any person who submits a
15 timely and valid request to "Opt-Out" from the Class. (Exh. A, ¶ 31.) "Class Period" means the
16 period from September 25, 2016, through the date of preliminary approval of the Settlement.
17 (Exh. A, ¶ 7.)

18 17. The "Net Settlement Amount" shall be the Maximum Settlement Amount, less the
19 Attorneys' Fees and Costs, the Class Representative Enhancement Payment, Settlement
20 Administration Costs, and seventy-five percent (75%) of the PAGA Payment. (Exh. A, ¶ 19.)
21 These amounts are detailed as follows:

- 22 • not more than Three Hundred Thirty Thousand Dollars and Thirty Three Cents
23 (\$333,333.33) to Class Counsel for attorneys' fees, and not more than Thirty Thousand Dollars
24 (\$30,000) in costs; (Exh. A, ¶ 4.);
- 25 • not more than Ten Thousand Dollars (\$10,000.00) to the Class Representative for
26 Service Enhancement Payment; (Exh. A, ¶ 8.);
- 27 • up to \$8,999.00 for the Settlement Administration Costs; (Exh. A, ¶ 36.);
- 28 • Fifty Thousand Dollars (\$50,000.00) shall be allocated for settlement of claims for

1 civil penalties under PAGA, where 75% (\$37,500.00) will be paid to the LWDA and 25%
2 (\$12,500.00) will be included in the Net Settlement Amount and distributed to Settlement Class
3 Members); (Exh. A, ¶ 22.)

4 18. The Individual Settlement Award, which is each Class Member's share of the Net
5 Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on
6 the number of Workweeks a Class Member worked during the Class Period as a non-exempt
7 employee in California. (Exh. A, ¶ 55 (a) (i).). Additionally, the Parties agreed that the Individual
8 Settlement Payment shall be allocated as follows: 25% as alleged unpaid wages subject to all
9 applicable tax withholdings; and 75% as alleged unpaid interest and unpaid penalties. (Exh. A, ¶
10 55 (a) (vii).).

11 19. The settlement amount was a compromise figure, factoring in the inherent risks related
12 to certification, liability and damages. However, taking into account all of the circumstances of
13 the action and the defenses raised by Defendant against certification, liability and damages, Class
14 Counsel believes that the settlement is fair and reasonable.

15 20. Class Members shall each receive a "Notice of Class Action Settlement" or "Notice
16 Packet" via regular First Class U.S. Mail, using the most current, known mailing addresses
17 identified in the Class List. (Exh. A, ¶ 54.) Before mailing, the Settlement Administrator will
18 perform a search based on the National Change of Address Database for information to update
19 and correct for any known or identifiable address changes. (Exh. A, ¶ 54.) If a new address is
20 obtained by way of a returned Notice Packet, then the Settlement Administrator will promptly
21 forward the original Notice Packet to the updated address via first-class regular U.S. mail,
22 indicating on the original packet the date of such re-mailing. (Exh. A, ¶ 54.)

23 21. Class Members will have an opportunity to dispute the information provided in their
24 Notices of Class Action Settlement and they must timely produce evidence to support the
25 information is inaccurate. (Exh. A, ¶¶ 54, 55.) The Settlement Administrator shall decide the
26 dispute and may ask Defendant to produce the personnel and payroll files of the Class Member
27 disputing their credited workweeks in order to resolve the dispute. (Exh. A, ¶¶ 54, 55.)

28 22. Class Members wishing to opt-out from the Settlement Agreement must sign and

1 postmark a written Request for Exclusion to the Settlement Administrator within the “Class
2 Member Exclusion Deadline.” (Exh. A, ¶ 32.) The Exclusion Deadline will be forty-five (45)
3 calendar days after the date the Notice Packet was mailed. (Exh. A, ¶ 33.) The delivery date is
4 deemed to be the date the Opt-Out request is deposited in the U.S. Mail as evidenced by the
5 postmark. (Exh. A, ¶ 33.)

6 23. Class Members will also have the opportunity to object to the Settlement Agreement,
7 by serving a copy of the objection to the Settlement Administrator at Simpluris, P.O. Box 26170,
8 Santa Ana, CA 92799. (Exh. A, ¶ 20.) All objections must be served within forty-five (45)
9 calendar days of first mailing of the Class Notice. (Exh. A, ¶ 33.)

10 **THE STRENGTH OF PLAINTIFF’S CASE**

11 **IN LIGHT OF THE SETTLEMENT AMOUNT**

12 24. Because the class consists of numerous employees, it was unlikely that the potential
13 monetary claims of individual Class Members would have proved viable without the class-action
14 mechanism. The Settlement Agreement should be approved in light of two California appellate
15 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
16 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

17 25. The strength of the Plaintiff’s case in light of the settlement amount is deemed by
18 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175
19 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay
20 minimum wages and overtime, failed to provide meal and rest breaks, failed to provide accurate
21 wage statements, and failed to pay all wages upon termination, all in violation of California law.
22 Plaintiff seeks related violations of California’s Business & Professions Code, penalties pursuant
23 to Labor Code § 2699 *et seq*, and failure to make proper disclosure in violation of the Fair Credit
24 Reporting Act. The merits of each of these claims will be addressed separately below.

25 **Minimum Wages and Overtime**

26 26. Plaintiff alleged that Defendant failed to pay Plaintiff and other Class Members
27 minimum wages and overtime for all hours worked. Plaintiff contended that he and other Class
28 Members were not paid proper overtime and minimum wages. Specifically, Defendants

1 unlawfully rounded down the hours Employees worked as shown in the earning statements and
2 off-the-clock work for the time they spent booting up their computers before the start of their
3 shifts. Additionally, Defendant paid incentive and other nondiscretionary bonuses to Employees.
4 The bonus amounts must be included in determining the regular rate of pay for overtime
5 purposes. Defendant failed to calculate the regular rate with the bonuses.

6 27. Defendant contend that they paid for all reported hours worked, that Class Members
7 were trained to record all hours worked, and that they paid proper minimum wages. Defendant
8 also pointed out that given the rounding analysis, the claim lacked merit under California law.
9 Additionally, Defendant also maintained that the allegations regarding failure to pay wages for
10 hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor
11 Code § 510. Defendant argued that given their written policies and practices, any unrecorded
12 hours were likely subject to individualized inquiry and unlikely to be certified. Furthermore,
13 Defendant contended it paid overtime at the appropriate regular rate of pay. Based on the above
14 detailed facts, Class Counsel estimated Defendant's exposure on unpaid wages claims to be
15 approximately \$932,996.25 (52,050 workweeks x 5 minutes a day for unpaid time x 5 days week
16 x \$28.65 average hourly pay x 1.5). Plaintiff's expert valued the regular rate claim at \$247,770.

17 **Meal Periods and Rest Breaks**

18 28. Plaintiff alleged that Defendant consistently failed to provide timely and uninterrupted
19 meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th
20 1004, 1040 (“[T]he wage order’s meal period requirement is satisfied if the employee (1) has at
21 least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for
22 the entire period.”).

23 29. Plaintiff argued that Defendant had a common practice and policy of denying
24 compliant meal periods. Specifically, Plaintiff and Class Members were regularly required to
25 work through their meal periods, never being provided the opportunity to take uninterrupted thirty
26 (30) minute meal periods in accordance with California law. Moreover, what meal periods Class
27 Members did receive were provided well after their fifth consecutive hour of work. This practice
28 of providing untimely and late meal periods comports with Defendant's defective meal period

1 policy (requiring Class Members to take their meal periods after their fifth hour of work)
2 uniformly applicable to all Class Members. For each meal period missed, of less than 30 minutes,
3 or taken late for which the employee was not provided a reasonable opportunity to take a
4 complete and timely meal period, an employer must pay the employee an additional one hour of
5 compensation. Labor Code § 226.7. This additional hour of compensation is referred to as
6 “premium pay.” To comply with these laws, every employer must keep, for each employee,
7 accurate time records showing when the employee begins and ends each work period and takes
8 his or her meal periods. *See* Wage Order 4-2001(7)(A)(3).

9 30. Defendant disagreed with Class Counsel’s interpretation of the law and facts.
10 Defendant argued that its written policies were valid and disseminated to all Class. Defendant
11 contended that Class Members were given a reasonable opportunity to take their meal periods,
12 and in fact received their meal periods most of the time and a meal period premium when the
13 meal is facially non-compliant

14 31. Class Counsel estimated Defendant’s maximum total exposure on the meal break claim
15 at approximately \$1,491,232.50 (52,050 workweeks x 1 meal break violation per week x \$28.65
16 average hourly pay). This number was discounted due to the fact that Defendant argued many
17 individualized issues would apply making certification of this claim difficult to achieve.

18 32. The same argument applied to rest breaks. Plaintiff contended that Defendant did not
19 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
20 thereof. Class Members consistently worked in excess of consecutive four-hour shifts and were
21 entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift which
22 they were denied. Class Members were required to work through their rest breaks, and through
23 their entire shifts.

24 33. Defendant maintained that it did provide the reasonable opportunity for Class Members
25 to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest breaks
26 need not be recorded. As these considerations would likely depress the damages *vel non*
27 ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break
28 claim. Class Counsel estimated Defendant’s maximum total exposure on the rest break claim at

1 approximately \$1,491,232.50 (52,050 workweeks x 1 rest breaks violations per week x \$28.65
2 average hourly pay). Owing to the arguments above and the fact that recording of rest periods is
3 not required, this claim was substantially discounted, and was not a major driver of exposure in
4 this case.

5 **Paystub Violations**

6 34. Plaintiff also contended that Defendant failed to provide Class Members with accurate,
7 itemized wage statements in writing as required by California Labor Code § 226(a) because of the
8 systematical underpaying of Employees due to the off-the-clock work which Defendant knew or
9 reasonably should have known were owed to Plaintiff and Class Members. As a direct and
10 proximate cause of Defendant's violation of Labor Code § 226(a), the Class Members suffered
11 injuries, including among other things confusion over whether they received all wages owed
12 them. Pursuant to Labor Code §§ 226(a) and 226(e), employees are entitled to recover the greater
13 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
14 and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
15 aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs
16 and reasonable attorneys' fees.

17 35. Defendant contended that Plaintiff's claim for further Labor Code § 226(e) penalties
18 would depend in large part on their underlying wage claims, and thus be subject to the same
19 defenses. Defendant further contended that wage claim violations, even if established, could not
20 be the predicate for a Labor Code § 226 wage statement claims. *See, e.g. Culley v. Lincare Inc.*
21 (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4
22 Cal.App.5th 385, 392-393 (noting wage statement need only document compensation actually
23 received and the hours used to calculate that compensation). Finally, because the damages for this
24 cause of action are penalties, the statute of limitations only runs from one year prior to the filing
25 of the original complaint. *See* Cal. Civ. Pro. § 340.

26 36. Plaintiff's expert estimated Defendant's maximum total exposure on the section 226
27 claim at approximately \$847,650. The parties discussed these issues, and in light of these and
28 other considerations Class Counsel factored in a reduction of liability and damages for this cause

1 of action.

2 **Failure to Pay Final Wages**

3 37. In failing to pay the California Class Members their minimum wages, overtime wages,
4 all discussed above, Defendant willfully failed to pay these the California Class Members all
5 wages due and certain at the time of termination or within seventy-two (72) hours of resignation,
6 as required under Labor Code § 203.

7 38. Labor Code § 203 provides that if an employer willfully fails to pay an employee all
8 wages due at termination or within 72 hours of resignation, then that employee's wages shall
9 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
10 Because Class Members stopped working for Defendant but again were not paid their full
11 compensation for the reasons discussed above, Class Members did not receive all wages due upon
12 termination of employment.

13 39. Defendant argued that, under Labor Code § 203, employers are only obligated to pay
14 waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of
15 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

16 A willful failure to pay wages within the meaning of Labor Code Section 203
17 occurs when an employer intentionally fails to pay wages to an employee when
18 those wages are due. However, a good faith dispute that any wages are due will
preclude imposition of waiting time penalties under Section 203.

19 A "good faith dispute" that any wages are due occurs when an employer presents
20 a defense, based in law or fact, which, if successful, would preclude any recovery
21 on the part of the employee. The fact that a defense is ultimately unsuccessful will
22 not preclude a finding that a good faith dispute did exist. Defenses presented
which, under all the circumstances, are unsupported by any evidence, are
unreasonable, or are presented in bad faith, will preclude a finding of a "good
faith dispute."

23 Defendant maintained that because they had viable defenses in both law and fact, especially in
24 light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in any case,
25 such penalties were subject to a three-year limitations period under Labor Code § 203(b).

26 40. Plaintiff's Counsel estimated Defendant's maximum total exposure on the section 203
27 claim at approximately \$1,553,976 (226 former employees from September 25, 2017 to
28 September 24, 2021 x 30 days x 28.65 average rate of pay x 8 hours in a work day). Given the

1 foregoing arguments, this claim had to be steeply discounted.

2 **PAGA Penalties**

3 41. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows
4 Plaintiff to obtain civil penalties on behalf of herself and other Class Members for Defendant's
5 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
6 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
7 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
8 for each aggrieved employee per pay period for the initial violation and two hundred dollars
9 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
10 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
11 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)
12 percent allocated to the affected employees. The limitations period as for all penalties is one year
13 prior to the filing of the complaint.

14 42. The provisions of the Labor Code potentially triggering PAGA penalties in this case
15 include but are not limited to Labor Code §§ 201-204, 210, 221, 226, 226.7, 245 *et seq.*, 246, 510,
16 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699 *et*
17 *seq.* and applicable IWC Wage Orders. Defendant asserted that if PAGA penalties were
18 mandatory, an employer's PAGA liability would be huge because of the possibility of collecting
19 multiple civil penalties for a single violation, and thus such penalties would almost always dwarf
20 the damages available under the causes of action proper. However, PAGA penalties are not
21 mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser
22 amount than the maximum civil penalty amount specified by this part if, based on the facts and
23 circumstances of the particular case, to do otherwise would result in an award that is unjust,
24 arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal. App. 4th
25 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendant here
26 maintained that it had a strong argument that it would be unjust to award maximum PAGA
27 penalties.

28 43. Furthermore, PAGA penalties are also derivative of each and every other claim, and

1 Defendant therefore argued the PAGA claims would be subject to the same defenses to the
2 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be
3 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for
4 initial violations under the applicable statutes, because Defendant had never been notified of the
5 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to
6 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.
7 4th 1157, 1211-12. Therefore, if Labor Commissioner - on whose behalf Plaintiff is prosecuting
8 this action for civil penalties - would not impose civil penalties in a case like this, the Court may
9 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
10 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court's reduction of PAGA civil
11 penalties by 30 percent, finding that awarding the full penalties would have been "unjust" because
12 "...a court may award a lesser amount than the maximum civil penalty amount specified by this
13 part if, based on the facts and circumstances of the particular case, to do otherwise would result in
14 an award that is unjust, arbitrary and oppressive, or confiscatory." Additionally, PAGA penalties
15 for multiple Labor Code violations are "stacked," and plaintiff is entitled to recover penalties for
16 multiple violations based on the same conduct. *Hernandez v. Towne Park, Ltd.*, No. 12 Civ.
17 02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22, 2012) ("federal courts applying
18 California law have concluded that stacking is appropriate"; defining "stacking" as multiple
19 PAGA penalties assessed for the same pay period for different Labor Code violations). However,
20 as discussed above PAGA provides that the Court "may award a lesser amount than the maximum
21 civil penalty amount specified by this part if, based on the facts and circumstances of the
22 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
23 or confiscatory."

24 44. Class Counsel estimated Defendant's maximum total exposure on the PAGA claim at
25 approximately \$861,100 (\$100 x 8,611 number of paystubs from September 25, 2019 to
26 September 24, 2021). Class Counsel then applied discounts in light of the countervailing
27 arguments with regard to the other causes of action, and moreover the Court's power to award "a
28 lesser amount than the maximum civil liability." The parties also considered that the purpose of

1 PAGA is to “achieve maximum compliance with state labor laws,”. *Iskanian v. CLS Transp. Los*
2 *Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the settlement’s contemplated PAGA
3 payment of \$50,000.00 appropriate.

4 **Unfair Business Practices**

5 45. Plaintiff pleaded this cause of action in order to augment their other causes of action
6 and aid in their prosecution. Business & Professions Code § 17208 extends the statute of
7 limitations on Plaintiff’s wage claims, which qualify as unfair business practices, to four years
8 rather than the three years provided by statute.

9 **Federal FCRA Claim**

10 46. Under the FCRA, employers can freely procure and use employment background check
11 reports provided that they follow two strict procedural requirements. First, the consumer must be
12 notified by clear, conspicuous, and stand-alone disclosure informing the applicant that a
13 consumer report for employment purposes will be procured. 15 U.S.C. § 1681b(b)(2). Plaintiff
14 alleges that Defendant's disclosures were neither, clear, nor stand-alone as they contained
15 extraneous information and were made as part of the employment application. *See Milbourne v.*
16 *JRK Residential Am. LLC*, (E.D. Va. 2015) 92 F. Supp. 3d 425, 433 (the notices must contain
17 only the mandated disclosures and nothing else); *Woods v. Caremark PHC, L.L.C.*, (W.D. Mo.
18 2015) WL 6742124, at *2 (finding disclosure to violate the FCRA when it contained an
19 overbroad authorization and state-specific notices). The statutory penalty of \$100 to \$1,000 is
20 available only if Plaintiff can establish willful violations of the FCRA. 15 U.S.C. §
21 1681n(a)(1)(A). If the Defendant's violation was at most negligent, recovery is limited to actual
22 damages. *See* 15 U.S.C. § 1681o (a)(1). The FCRA’s willfulness standard is important because, in
23 the absence of willfulness, Plaintiff must prove that Defendant’s alleged FCRA violations caused
24 actual damages in order to recover. Defendant contested the question of willfulness. At least one
25 court has found that allegations similar to Plaintiff’s allegations to be insufficient to state a claim
26 for a willful violation of the statute. *Schoebel v. Am. Integrity Ins. Co. of Fla.*, (M.D. Fla. May 27,
27 2015) No. 8:15-cv-380-T-24 AEP, 2015 WL 3407895, at *9 (dismissing FCRA stand-alone
28 disclosure claim for failing to adequately plead willfulness); *see also Chakejian v. Equifax Info.*

1 *Servs., LLC*, (E.D. Pa. 2011) 275 F.R.D. 201, 212 (noting that proving willfulness in FCRA case
2 was “a high hurdle to clear,” weighing in favor of settlement approval); *Reibstein v. Rite Aid*
3 *Corp.*, (E.D. Pa. 2011) 761 F. Supp. 2d 241, 253 (that willfulness presented “considerable albeit
4 not insurmountable risks” weighs in favor of settlement approval). Based on the foregoing
5 analysis, Class Counsel valued this claim at zero.

6 **Summary**

7 47. The foregoing discussion has sought to explain how the settlement amount is adequate
8 in light of the merits of Plaintiff’s case. It has done this by explaining the legal basis for each of
9 Plaintiff’s causes of action, summarizing the evidence that Class Counsel gathered in support of
10 those causes of action, and relating Defendant’s legal and factual arguments that worked to
11 derogate from the strength of Plaintiff’s case.

12 48. Class Counsel had to apply appropriate discounts in light of the facts and law as
13 discussed above. Thus, this settlement, like most others, was the product of compromise. Because
14 of these and other risks, a recovery of \$1,000,000 under the Settlement Agreement is an excellent
15 result. Under the Settlement, each of the approximately 450 Class Members will receive on
16 average \$1,289.26 after expenses.

17 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,** 18 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION** 19 **STATUS THROUGH TRIAL**

20 49. The next *Clark/Kullar* factors recognize that settlements take into consideration the
21 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
22 certification. Consequently, it is proper that trial courts should keep these considerations in mind
23 when judging the adequacy of class action settlements.

24 50. Further litigation of this case posed real risks for a number of reasons. First, there were
25 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in
26 the previous section. In that section, it was observed that almost every cause of action was subject
27 to some unique indeterminacy of its own, and that the derivative causes of action were thus
28 subject to a double indeterminacy, both their own and those of the causes of action on which they

1 were based.

2 51. The parties disputed the effect of these and other issues on class certification and
3 decertification. Class Counsel maintained that there were several legal and factual questions at
4 issue in the case that could best be decided on a class wide basis. Class Counsel contended that
5 the same policies and practices applied to all Class Members and therefore common questions
6 obtained and were likely to predominate over individual inquiries. Defendant disputed these
7 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
8 such as this one. Defendant also argued that its policies were compliant with the law, while
9 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would
10 give rise to common questions amenable to certification. Thus the parties had set positions on the
11 propriety of certifiability and liability that did not admit of an easy resolution.

12 52. Finally, it is always preferable to reach a relatively early resolution of a dispute
13 because, in addition to what has already been said, such resolutions save time and money that
14 would otherwise go to litigation. In light of the risk and expense of the lawsuit and proceeding to
15 trial there was a need to resolve this matter soon than later. Most cases settle sooner or later. If
16 this case settled after further litigation, the settlement amount would have taken into account the
17 additional costs incurred, and there might have been less available for Class Members after all
18 was said and done. This is not just an abstract contention. The parties were moving into the phase
19 of this litigation where they would have had to depose a number of people such as managers,
20 supervisors, and employees in order to establish liability for trial. Discovery disputes would have
21 been in the offing. The parties were also aware that a class action trial would be a complicated
22 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.
23 In contrast, the settlement provides real benefits for Class Members in the immediate future. The
24 benefits are not insignificant for anyone, especially given the current economic climate.
25 Consequently, the risk and expense of further litigation outweighed any benefit that might have
26 been gained otherwise.

27 ///

28 ///

NOTICE TO AND REACTION OF CLASS MEMBERS
TO THE PROPOSED SETTLEMENT

53. It is premature to address this factor now, at the preliminary approval stage; however, some observations are in order. First, the notification procedure set out in the Settlement Agreement provides the greatest likelihood that each and every Class Member will receive the Notice of Class Action Settlement (“Notice” or “Notice Packet”), attached to the Settlement Agreement as **Exhibit 1**. Under the Settlement Agreement, the Settlement Administrator will send the Notice to each Class Member via First Class U.S. mail. (Exh. A, ¶ 54.) Before mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (Exh. A, ¶ 54.) If a new address is obtained by way of a returned Notice Packet, then the Settlement Administrator will promptly forward the original Notice Packet to the updated address via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing. (Exh. A, ¶ 54.) Thus, most, if not all, Class Members will likely receive the Notice.

54. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the claims involved, the terms of the settlement, and their options thereunder. They provide for a specific procedure to seek exclusion from the Class, and for lodging objections to the settlement. The efforts taken to ensure that Class Members receive the Class Notice and are well informed about the settlement augur a favorable response rate.

55. All Class Members will benefit because Defendant who have been sued are generally more likely to comply with the law in the future. If a Class Member disputes the number of workweeks stated for that Class Member in the Class Notice, the Class Member must ask the Settlement Administrator to resolve the matter by submitting in writing under penalty of perjury the workweeks that the Class Member claims to have actually worked for Defendant during the Class Period. (Exh. A, ¶ 39.) Defendant’s records shall have a rebuttable presumption of correctness. After consultation with Class Counsel and Defendant’s Counsel, the Class Action Administrator will make a determination of the Class Member’s total workweeks during the applicable period. *Id.*

1 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

2 56. The foregoing discussion establishes the fairness of the class-action settlement in the
3 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
4 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
5 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour
6 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.
7 Defendant has agreed to pay fair value to settle Plaintiff's claims given the existence of legal
8 uncertainty. From Class Counsel's substantial experience with wage-and-hour class action
9 lawsuits Class Counsel believe that this case could not have settled on better terms under the
10 circumstances. Request therefore is made that the settlement be granted preliminary approval so
11 that those persons whom it was intended to benefit shall be afforded the opportunity to determine
12 its adequacy.

13 **REQUEST FOR ATTORNEYS' FEES**

14 57. Under the Settlement, Class Counsel also requests, without opposition from Defendant,
15 an award of Attorneys' Fees and Costs consisting of: (1) no more than \$333,333.33 and (2)
16 \$30,000.00 for reimbursement of Class Counsel's costs. (Exh. A, ¶ 4). This request is fair,
17 reasonable, and adequate to compensate Class Counsel for the substantial work they have put into
18 this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees
19 award is intended to reimburse Class Counsel for all uncompensated work that they have already
20 done and for all the work they will continue to do in carrying out and overseeing the notification
21 to Class Members, communicating with Class Members regarding their claims, and assisting in
22 the administration of the settlement if it is preliminarily approved.

23 58. My firm took this case on a contingent-fee basis against a business represented by a
24 reputable defense firm. When we take contingent cases, we must pay careful attention to the
25 economics involved or one bad case can destroy years of work. Accordingly, when we take
26 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
27 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
28 number of hours in a day is limited. Because of this, when we take on one particular matter, we

1 are unable to take on other matters. When Class Counsel became involved in this case, we
2 realized the time commitment that it would entail and we were forced to turn down matters that
3 we otherwise should have been able to handle. In sum, this case claimed a significant portion of
4 Class Counsel's time and attention throughout its pendency.

5 59. The requested fee is reasonable for the services provided to Class Members and for the
6 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see*
7 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would
8 still be justified. Class Counsel will more fully brief the Court on its lodestar in the motion for
9 final approval.

10 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

11 60. Plaintiff herein is entitled to reasonable service payment for her efforts and initiative in
12 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better
13 apprising herself of her rights, deciding whether remedial action should be taken, how it should
14 be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours
15 with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only
16 her own rights but also those of her co-workers by filing a class action lawsuit.

17 61. The courage it took to stand up to Defendant by filing and litigating this action in this
18 way should not be underestimated. By suing Defendant, Plaintiff increased her risk of retaliation
19 by prospective employers. Plaintiff's lawsuit has now required Defendant to expend considerable
20 resources, and Plaintiff justifiably fears the fact that she served as class representatives in a wage
21 and hour class action will not be lost on a prospective employer who has to choose between an
22 applicant who has never sued a prior employer and one who has. Plaintiff contends this risk is
23 particularly real in the information age, where employers can, more easily than ever, perform
24 background checks of prospective employees, sometimes with the stroke of a key. It is common
25 for employers to screen employee candidates to determine whether they have ever filed suit, and
26 employee candidates who might be branded "litigious" are likely to be screened out of the
27 process. In fact, an entire industry has developed for providing employers with background
28 information on employee candidates.

1 62. But Plaintiff did not allow her fears of the potential repercussions of being class
2 representatives to deter her from acting for the benefit of Class Members. To the contrary,
3 Plaintiff has been intimately involved in this case since its inception. She has devoted a
4 substantial amount of time to helping Class Counsel effectively develop and prosecute this action
5 at every stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred
6 with Class Counsel on numerous occasions to discuss every aspect of her case. Plaintiff provided
7 Class Counsel with information about Defendant and about the industry generally, reviewed
8 documents, identified witnesses, consulted Class Counsel throughout the litigation repeatedly and
9 at length, participated in the mediation process, monitored the progress of the litigation with Class
10 Counsel, and reviewed and signed the Settlement Agreement.

11 63. Plaintiff has spent a significant amount of time with Class Counsel detailing her
12 knowledge of Defendant's practices and helping Class Counsel with the prosecution of this
13 action. She has diligently, adequately, and fairly represented Class Members, and has not placed
14 her interests above any member of the putative class. The payment to Plaintiff is intended to
15 recognize her time and effort on behalf of the Class. The amount requested is fair and appropriate
16 based on her contribution and involvement. For example, Plaintiff instigated the lawsuit by
17 bringing these violations to the attention of Class Counsel. She spent several hours answering
18 questions and providing information to Class Counsel throughout the pendency of this action. She
19 identified witnesses, explained to Class Counsel day to day business practices of Defendant with
20 regard to work schedules, etc. The parties are in agreement that Plaintiff is entitled to an
21 enhancement for her time and effort in this matter. This sort of payment to a class representative
22 has been a common feature of settlements negotiated by Class Counsel and has been routinely
23 approved by trial courts.

24 64. In light of the foregoing, Class Counsel believes that the service enhancement payment
25 in the amount of \$10,000.00 is fair and reasonable. This amount is a far cry from the \$50,000 of
26 enhancement awards to the two named plaintiffs approved by the trial court in *Clark*. See *Clark*,
27 *supra*, 175 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to
28 ensure that class representatives are not overcompensated at the expense of the class, modest

1 incentive awards in employment class actions, such as the one here, are necessary not only to
2 compensate class representatives for the time they spend in the case, but also, and more
3 importantly, to encourage aggrieved employees to challenge questionable employment practices
4 notwithstanding the very real consequences they may face.

5 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

6 65. The proposed Classes satisfy the criteria for certification of a settlement class under
7 California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to
8 the certification of the class for settlement purposes. In general, courts may take a proposed
9 settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor*
10 *Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in
11 certifying classes for settlement purposes. *Ibid.* Therefore the Court should take into
12 consideration the fact that the parties have settled their claims and stipulated to certification for
13 settlement purposes when assessing typicality and adequacy.

14 a. Numerosity. The putative classes are so numerous that joinder of all members is
15 impractical. Class Members are all current and former non-exempt hourly California employees
16 of Defendant in the state of California employed during the Class Period. There are
17 approximately 450 persons answering to this definition. Thus, there are a sufficient number of
18 Class Members to warrant certifying this as a class action for settlement purposes.

19 b. Ascertainability. The putative classes are defined in a manner that is precise,
20 objective, and ascertainable. The Class Members have already been identified by reference to
21 Defendant’s payroll and personnel records.

22 c. Typicality. A class representative’s claims are typical when they arise from the
23 same event, practice, or course of conduct that gives rise to the claims of other putative class
24 members, and if their claims rest on the same legal theories. The class representative’s claims
25 must be “typical” but not necessarily identical to the claims of other class members. It is
26 sufficient that the representative is similarly situated so that he or she will have the motive to
27 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
28 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been

1 the law in California that the class representative must have identical interests with the class
2 members.”). Thus, it is not necessary that the class representative should have personally incurred
3 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
4 (2001) 91 Cal.App.4th 224, 228.

5 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same
6 factual basis and are based on the same legal theories. Plaintiff was employed by Defendant
7 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay
8 practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central
9 issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to
10 provide meal and rest periods etc.), which would arise if this were an individual action brought by
11 Plaintiff, apply to the other Class Members as well, and the answer to these questions would
12 determine Defendant’s liability to the entire putative class. Thus, Plaintiff’s claims are typical of
13 the claims of the putative class. Accordingly, the typicality requirement is satisfied.

14 d. Adequacy. A class representative must possess the same interest and suffer the
15 same injury as the class members. “To assure ‘adequate’ representation, the class representative’s
16 personal claim must not be inconsistent with the claims of other members of the class.” *J.P.*
17 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
18 the adequacy requirement is satisfied when the class representative’s interests are not antagonistic
19 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

20 Plaintiff has no conflicts with the class and in fact his interests are aligned with those of
21 the class. Because Plaintiff’s claims are identical to those that would be asserted by the unnamed
22 Class Members were they before the Court, Plaintiff has every interest in zealously representing
23 the unnamed class members. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff has
24 devoted a substantial amount of time and energy to litigating this action and effecting a
25 settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-and-hour
26 litigation, especially class actions, and have zealously represented the interests of the class in
27 litigating this case. *See infra* ¶¶3-9. Accordingly, the adequacy requirement is satisfied.

28 e. Commonality. Common questions of law or fact in this case predominate over

1 individual questions. This action involves, *inter alia*, a determination about Defendant's alleged
2 failure to pay minimum wages, failure to pay all wages due to allegedly common and unlawful
3 policies, failure to provide meal and rest periods, the resulting failure to pay final wages when
4 required, the failure to provide accurate paystubs, the failure to pay employees on a timely basis,
5 and largely derivative claims under the Business & Professions Code, failure to make proper
6 disclosure in violation of the Fair Credit Reporting Act, PAGA. Plaintiff contends these practices,
7 including the alleged failure to provide corresponding premium payments, that affected class
8 members in the same way. All class members were employed during the Class Period. Therefore,
9 the operative complaint delineates a common course of conduct applicable to all Class Members.
10 Therefore, based on Class Counsel's investigation, the review of the discovery produced by
11 Defendant, and their discussions with Plaintiff, Plaintiff contends the evidence supports her
12 position that the employment practices and policies of Defendant's business were consistent and
13 uniform.

14 f. Predominance. Individualized issues do not predominate over the issues of law and
15 fact that are common to the class as a whole. The principal issues of controversy are whether
16 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,
17 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were
18 subjected to the same policies and pay practices during the relevant time period. Plaintiff and
19 Class Members seek meal and rest break premiums, unpaid wages and overtime, and penalties for
20 work performed as non-exempt employees for Defendant. These issues are suitable for common
21 adjudication because all Class Members were subject to the same employment policies and
22 Plaintiff contends the practices applied uniformly to all Class Members.

23 g. Superiority. Class resolution is superior to other available methods for the fair and
24 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
25 individually control the prosecution of separate actions. Although the injury resulting from
26 Defendant's policies and practices are real and significant, the cost of individually litigating each
27 such case against Defendant would easily exceed the value of any relief that could be obtained by
28 any one Class Member individually. If Class Members are forced to litigate their claims

1 individually this would result in about 450 individual actions against Defendant. Here, the
2 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
3 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
4 dwarf a potential recovery.

5 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
6 actions by Class Members against Defendant asserting similar claims as here. Furthermore, San
7 Joaquin County is a compelling forum for this action given that Defendant's location is in San
8 Joaquin County and numerous Class Members work in this County.

9 i. There are no serious manageability difficulties presented by preliminarily
10 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
11 that would remain is claims administration and responding to possible objectors.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed this 17th day of May 2022, at Glendale, California.

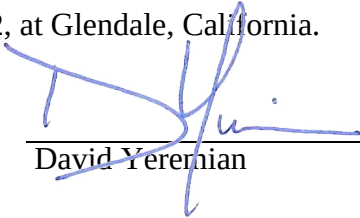
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17 David Yeremian
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EXHIBIT A

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Attorneys for Defendant
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE STATE OF CALIFORNIA

DENISE RIVAS, on behalf of herself and
 on behalf of all other aggrieved employees,

Plaintiff,

vs.

8X8, INC., a Delaware corporation; and
 DOES 1 through 50, inclusive

Defendants.

Case No. 20cv374192

**JOINT STIPULATION OF CLASS
 ACTION AND PAGA ACTION
 SETTLEMENT AND RELEASE**

Judge: Hon. Sunil R. Kulkarni
 Dept: 1

Complaint Filed: Dec. 1, 2020

IT IS HEREBY STIPULATED, by and between the parties in the two actions entitled: *Denise Rivas, on behalf of herself and on behalf of all other aggrieved employees v. 8X8, Inc., a Delaware corporation, and DOES 1 through 50, inclusive*, United States District court, Northern District of California, Case No. 5:20-cv-07607-LHK (“Class Action”), and *Denise Rivas, on behalf of herself and on behalf of all other aggrieved employees, v. 8X8, Inc., a Delaware corporation; and Does 1 through 50, inclusive*, Santa Clara County Superior Court, Case No. 20CV374192 (“PAGA Action”), namely, DENISE RIVAS, on behalf of herself and on behalf of all other putative class members and aggrieved employees (hereinafter “Rivas”), on the one hand, and Defendant 8X8, INC. (hereinafter “Defendant”), on the other hand, and subject to the approval of the Court,¹ that the Actions are hereby compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action and PAGA Action Settlement and Release (“Agreement,” “Settlement,” “Settlement Agreement,” or “Stipulation of Settlement”) and that the Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, and subject to the definitions, recitals, and terms set forth herein which by this reference become an integral part of this Stipulation of Settlement.

DEFINITIONS

1. “Actions” means the putative class and representative actions entitled *Denise Rivas, on behalf of herself and others similarly situated, v. 8X8, Inc., a Delaware corporation, and DOES 1 through 50, inclusive*, United States District court, Northern District of California, Case No. 5:20-cv-07607-LHK (“Class Action”), and *Denise Rivas, on behalf of herself and on behalf of all other aggrieved employees, v. 8X8, Inc., a Delaware corporation; and Does 1 through 50, inclusive*, Santa Clara County Superior Court, Case No. 20CV374192 (“PAGA Action”).

2. “Operative Complaints” mean the Complaints filed by Plaintiff on September 25, 2020, in the Class Action and the December 1, 2020 Complaint filed in the PAGA Action.

3. “Class Counsel” means David Yeremian, Esq. and Roman Shkodnik, Esq. of

¹ The parties agree, as outlined in Section 50 below, that they shall seek approval of the PAGA and Class claims in state court.

David Yeremian & Associates, Inc. and Emil Davtyan of the Davtyan Law Firm, Inc.

4. “Class Counsel Award” means the Court-approved attorneys’ fees for Class Counsel’s litigation and resolution of the Action (not to exceed one-third [33.33%] of the Maximum Settlement Amount, or Three Hundred Thirty-Three Thousand Dollars and 33 cents (\$33,333.33), and the court approved costs incurred by Class Counsel in connection with this Action (not to exceed Thirty Thousand Dollars [\$30,000]).

5. “Class Information” or “Class Lists” means information regarding Class Members that Defendant shall in good faith compile from its records and shall be authorized by the Court to transmit in a secured manner to the Settlement Administrator. Class Information shall be transmitted in Microsoft Excel format and shall include for each Class Member’s: (i) full name; (ii) last known address; (iii) Social Security number; and (iv) the number of workweeks worked for Defendant in California as non-exempt hourly employees during the Class Period.

6. “Class Members” or “Settlement Class” means all current and former non-exempt hourly California employees of Defendant from September 25, 2016, through the date of preliminary approval of the settlement. It shall be an opt-out class.

7. “Class Period” means the period from September 25, 2016, through the date of preliminary approval of the Settlement.

8. “Class Representative Service Award” means the Court-approved amounts to be paid to Plaintiff Denise Rivas in the amount up to Ten Thousand Dollars (\$10,000) in addition to Plaintiff’s Individual Settlement Award, in recognition of Plaintiff’s efforts and risks in prosecuting the Action.

9. “Defendant” means 8x8, Inc.

10. “Defense Counsel” means Jen Cornell, Esq. and Teresa W. Ghali, Esq., both of GBG LLP.

11. “Effective Date” means the date when all of the following events have occurred: (i) the Stipulation of Settlement has been executed by all Parties, Class Counsel and Defense Counsel; (ii) the parties have stipulated to remand the Class Action to state court; (iii) the state court has assumed jurisdiction of the Class Action and, per the parties’ stipulation or joint motion,

1 has consolidated the Class and PAGA Actions into one action; (iv) the Court, presiding over both
2 the Class Action and PAGA Actions, has given preliminary approval to the Stipulation of
3 Settlement; (v) the Notice of Class Action Settlement has been given to the putative members of
4 the Settlement Class, providing them with an opportunity to object to the terms of this Stipulation
5 of Settlement or opt out of the settlement; (vi) the Court has held a Final Approval Hearing and
6 entered a Final Order and Judgment certifying the Settlement Class, and approving the Stipulation
7 of Settlement, and no objections or motions to intervene have been filed, or they were withdrawn
8 before the Court entered a Final Order and Judgment; or, if an objection or motion to intervene
9 have been filed and were not subsequently withdrawn, the next business day after the period for
10 filing any appeal, writ or other appellate proceeding opposing the Court's Final Order and
11 Judgment has elapsed without any appeal, writ or other appellate proceeding having been filed; or
12 (vii) if a Class Member objects, intervenes or files a motion to vacate the judgment approving the
13 Settlement Agreement, and if a timely appeal is filed, the date of final resolution of that appeal
14 (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial
15 approval of the Settlement Agreement

16 12. "Employer's Share of Payroll Taxes" means Defendant's portion of payroll taxes,
17 including, but not limited to FICA and FUTA, on the portion of the Individual Settlement Awards
18 that constitutes wages.

19 13. "Final Approval Hearing" means the hearing to be conducted by the Court after
20 the filing by Plaintiff of an appropriate motion and following appropriate notice to Class
21 Members giving Class Members an opportunity to request exclusion from the Settlement Class
22 and Settlement or to object to the Settlement, at which time Plaintiff shall request that the Court
23 finally approve the Settlement, enter the Final Order and Judgment, and take other appropriate
24 action.

25 14. "Final Order and Judgment" means the order and judgment to be entered by the
26 Court upon granting final approval of the Settlement and this Stipulation of Settlement as binding
27 upon the Parties and Participating Class Members. A proposed Final Order and Judgment shall
28 be mutually agreed upon by the Parties and submitted to the Court concurrently with Plaintiff's

1 Motion for Final Approval of the Settlement.

2 15. "Final Report" means the report to be prepared by the Settlement Administrator
3 (after the expiration of the 180-day period in which Participating Class Members must
4 cash/deposit their Individual Settlement Award payment checks) regarding the distribution of the
5 Maximum Settlement Amount, including the total amount that was cashed/deposited by
6 Participating Class Members and the total amount of any unpaid residue or unclaimed or
7 abandoned funds pursuant to California Code of Civil Procedure section 384.

8 16. "Individual PAGA Payment" means the amount payable from the PAGA Payment
9 to each Class Member.

10 17. "Individual Settlement Award" means the amount payable from the Net Settlement
11 Amount to each Participating Class Member.

12 18. "Maximum Settlement Amount" means the maximum amount Defendant shall
13 have to pay in connection with this Settlement, by way of a common fund, which shall be
14 inclusive of all Individual Settlement Awards to Participating Class Members, the Class Counsel
15 Award, the Class Representative Service Award, PAGA Payment, and Settlement Administration
16 Costs. Subject to Court approval and the terms of this Stipulation of Settlement, the Maximum
17 Settlement Amount Defendant shall be required to pay is One Million Dollars (\$1,000,000.00).
18 The Maximum Settlement Amount is exclusive of Employer's Share of Payroll Taxes. Defendant
19 has represented that the total number of workweeks from the start of the class period through July
20 30, 2021 is 52,050 workweeks. If the total number of workweeks increases by more than 10% as
21 of the date of Preliminary Approval, then there shall be a corresponding pro-rata increase in the
22 Net Settlement Amount, as defined in paragraph 19 below.

23 19. "Net Settlement Amount" means the Maximum Settlement Amount, less the Class
24 Counsel Award, Class Representative Service Award, PAGA Payment to the California Labor
25 Workforce Development Agency ("LWDA"), and Settlement Administration Costs.

26 20. "Notice of Objection" means a Class Member's valid and timely submission of a
27 written objection to the Settlement to the Settlement Administrator within the Response Deadline.
28 An objection should include: (a) the objector's full name, signature, address, telephone number,

1 and the last four digits of his/her Social Security number, (b) a written statement of all grounds
2 for the objection accompanied by any legal support for such objection, and (c) copies of any
3 papers, briefs, or other documents upon which the objection is based. Objecting Class Members
4 may appear at the Final Approval Hearing either in person, or through counsel retained at Class
5 Member's own expense, to have their objection heard, whether or not they had submitted a prior
6 written objection as specified in this section. The Court will rule on any objections to the
7 settlement at the Final Approval Hearing. An objection may be withdrawn at any time. The
8 Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel
9 via email within three (3) calendar days of receipt, and the Settlement Administrator shall attach
10 any objections to its declaration of due diligence, which is to be filed with the Court prior to the
11 Final Approval Hearing. Any Participating Class Member who files an objection remains eligible
12 to receive monetary compensation from the Settlement. At no time shall any of the Parties, Class
13 Counsel, or Defense Counsel seek to solicit or otherwise encourage or discourage Class Members
14 from submitting a Notice of Objection or filing an appeal from the Final Order and Judgment.

15 21. "PAGA Notice" means the September 16, 2020 letter that Class Counsel sent to
16 the LWDA pursuant to Labor Code §2699.3(a)/(c) seeking to exhaust Plaintiff's administrative
17 remedies under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab.
18 Code §§2698, et seq., and specifically alleging that Defendant failed to pay all wages due to
19 illegal rounding, failed to pay overtime and sick pay at the correct regular rate of pay by failing to
20 incorporate commissions, non-discretionary incentive pay, or any other appropriate amounts into
21 the regular rate of pay; failed to provide meal periods, failed to authorize and permit rest periods,
22 derivatively failed to provide accurate itemized wage statements in violation of the Labor Code
23 and the applicable Industrial Wage Order, failed to timely pay wages, and owes statutory and/or
24 civil penalties pursuant to the Labor Code.

25 22. "PAGA Payment" means the amount of Fifty Thousand Dollars (\$50,000), subject
26 to Court approval, to be paid from the Maximum Settlement Amount for satisfaction of Plaintiff's
27 and Class Members' claims under PAGA. Pursuant to the PAGA, seventy five percent (75%) or
28 Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) of this sum will be paid to the LWDA

1 and Twelve Thousand Five Hundred Dollars (\$12,500.00) will be distributed as the Individual
2 PAGA Payments to Class Members.

3 23. "PAGA Release" or "PAGA Released Claims" means the release by all Class
4 Members for all claims for PAGA that arise out of or relate to California Labor Code sections
5 201-204, 210, 221, 226, 226.7, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,
6 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699 *et seq.*, and the applicable wage orders at
7 California Code of Regulations, Title 8, section 11000, *et seq.*, as pled in the PAGA Notice and
8 Complaint in the PAGA Action, from September 16, 2019, through the date of preliminary
9 approval of this Agreement. In light of the binding nature of a PAGA judgment on non-party
10 employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), Class Members
11 employed by Defendant on or after September 16, 2019, who exclude themselves from this
12 Settlement shall still receive an Individual PAGA Payment directly from the Settlement
13 Administrator for the amount of each such individual's estimated share of the PAGA Payment as
14 calculated by the Settlement Administrator.

15 24. "Participating Class Members" means Plaintiff and all other Class Members who
16 do not submit a valid and timely Request for Exclusion.

17 25. "Participating PAGA Members" means all Class Members who submit a valid and
18 timely Request for Exclusion but are nevertheless bound by the PAGA Release.

19 26. "Parties" means Plaintiff and Defendant.

20 27. "Plaintiff" means Plaintiff Denise Rivas.

21 28. "Preliminary Approval Order" means the order to be issued by the Court
22 approving and authorizing the mailing of the Settlement Notice by the Settlement Administrator,
23 setting the date of the Final Approval Hearing and granting preliminary approval of the
24 Settlement set forth in this Stipulation of Settlement, among other things. A proposed Preliminary
25 Approval Order shall be mutually agreed upon by the Parties and submitted to the Court
26 concurrently with Plaintiff's Motion for Preliminary Approval of the Settlement.

27 29. "Released Claims" includes any and all claims, rights, demands, liabilities, and
28 causes of action of every nature and description arising from September 25, 2016, through the

1 date on which the Court grants preliminary approval of the Settlement, including statutory,
 2 contractual, or common law claims, for wages, damages, penalties, liquidated damages, punitive
 3 damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, arising out of
 4 and based on the following categories of claims that were specifically alleged, or are in substance
 5 the same as or related to those specifically alleged, in Plaintiff's Complaints herein, under
 6 California Labor Code sections 201-204, 210, 221, 226, 226.7, 245 *et seq.*, 246, 510, 512, 558,
 7 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699 *et seq.*,
 8 Business and Professions Code §§17200-17208, and the applicable wage orders at California
 9 Code of Regulations, Title 8, section 11000, *et seq.*, and: (a) any and all claims for failure to pay
 10 any type of wages, including overtime wages, minimum wages, and/or regular pay, due to
 11 Defendant's rounding policy, any alleged policy or practice of off-the-clock work or alleged
 12 demand or pressure to work through breaks or before or after clocking in, any alleged unlawful
 13 deduction from pay, and any alleged failure to incorporate sick time, commissions, incentive pay,
 14 or nondiscretionary bonuses in regular rate of pay for purposes of calculating overtime; (b) any
 15 and all claims for failure to provide meal breaks and/or premiums in lieu thereof; (c) any and all
 16 claims for failure to authorize and permit rest periods and/or pay premiums in lieu thereof; (d)
 17 any and all claims for failure to furnish accurate itemized wage statements, both derivative and
 18 claims that employee's wage statements failed to include total hours worked, hourly rates in
 19 effect during the pay period, and corresponding number of hours worked at each rate, in violation
 20 of Labor Code §§ 226(a)2), (9); (e) any and all claims for failure to maintain wage and time
 21 records; (f) any and all claims for failure to provide wages when due upon separation of
 22 employment; (g) any and all claims for violation of California Business and Professions Code §§
 23 17200 *et seq.* related only to the above alleged claims; (h) any claims for violation under the Fair
 24 Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 *et seq.*; and (i) any and all claims for violation
 25 of the Private Attorneys General Act of 2004, Labor Code §§2698 *et seq.* as alleged in the PAGA
 26 Complaint.

27 30. "Released Parties" means Defendant, and any of its former and present parents,
 28 subsidiaries, divisions, and affiliated companies, including 8x8, and its respective officers,

1 directors, employees, partners, shareholders, agents, successors, assigns, and legal
2 representatives.

3 31. "Released Claims Period" means from September 25, 2016, through the date the
4 Court issues its Preliminary Approval Order.

5 32. "Request for Exclusion" means a written statement submitted by a Class Member
6 indicating a request to be excluded from the Settlement. The Request for Exclusion must be in
7 writing and should: (i) be signed by the Class Member; (ii) contain the name, address, telephone
8 number, and the last four digits of the Social Security number of the Class Member requesting
9 exclusion; (iii) clearly state that the Class Member does not wish to be included in the Settlement;
10 (iv) be returned by fax or mail to the Settlement Administrator at the specific address and/or
11 facsimile number; and (v) be postmarked or faxed on or before the Response Deadline. The date
12 of the fax or postmark on the return mailing envelope will be the exclusive means to determine
13 whether a Request for Exclusion has been timely submitted. A Class Member who does not
14 request exclusion from the Settlement will be deemed a "Participating Class Member" and will be
15 bound by all terms of the Settlement, if the Settlement is granted final approval by the Court.
16 Any Class Member who validly requests to be excluded from the Settlement will no longer be a
17 member of the Settlement Class and will not have any right to object, appeal, or comment on the
18 Settlement, but will remain as Participating PAGA Member(s), and will receive an Individual
19 PAGA Payment for the PAGA Released Claims. No later than ten (10) calendar days after the
20 Response Deadline, the Settlement Administrator shall provide counsel for the Parties a complete
21 list of all Class Members who submitted a timely and valid Request for Exclusion.

22 33. "Response Deadline" means the deadline by which Class Members must postmark
23 or fax to the Settlement Administrator a valid Request for Exclusion, objection, or workweek
24 dispute. The Settlement Administrator shall continue efforts to properly locate Class Members
25 who have had their Class Notice returned as undeliverable. The Response Deadline will be forty-
26 five (45) calendar days from the initial mailing of the Settlement Notices by the Settlement
27 Administrator unless the 45th day falls on a Sunday or Federal holiday, in which case the
28 Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

1 The Response Deadline for Requests for Exclusion, Objection or workweek disputes will be
2 extended fourteen (14) calendar days for any Class Member who is re mailed a Notice Packet by
3 the Settlement Administrator, unless the 14th day falls on a Sunday or Federal holiday, in which
4 case the Response Deadline will be extended to the next day on which the U.S. Postal Service is
5 open. Under no circumstances, however, will the Administrator have the authority to extend the
6 deadline for Class Members to submit a Request for Exclusion, Notice of Objection or
7 Workweeks Dispute to the settlement.

8 34. "Settlement" means the final and complete disposition of the Action pursuant to
9 this Stipulation of Settlement.

10 35. "Settlement Administrator" or "Administrator" means Simpluris or any other
11 third-party action settlement administrator agreed to by the Parties and approved by the Court for
12 purposes of administering this settlement. The Parties each represent that they will not have any
13 financial interest in the Settlement Administrator or otherwise have a relationship with the
14 Settlement Administrator that could create a conflict of interest.

15 36. "Settlement Administration Costs" means the reasonable costs and fees of
16 administering the Settlement to be paid from the Maximum Settlement Amount, not to exceed
17 Eight Thousand Nine Hundred and Ninety-Nine Dollars (\$8,999.00), including, but not limited
18 to: (i) printing, mailing and re-mailing (if necessary) of Settlement Notices to Class Members;
19 (ii) preparing and submitting to Class Members and government entities all appropriate tax filings
20 and forms; (iii) computing the amount of and distributing Individual Settlement Awards, the
21 Class Representative Service Award, the Class Counsel Award; (iv) processing and validating
22 Requests for Exclusion; (v) establishing a Qualified Settlement Fund, as defined by the Internal
23 Revenue Code; (vi) calculating and remitting to the appropriate government agencies all
24 employer and employee payroll tax obligations arising from the Settlement and preparing and
25 submitting filings required by law in connection with the payments required by the Settlement;
26 and (vii) transmitting uncashed Individual Settlement Award payments to the California State
27 Controller's Unclaimed Property division.

28 37. "Settlement Notice" means the Notice of Class Action Settlement, substantially in

1 the form attached as Exhibit 1, which shall be subject to Court approval and which the Settlement
2 Administrator shall mail to each Class Member containing: (i) information regarding the nature of
3 the Action; (ii) a summary of the Settlement's principal terms; (iii) the Class definitions; (iv) the
4 total number of Workweeks the respective Class Member worked for Defendant (according to
5 Defendant's records); (v) the Class Member's estimated Individual Settlement Award and the
6 formula for calculating Individual Settlement Awards; (vi) the dates which comprise the Class
7 Period; (vii) instructions on how to submit disputes regarding Workweeks, Requests for
8 Exclusion, and/or Notices of Objection; (viii) the Response Deadline; and (ix) the claims to be
9 released pursuant to the Settlement of the Action.

10 38. "Workweeks" means the number of workweeks worked by each Class Member
11 during the Class Period. For purposes of this Settlement, Workweeks will be calculated by
12 counting the number of calendar days between each Class Member's first and last days of work in
13 a Class Position during the Class Period and dividing that sum by seven, without regard to any
14 vacations, periods of illness, or leaves of absence taken during the Class Period.

15 39. "Workweek Dispute" means a written statement that a Class Member disputes the
16 number of Workweeks listed on his/her Settlement Notice. Any such Workweek Dispute must be
17 faxed or mailed to the Settlement Administrator by the Response Deadline. The date of the fax or
18 postmark on the written statement will be the exclusive means to determine whether a Workweek
19 Dispute has been timely submitted. A valid Workweek Dispute must be in writing and should
20 contain: (i) the Class Member's full name, signature, address, telephone number, and the last four
21 digits of his/her Social Security number; (ii) the number of Workweeks the Class Member
22 contends is correct; and (iii) any evidence supporting his/her contention. The dates of
23 employment identified for each Class Member in the applicable Class List will be presumed to be
24 correct, unless a particular Class Member proves otherwise to the Settlement Administrator by
25 credible evidence. All Workweek Disputes will be resolved and decided by the Settlement
26 Administrator, after consultation with counsel for the Parties, and the Settlement Administrator's
27 decision on all Workweek Disputes will be final, subject to the ultimate final approval of the
28 Court if necessary.

40. “Workweek Value” means the value of each compensable Workweek, as determined by the formula set forth herein.

41. “Workweek Verification” means Defendant certifies that, according to its records, the approximate number of workweeks for all class members from September 25, 2016, to July 30, 2021, is 52,050 (“Certified Workweek Amount”). If the number of workweeks increases by more than 10% as of the date of Preliminary Approval, then there shall be a corresponding pro-rata increase in the Net Settlement Amount.

RECITALS

42. Procedural History.

a. On September 16, 2020, Plaintiff submitted the PAGA Notice to the LWDA for the purpose of complying with Labor Code §2699.3’s notice requirement, giving notice of Plaintiff’s intentions to file the PAGA Action.

b. On September 25, 2020, Plaintiff filed the Class Action entitled *Denise Rivas, on behalf of herself and others similarly situated, v. 8X8, Inc., a Delaware corporation; and Does 1 through 50, inclusive*, in Santa Clara County Superior Court (Case No. 20CV370842). Defendant timely removed to United States District Court, Northern District of California, where the case was assigned to Judge Lucy H. Koh, Case No. 5:20-cv-07607-LHK.

c. On December 1, 2020, Plaintiff filed the PAGA Action entitled *Denise Rivas, on behalf of herself and on behalf of all other aggrieved employees v. 8x8, Inc., a Delaware corporation; and Does 1 through 50, inclusive*, alleging one cause of action based on the following claims: (1) penalties under the PAGA for failure to pay minimum wages; (2) civil penalties under the PAGA for failure to pay wages and overtime under Labor Code § 510; (3) civil penalties under the PAGA for meal period liability under Labor Code §§ 512 and 226.7; (4) penalties under the PAGA for rest break liability under Labor Code §§ 226.7 and 512; (5) penalties under the PAGA for failure to provide accurate itemized wage statements under Labor Code § 226(a) and keep accurate payroll records under Labor Code § 1174; and (6) penalties under the PAGA for failure to timely pay all wages owed in violation of Labor Code §§ 203 and 204.

1 d. On September 24, 2021, the Parties participated in a full-day mediation
2 before Steve Rottman, Esq. at which the parties settled the case, which is now confirmed in this
3 long form Settlement Agreement.

4 e. The parties shall seek approval of this Agreement by filing a motion for
5 approval in the Class and PAGA Actions after they are consolidated in state court in
6 accordance with the terms of this Agreement.

7 43. Benefits of Settlement to Plaintiff and the Class Members. Plaintiff and Class
8 Counsel recognize the expense and length of continued proceedings necessary to litigate
9 Plaintiff's disputes in the Actions through trial and through any possible appeals. Plaintiff also
10 has taken into account the uncertainty and risks of the outcome of further litigation, and the
11 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of
12 the burdens of proof necessary to establish liability for the claims asserted in the Actions, both
13 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
14 damages, penalties, restitution and other relief sought in the Actions. Plaintiff and Class Counsel
15 also have taken into account Defendant's agreement to enter into a settlement that confers
16 substantial benefits upon the Class Members. Based on the foregoing, Plaintiff and Class Counsel
17 have determined that the Settlement set forth in this Stipulation of Settlement is fair, adequate,
18 and reasonable and is in the best interests of all Class Members.

19 44. Defendant's Reasons for Settlement. Defendant has concluded that further defense
20 of the Action would be protracted and expensive. Substantial amounts of Defendant's time,
21 energy, and resources have been, and unless this Settlement is completed, shall continue to be,
22 devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken into account
23 the risks of further litigation in reaching its decision to enter into this Settlement. Even though
24 Defendant contends it is not liable for any of the claims alleged by Plaintiff in the Actions and
25 denies any liability whatsoever, Defendant, nonetheless, has agreed to settle in the manner and
26 upon the terms set forth in this Stipulation of Settlement and to fully and finally put to rest the
27 claims alleged in the Actions. Defendant has asserted and continues to assert that the claims
28 alleged by Plaintiff have no merit and do not give rise to any liability, damages, restitution,

penalties or other payments. This Stipulation of Settlement is a compromise of disputed claims. Nothing contained in this Stipulation of Settlement, no documents referred to herein, and no action taken to carry out this Stipulation of Settlement, shall be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted in the Action. Defendant contends that it has complied with all applicable state, federal, and local laws. In the event this Settlement does not obtain final approval, Defendant retains all rights it has to defend itself in this matter and to take any actions in defense of itself that are available to it.

CLASS CERTIFICATION

45. Solely for purposes of settling the Actions, and not for purposes of class certification should the Settlement not be approved or for any other reason, the Parties stipulate and agree that the requisites for establishing class certification with respect to the Settlement Class have been met and are met. More specifically, for purposes of settlement only, the Parties stipulate and agree that:

- a. The Settlement Class is ascertainable and so numerous as to make it impracticable to join all Class Members;
- b. There are common questions of law and fact including, but not limited to, the following:
 - i. Whether Defendant failed to pay employees minimum wages
 - ii. Whether Defendant failed to pay employees wages for all hours worked;
 - iii. Whether Defendant violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide employees with requisite meal periods or premium pay in lieu thereof;
 - iv. Whether Defendant violated Labor Code §§ 226.7 and the applicable IWC Wage Orders, by failing to provide employees with requisite rest periods or premium pay in lieu thereof;
 - v. Whether Defendant violated Labor Code § 226(a):
 - vi. Whether Defendant violated Labor Code §§ 1174 and 1174.5;

- 1 vii. Whether Defendant violated Labor Code §§ 221;
- 2 viii. Whether Defendant violated Labor Code §§ 201, 202, 203 by
- 3 failing to pay wages and compensation due and owing at the time of
- 4 termination of employment;
- 5 ix. Whether Defendant violated Business and Professions Code §
- 6 17200 *et seq.*;
- 7 x. Whether employees are entitled to equitable relief pursuant to
- 8 Business and Professions Code § 17200 *et seq.*;
- 9 xi. Whether Defendant’s standard FCRA disclosure meets 15 U.S.C. §
- 10 1681b(b)(2)(A)(i)’s “clear and conspicuous disclosure”
- 11 requirement;
- 12 xii. Whether Defendant’s standard FCRA disclosure is “in a document
- 13 that consists solely of the disclosure” (15 U.S.C. § 1681
- 14 b(b)(2)(A)(i));
- 15 xiii. Whether Defendant “willfully” violated the FCRA pursuant to 15
- 16 U.S.C. § 1681n.
- 17 c. Class Representative’s claims are typical of the claims of the Settlement
- 18 Class;
- 19 d. Class Representative and Class Counsel will fairly and adequately protect
- 20 the interests of the Settlement Class;
- 21 e. The prosecution of separate actions by individual members of the
- 22 Settlement Class would create the risk of inconsistent or varying adjudications, which would
- 23 establish incompatible standards of conduct; and
- 24 f. Questions of law and fact common to the members of the Settlement Class
- 25 predominate over any questions affecting any individual Class Member, and a class action is
- 26 superior to other available means for the fair and efficient adjudication of the controversy.
- 27 46. Should this Settlement not be approved or be terminated, all stipulations set forth
- 28 in the immediately preceding Paragraph shall be null and void and shall not be admissible for any

1 purpose whatsoever.

2 **TERMS OF SETTLEMENT**

3 NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements
4 set forth herein, the Parties agree, subject to the Court's approval, as follows:

5 47. Binding Settlement. This Settlement shall bind the Parties and all Participating
6 Class Members and Participating PAGA Members, subject to the terms and conditions hereof and
7 the Court's approval.

8 48. Tax Liability. The Parties make no representations as to the tax treatment or legal
9 effect of the payments specified herein, and Class Members are not relying on any statement or
10 representation by the Parties, Class Counsel, or Defense Counsel in this regard. Participating
11 Class Members, Participating PAGA Members, and Class Counsel understand and agree that they
12 shall be solely and legally responsible for the payment of all applicable taxes and penalties
13 assessed on the payments specified herein.

14 49. Circular 230 Disclaimer. The Parties acknowledge and agree that (i) no provision
15 of this Stipulation of Settlement, and no written communication or disclosure between or among
16 the Parties, Class Counsel, or Defense Counsel and other advisers, is or was intended to be, nor
17 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
18 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
19 as amended); (ii) the acknowledging party (a) has relied exclusively upon his, her, or its own,
20 independent legal and tax counsel for advice (including tax advice) in connection with this
21 Stipulation of Settlement, (b) has not entered into this Stipulation of Settlement based upon the
22 recommendation of any other party or any attorney or advisor to any other party, and (c) is not
23 entitled to rely upon any communication or disclosure by any attorney or advisor to any other
24 party to avoid any tax penalty that may be imposed on the acknowledging party; and (iii) no
25 attorney or advisor to any other party has imposed any limitation that protects the confidentiality
26 of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally
27 binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any
28 transaction, including any transaction contemplated by this Stipulation of Settlement.

1 50. Preliminary Approval of Settlement. Upon remand of the Class Action to state
2 court, Class Counsel will promptly reserve a hearing date in state court as the date for a hearing
3 on Plaintiff's Motion for Preliminary Approval so that the Parties may request provisional
4 certification of the Settlement Class for settlement purposes only and the setting of a Final
5 Approval Hearing date. The Parties agree to work diligently and cooperatively to have this
6 Settlement presented to the Court for preliminary approval. The proposed Order granting
7 Plaintiff's Motion for Preliminary Approval shall be mutually agreed to by the Parties prior to
8 Plaintiff submitting the proposed Order to the Court. The Preliminary Approval Order shall
9 provide for, among other things, the Settlement Notice to be sent to Class Members as specified
10 herein.

11 51. Release by All Participating Class Members. All Participating Class Members,
12 including Plaintiff, shall be deemed to have released their respective Released Claims against the
13 Released Parties upon the Effective Date of this Agreement. Plaintiff and Class Members who do
14 not Request Exclusion will be deemed to have fully, finally, and forever released, settled,
15 compromised, relinquished, and discharged with respect to all of the Released Parties for any and
16 all Released Claims that accrued during the Released Claims Period. The Settlement Class and
17 each Class Member who has not submitted a valid Request for Exclusion, fully releases and
18 discharges the Released Parties for the Released Claims for any period during the Released
19 Claims Period.

20 52. PAGA Release by All Class Members. All Class Members, including Plaintiff and
21 Participating PAGA Members, shall be deemed to have released their respective PAGA Released
22 Claims, premised in whole or in part on any of the claims, facts, or allegations set forth in the
23 PAGA Notice and PAGA Complaint, against the Released Parties upon the date on which the
24 payment of the Maximum Settlement Amount is made by Defendant, as provided in paragraph 55
25 below. It is understood that Class Members will not have the opportunity to opt out of, or object
26 to, the PAGA Release. Further, the Class Members are bounded by the PAGA Release regardless
27 of whether they cash and/or otherwise negotiate their Individual PAGA Payment.

28 53. Additional Release and Waiver of Claims by Plaintiff. In addition to the release of

Released Claims against the Released Parties made by all Participating Class Members, as set forth above, Plaintiff, in her individual capacity, agrees to release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, arising as of the date of execution of this Agreement including but not limited to claims arising from or related to her employment with Defendant and her compensation while an employee of the Defendant ("Plaintiff's Released Claims").

Plaintiff's Released Claims include all claims, whether known or unknown. Even if Plaintiff discovers facts in addition to or different from those that she now knows or believes to be true with respect to the subject matter of Plaintiff's Released Claims, those claims will remain released and forever barred. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Stipulation of Settlement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Stipulation of Settlement, and that this Stipulation of Settlement contemplates the extinguishment of any such claims. Plaintiff warrants that she has read this Stipulation of Settlement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Stipulation of Settlement and specifically

1 about the waiver of section 1542, and that Plaintiff understands this Stipulation of Settlement and
2 the section 1542 waiver, and so Plaintiff freely and knowingly enters into this Stipulation of
3 Settlement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or
4 in addition to those Plaintiff now knows or believes to be true regarding the matters released or
5 described in this Stipulation of Settlement, and even so Plaintiff agrees that the releases and
6 agreements contained in this Stipulation of Settlement shall remain effective in all respects
7 notwithstanding any later discovery of any different or additional facts. Plaintiff expressly
8 assumes any and all risk of any mistake in connection with the true facts involved in the matters,
9 disputes, or controversies released or described in this Stipulation of Settlement or with regard to
10 any facts now unknown to Plaintiff relating thereto.

11 54. Settlement Administration.

12 a. Within thirty (30) calendar days of entry of the Preliminary Approval
13 Order, Defendant shall provide the Settlement Administrator with the Class Lists for purposes of
14 mailing the Settlement Notices to Class Members, along with data indicating the number of
15 workweeks worked by each class member during the relevant class period. The Settlement
16 Administrator shall not be permitted to share any Class Information included in the Class Lists
17 with Plaintiff or Class Counsel absent express approval by Defendant or Defense Counsel.

18 i. Notice by First Class U.S. Mail. Upon receipt of the Class Lists,
19 the Settlement Administrator shall perform a search based on the
20 National Change of Address Database maintained by the United
21 States Postal Service to update and correct any known or
22 identifiable address changes. Within fourteen (14) calendar days
23 after receiving the Class Lists from Defendant as provided herein,
24 the Settlement Administrator shall mail copies of the Settlement
25 Notice to all Class Members via regular First-Class U.S. Mail. The
26 Settlement Administrator shall exercise its best judgment to
27 determine the current mailing address for each Class Member. The
28 address identified by the Settlement Administrator as the current

1 mailing address shall be presumed to be the most current mailing
2 address for each Class Member. The Parties agree that this
3 procedure for notice provides the best notice practicable to Class
4 Members and fully complies with due process.

5 ii. Undeliverable Settlement Notices. Any Settlement Notice returned
6 to the Settlement Administrator as non-deliverable on or before the
7 Response Deadline shall be re mailed to the forwarding address
8 affixed thereto within five (5) calendar days of receipt of the
9 returned Settlement Notice by the Settlement Administrator. If no
10 forwarding address is provided, the Settlement Administrator shall
11 attempt to determine a correct address by the use of skip-tracing, or
12 other type of automated search, using the name, address and/or
13 Social Security number of the Class Member involved, and shall
14 then perform a re-mailing to the Class Member whose Settlement
15 Notice was returned as non-deliverable within five (5) calendar
16 days of receipt of the returned Settlement Notice by the Settlement
17 Administrator, assuming another mailing address is identified by
18 the Settlement Administrator. Class Members who are sent a re-
19 mailed Settlement Notice shall have their Response Deadline
20 extended by fourteen (14) calendar days from the date the
21 Settlement Administrator re-mails the Settlement Notice. If these
22 procedures are followed, notice to Class Members shall be deemed
23 to have been fully satisfied, and if the intended recipient of the
24 Settlement Notice does not receive the Settlement Notice, the
25 intended recipient shall nevertheless remain a Class Member and
26 shall be bound by all terms of the Settlement and the Final Order
27 and Judgment.
28

1 iii. Determination of Individual Settlement Awards and Individual
2 PAGA Payments. The Settlement Administrator shall determine
3 the eligibility for, and the amounts of, each Individual Settlement
4 Award and Individual PAGA Payment under the terms of this
5 Stipulation of Settlement. The Settlement Administrator's
6 determination of the eligibility for and amount of each Individual
7 Settlement Award and Individual PAGA Payment shall be binding
8 upon the Class Members and the Parties, subject to the Court's
9 ultimate approval and oversight. In the absence of fraud or gross
10 negligence, Defendant's Workweek estimates shall be presumed
11 accurate.

12 iv. Disputes Regarding Administration of Settlement. Any dispute not
13 resolved by the Settlement Administrator concerning the
14 administration of the Settlement shall be resolved by the Court.

15 b. Monitoring and Reviewing Settlement Administration. The Parties have
16 the right to monitor and review the administration of the Settlement to verify that the monies
17 allocated under the Settlement are distributed in the correct amount, as provided for in this
18 Stipulation of Settlement.

19 c. Certification Reports Regarding Individual Settlement Award Calculations.
20 The Settlement Administrator will provide Defense counsel and Class Counsel a weekly report
21 which certifies: (i) the number of Class Members who have submitted valid Requests for
22 Exclusion or objections; and (ii) whether any Class Member has submitted a challenge to any
23 information contained in their Settlement Notice, including but not limited to the number of Class
24 Members from the Settlement Class who have submitted a Workweek Dispute. Additionally, the
25 Settlement Administrator will provide to counsel for both Parties any updated reports regarding
26 the administration of the Settlement Agreement as needed or requested.

27 d. Best Efforts. The Parties agree to use their best efforts to carry out the
28 terms of this Settlement.

1 55. Funding and Allocation of Maximum Settlement Amount. The Maximum
2 Settlement Amount, together with the amount the Settlement Administrator has determined or
3 estimated to be Defendant's share of employer taxes due on the wages being paid under the
4 Settlement, shall be paid by Defendant in one lump sum payment within thirty (30) calendar days
5 after the Effective Date. Defendant shall provide the Maximum Settlement Amount to the
6 Settlement Administrator in any feasible manner, including, but not limited to, by way of a wire
7 transfer. Within fifteen (15) calendar days thereafter, the Settlement Administrator will distribute
8 the payments to Plaintiff for her awarded Class Representative Service Award, to Class Counsel
9 for their awarded attorneys' fees and costs, PAGA Payment to the LWDA, Individual Settlement
10 Payment to the Participating Class Members, and PAGA Payment to the Participating PAGA
11 Members. If this Settlement is not finally approved by the Court in full, or is terminated,
12 rescinded, canceled, or fails to become effective for any reason, or if the Effective Date does not
13 occur, then no portion of the Maximum Settlement Amount shall be paid.

14 a. Payments to the Settlement Class. Class Members shall not be required to
15 submit a claim in order to receive a share of the Net Settlement Amount, and no portion of the
16 Maximum Settlement Amount shall revert to Defendant or result in an unpaid residue. The
17 Settlement Administrator shall first compute the Net Settlement Amount by deducting from the
18 Maximum Settlement Amount approved by the Court the Class Counsel Award, Class
19 Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration
20 Costs. To the extent the Court does not approve the full requested attorneys' fees, litigation costs,
21 service award or settlement administration costs, the Net Settlement Amount will increase
22 accordingly, by the difference between the request amount and the amount awarded by the Court.

23 i. Individual Settlement Award: From the Net Settlement Amount, the
24 Settlement Administrator will calculate each Individual Settlement
25 Award by dividing the Net Settlement Amount by the total number
26 of workweeks for the Class resulting in the Workweek Value and
27 then multiplying the Workweek Value by the number of
28 Workweeks worked by each Class Member. All Participating Class

1 Members will be entitled to payment for at least one Workweek.
2 Defendant will provide the total number of Workweeks for each
3 Class Member to the Settlement Administrator. The Settlement
4 Administrator will calculate the number of Workweeks worked by
5 the Class Members in each Subclass during the Class Period, the
6 amount to be paid per Workweek, and the Individual Settlement
7 Awards to eligible Class Members. All Workweek Disputes will be
8 resolved and decided by the Settlement Administrator and the
9 Settlement Administrator's decision on all Workweek Disputes will
10 be final and non-appealable, subject to the Court's ultimate
11 approval and oversight.

12 ii. Individual PAGA Payment: The Settlement Administrator will
13 calculate each Class Member's Individual PAGA Payment by
14 dividing the 25% of the PAGA Payment to be distributed to Class
15 Members, i.e. Twelve Thousand Five Hundred Dollars (\$12,500)
16 by the total number of Workweeks for the entire Settlement Class
17 resulting in the PAGA Workweek Value; and then multiplying the
18 PAGA Workweek Value by the number of Workweeks worked by
19 each Participating PAGA Member. All Participating PAGA
20 Members will be entitled to payment for at least one Workweek.

21 iii. Each Participating Class Member's Individual Settlement Award
22 and each Participating PAGA Member's Individual PAGA
23 Payment shall be calculated solely by the Settlement Administrator
24 using Defendant's Workweek data. Defendant's Workweek data
25 will be presumed to be correct, unless a particular Class Member
26 proves otherwise to the Settlement Claims Administrator by
27 credible evidence. All Workweek Disputes will be resolved and
28 decided by the Settlement Administrator and the Settlement

1 Administrator's decision on all Workweek Disputes will be final
2 and non-appealable, subject to the Court's ultimate approval.

3 iv. Individual Settlement Awards and Individual PAGA Payments
4 shall be mailed by the Settlement Administrator by regular First
5 Class U.S. Mail to each Participating Class Member/Participating
6 PAGA Member's last known mailing address within fifteen (15)
7 calendar days after Defendant provides the Settlement
8 Administrator with the Maximum Settlement Amount. Prior to
9 mailing the Individual Settlement Awards and the Individual PAGA
10 Payments, the Settlement Administrator shall perform a search
11 based on the National Change of Address Database maintained by
12 the United States Postal Service to update and correct any known or
13 identifiable address changes.

14 v. Should any of the following occur, the Settlement Administrator
15 will proportionately increase the estimated Individual Settlement
16 Award of each Participating Class Member to ensure that the entire
17 Net Settlement Amount is distributed to Participating Class
18 Members: (i) any Class Members submit timely and valid, or
19 otherwise accepted, Requests for Exclusion following the provision
20 of Settlement Notices and expiration of the Response Deadline; (ii)
21 the Court approves the Class Representative Service Award in
22 amounts less than those requested by Plaintiff, as detailed herein;
23 (iii) the Court approves a Class Counsel Award in an amount less
24 than that requested by Plaintiff, as detailed herein; and/or (iv) the
25 Court approves Settlement Administration Costs in an amount less
26 than that requested by Plaintiff, as detailed herein.

27 vi. Individual Settlement Award Payments and Individual PAGA
28 Payments shall be made by check and shall be made payable to

1 each Participating Class Member and Participating PAGA Member
2 as set forth in this Stipulation of Settlement.

3 vii. Individual Settlement Awards shall be allocated as follows: 25% as
4 alleged unpaid wages subject to all applicable tax withholdings; and
5 75% as alleged unpaid interest and unpaid penalties. The Settlement
6 Administrator shall issue an IRS Form W-2 to each Participating
7 Class Member for the portion of each Individual Settlement Award
8 Payment allocated as alleged unpaid wages and subject to all
9 applicable tax withholdings. The Settlement Administrator shall
10 issue an IRS Form 1099 to each Class Member for the remaining
11 portion of each Individual Settlement Award and for the Individual
12 PAGA Payment, which are allocated as alleged unpaid non-wage
13 penalties and interest and not subject to payroll tax withholdings.
14 The Settlement Administrator shall calculate the amount of the
15 Employer's Share of Payroll Taxes and shall remit and report the
16 applicable portions of the payroll tax payment to the appropriate
17 taxing authorities in a timely manner. Defendant will be
18 responsible for paying its share of the Payroll Taxes and this
19 amount will not be deducted from the Maximum or Net Settlement
20 Amount.

21 viii. Any Individual Settlement Award Payment Check and/or Individual
22 PAGA Payment check issued by the Settlement Administrator to
23 Participating Class Members and Participating PAGA Members
24 must be cashed within 180 days after issuance. After the expiration
25 of the 180-day period, the Settlement Administrator will prepare the
26 Final Report regarding the distribution of the Maximum Settlement
27 Amount, including the total amount that was cashed/deposited by
28 Participating Class Members and Participating PAGA Members

1 and the total amount of any uncashed settlement checks pursuant to
2 California Code of Civil Procedure section 384. After the Final
3 Report is filed, the total amount of any uncashed settlement checks
4 shall be paid to the California State Controller's Unclaimed
5 Property division to be held pursuant to the Unclaimed Property
6 Law, California Civil Code § 1500 *et seq.*

7 ix. In the event a Class Member fails to cash/deposit his or her
8 Individual Settlement Award check and/or Individual PAGA
9 Payment check, for whatever reason, the Class Member shall
10 nevertheless remain bound by the Settlement.

11 x. All monies received by Participating Class Members under the
12 Settlement which are attributable to wages shall constitute income
13 to such Participating Class Members solely in the year in which
14 such monies actually are received by the Participating Class
15 Members. It is expressly understood and agreed that the receipt of
16 Individual Settlement Awards shall not entitle any Participating
17 Class Member to additional compensation or benefits under any
18 collective bargaining agreement or under any bonus, contest or
19 other compensation or benefit plan or agreement in place during the
20 period covered by the Settlement, nor shall it entitle any
21 Participating Class Member to any increased pension and/or
22 retirement, or other deferred compensation benefits. It is the intent
23 of the Parties that the Individual Settlement Awards and Individual
24 PAGA Payments provided for in this Stipulation of Settlement are
25 the sole payments to be made by Defendant to Class Members in
26 connection with this Settlement, with the exception of Plaintiff, and
27 that the Class Members are not entitled to any new or additional
28 compensation or benefits as a result of having received the

Individual Settlement Awards and/or and Individual PAGA Payments. Furthermore, the receipt of Individual Settlement Awards and Individual PAGA Payments by Class Members shall not, and does not, by itself establish any general, special, or joint employment relationship between and among the Class Member(s) and Defendant.

b. Class Representative Service Award. For the purposes of this Settlement only, the Parties agree to the designation of Plaintiff Denise Rivas as the Class/PAGA Representative. In recognition of her time and effort in bringing and presenting the Action and for releasing her Released Claims, Plaintiff shall request the Class Representative Service Award not to exceed Ten Thousand Dollars (\$10,000) to Denise Rivas. Plaintiff's request for such Class Representative Service Award shall be subject to approval from the Court. Defendant agrees not to oppose or object to Plaintiff's request for Class Representative Service Award in an amount not to exceed this amount. The Class Representative Service Award will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for her Class Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on her Class Representative Service Award. Any amount requested by Plaintiff for the Class Representative Service Award and not awarded by the Court shall become part of the Net Settlement Amount and shall be distributed to Participating Class Members as part of their Individual Settlement Awards.

c. Class Counsel Award. Class Counsel shall be entitled to request attorneys' fees in an amount not to exceed one-third (33.33%) of the Maximum Settlement Amount, which amounts to Three Hundred Thirty Thousand Dollars and Thirty Three Cents (\$333,333.33). In addition, Class Counsel shall also be entitled to request an award of costs associated with Class Counsel's prosecution of the Action not to exceed Thirty Thousand Dollars (\$30,000). Class Counsel's request for such attorneys' fees and costs shall be subject to approval from the Court. Defendant agrees not to oppose or object to Class Counsel's request for attorneys' fees or to

Counsel's request for attorneys' costs up to these amounts. In the event the Court awards Class Counsel less than Three Hundred Thirty Thousand Dollars and Thirty Three Cents (\$333,333.33) in attorneys' fees and/or less than Thirty Thousand Dollars (\$30,000) in costs, the difference shall become part of the Net Settlement Amount and shall be distributed to Participating Class Members as part of their Individual Settlement Awards. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. Class Counsel shall provide the Settlement Administrator with properly completed and signed copies of IRS Form W-9 in order for the Settlement Administrator to process the Class Counsel Award approved by the Court. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the Class Counsel Award.

56. Settlement Administration Costs. The Settlement Administration fees and expenses, which are estimated not to exceed Eight Thousand Nine Hundred and Ninety-Nine Dollars (\$8,999.00), shall be paid from the Maximum Settlement Amount. Prior to Plaintiff filing a Motion for Final Approval of the Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the Settlement Administration Costs to date. The Parties agree to cooperate in the Settlement Administration process and to make all reasonable efforts to control and minimize Settlement Administration Costs.

a. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

b. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities required by the Settlement. The Settlement Administrator shall be authorized to establish a Qualified Settlement Fund ("QSF") pursuant to IRS rules and regulations in which the Maximum Settlement Amount shall be placed and from which payments required by the Settlement shall be made.

57. Payroll Taxes. In accordance with this Settlement and to the fullest extent possible, the Maximum Settlement Amount shall resolve, satisfy and completely extinguish all of Defendant's liability with respect to the Class Members, except that the Defendant shall solely be

1 responsible for the employer portion of the payroll taxes on the portion of the Individual
2 Settlement Awards that constitutes wages, and these taxes shall be paid by the Defendant in
3 addition to the Maximum Settlement Amount. Upon the transfer of the Maximum Settlement
4 Amount and the employer portion of payroll taxes on the portion of the Individual Settlement
5 Awards that constitutes wages, Defendant shall have no further payment or defense obligation
6 whatsoever with respect to any claims covered by this Settlement made or asserted by any person
7 or entity anywhere in the world in connection with the Class Members.

8 58. Final Settlement Approval Hearing and Entry of Final Order and Judgment.

9 Following expiration of the Response Deadline, a Final Approval Hearing shall be conducted by
10 the Court for the Court to determine whether to grant final approval of the Settlement, including
11 determining the amounts properly payable for: (i) the Class Counsel Award; and (ii) the Class
12 Representative Service Award. At least sixteen (16) court days prior to the Final Approval
13 Hearing, the Settlement Administrator shall provide a written report or declaration to the Parties
14 describing the process and results of the administration of the Settlement to date, which report or
15 declaration shall be filed by Plaintiff with the Court prior to the Final Approval Hearing. The
16 Parties agree to work diligently and cooperatively to have this Settlement presented to the Court
17 for final approval.

18 59. Duties of the Parties Prior to Court Approval. Promptly upon execution of this
19 Settlement Agreement, the Parties shall stipulate to remand the Class Action to state court (Santa
20 Clara Superior Court), and upon remand, shall take all steps necessary to consolidate the Class
21 Action and PAGA Action before the same state court. The Parties shall then promptly submit this
22 Settlement Agreement to the Court in support of Plaintiff's Motion for Preliminary Approval and
23 determination by the Court as to its fairness, adequacy, and reasonableness. The Parties shall
24 apply to the Court for the entry of an order scheduling a fairness hearing on the question of
25 whether the proposed settlement, including payment of attorneys' fees and costs, the Class
26 Representative's Service Award payment, and the PAGA Payment, should be finally approved as
27 fair, reasonable and adequate as to the members of the Settlement Class. As part of Plaintiff's
28 Motion for Preliminary Approval, Plaintiff shall also apply to the Court for the entry of an Order

1 as follows:

- 2 a. Certifying the Settlement Class for settlement purposes only;
- 3 b. Approving, as to form and content, the proposed Settlement Notice and
- 4 Request for Exclusion;
- 5 c. Approving the manner and method for Class Members to object or request
- 6 exclusion from the Settlement, as contained herein and within the Settlement Notice;
- 7 d. Directing the mailing of the Settlement Notices to Class Members, by first
- 8 class mail;
- 9 e. Preliminarily approving the Settlement subject only to the objections of
- 10 Class Members and final review by the Court; and
- 11 f. Setting a Final Approval Hearing.

12 60. Duties of the Parties Following Final Approval. Following final approval by the

13 Court of the Settlement provided for in this Settlement Agreement, Class Counsel will submit a

14 proposed Final Order and Judgment:

- 15 a. Approving the Settlement, adjudging the terms thereof to be fair,
- 16 reasonable and adequate, and directing consummation of its terms and provisions;
- 17 b. Approving Class Counsel's application for an award of attorneys' fees and
- 18 costs;
- 19 c. Approving the Class Representative Service Award payment to Plaintiff;
- 20 d. Setting a date when the Parties shall submit the Final Report regarding the
- 21 distribution of the Maximum Settlement Amount pursuant to California Code of Civil Procedure
- 22 section 384, and, if necessary, a date for a final accounting hearing following its receipt of the
- 23 Final Report;
- 24 e. Entering judgment in this Action barring and enjoining all members of the
- 25 Settlement Class from prosecuting against any of the Released Parties, any individual or class, or
- 26 representative claims released herein pursuant to the Settlement Agreement, upon satisfaction of
- 27 all payments and obligations hereunder.

28 61. Revocation of Settlement by Defendant. If ten percent (10%) or more of Class

Members opt-out of the Class, Defendant shall have the sole and absolute discretion to rescind/void the Settlement Agreement within fourteen (14) days after receiving from the Settlement Administrator the final list of opt-outs, which the Settlement Administrator will do within fourteen (14) days after the deadline for submission of the Requests for Exclusion. Defendant agrees to meet and confer in good faith with Class Counsel before rescinding or voiding the Settlement Agreement. In the event that Defendant elects to rescind/void the Settlement Agreement, it shall provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect as a termination of this Settlement Agreement for failure to satisfy a condition of settlement, and the Settlement Agreement shall become null and void and have no further force or effect, and the Settlement Class certified pursuant to this Settlement Agreement will be decertified for all purposes. If Defendant chooses to terminate this Settlement Agreement under this provision, it shall be responsible to pay the Settlement Administrator's fees and costs incurred to that point. No party will encourage any Class Member to opt out of the Settlement.

62. Nullification of Settlement. In the event: (i) the Court does not enter the Preliminary Approval Order; (ii) the Court does not grant final approval of the Settlement; (iii) the Court does not enter the Final Order and Judgment; or (iv) the Settlement does not become final for any other reason, this Stipulation of Settlement shall be rendered null and void, any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning and this Stipulation of Settlement and any documents related to it shall not be used by any Class Member or Class Counsel to support any claim or request for class certification in the Action, and shall not be used in any other civil, criminal or administrative action against Defendant or any of the other Released Parties. Additionally, should the Settlement not become final for any reason, the Parties will request that the Court reopen proceedings within thirty (30) calendar days, and any Settlement Administration Costs already incurred by the Settlement Administrator shall be split evenly amongst the Parties. If Defendant elects to revoke the Settlement, as specified in Paragraph 61, the Parties and any monies required to be paid under this Settlement shall be returned to their respective statuses as of the date and time immediately prior

1 to the execution of this Stipulation of Settlement, and the Parties shall proceed in all respects as if
2 this Stipulation of Settlement had not been executed, except that any Settlement Administration
3 Costs already incurred by the Settlement Administrator shall be paid to the Settlement
4 Administrator by Defendant. In the event an appeal is filed from the Court's Final Order and
5 Judgment, or any other appellate review is sought, administration of the Settlement shall be
6 stayed pending final resolution of the appeal or other appellate review and the stay shall only be
7 lifted if the end result of the appeal or other proceeding is that the terms of this settlement
8 agreement are upheld.

9 63. Plaintiff's Waiver of Right to Be Excluded. Plaintiff agrees that by signing this
10 Settlement Agreement, she will be bound by the terms herein. Plaintiff further agrees that, upon
11 signing this Settlement Agreement, she will not request to be excluded from this Settlement and
12 that any such request for exclusion by Plaintiff will be void and of no force or effect.

13 64. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
14 class certification for purposes of this Settlement only; and either party may appeal any court
15 order that materially alters the Settlement Agreement's terms. Nothing in this Settlement
16 Agreement shall preclude Plaintiff from appealing from a court order denying or failing to grant
17 in full her requests for attorneys' fees, costs, or service award.

18 65. No Admission by Defendant. Defendant denies all claims alleged in this Action
19 and denies all wrongdoing whatsoever by Defendant. Neither this Stipulation of Settlement, nor
20 any of its terms and conditions, nor any of the negotiations connected with it, is a concession or
21 admission, and none shall be used against Defendant as an admission or indication with respect to
22 any claim of any fault, concession, or omission by Defendant or that class certification is proper
23 under the standard applied to contested certification motions. The Parties stipulate and agree to
24 the certification of the proposed class for settlement purposes only. The Parties further agree that
25 this Stipulation of Settlement will not be admissible in this or any other proceeding as evidence
26 that either (i) a class action should be certified or (ii) Defendant is liable to Plaintiff or any Class
27 Member, other than according to the terms of this Stipulation of Settlement.
28

1 66. Publicity.

2 a. Prior to the Filing of Plaintiff's Motion for Preliminary Approval. Class
3 Representative and Class Counsel will not make any public disclosures of any kind regarding the
4 Settlement, this Stipulation of Settlement, including but not limited to postings on Class
5 Counsel's websites and postings on any social media sites/outlets, until after the Motion for
6 Preliminary Approval is filed. Class Counsel will take all steps necessary to ensure the Class
7 Representative is aware of, and will encourage her to adhere to, the restriction against any public
8 disclosures regarding the Settlement, this Stipulation of Settlement, and the Confidential
9 Memorandum of Understanding executed on September 24, 2021, until after the Motion for
10 Preliminary Approval is filed. Further, Class Counsel will not include, reference, or use the
11 Settlement for any marketing or promotional purposes, or for attempting to influence business
12 relationships at 8x8, Inc., either before or after the Motion for Preliminary Approval is filed.

13 b. Following the Court's Order Granting Preliminary Approval. Class
14 Representative and Class Counsel will not initiate any communications with the media or third
15 parties, and, if contacted by the media or third parties, will only discuss information publicly
16 available. Class Counsel will take all steps necessary to ensure the Class Representative is aware
17 of, and will encourage her to adhere to, the restriction against initiating any media comment.
18 Class Counsel further agrees not to use the Settlement or any of its terms for any marketing or
19 promotional purposes. Nothing herein will restrict Class Counsel from including publicly
20 available information regarding this settlement in future judicial submissions regarding Class
21 Counsel's qualifications and experience. Further, as stated above, Class Counsel will not include,
22 reference or use the Settlement for any marketing or promotional purposes, or for attempting to
23 influence business relationships at 8x8, Inc., either before or after the Motion for Preliminary
24 Approval is filed. Nothing herein will restrict Plaintiff or Class Counsel from communicating
25 with putative members of the Settlement Class about the Settlement following the Court's Order
26 granting Preliminary Approval.

27 67. Waiver. No waiver of any condition or covenant contained in this Settlement
28 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered

1 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
2 right, or remedy.

3 68. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
4 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
5 Judgment to the Court for its approval, pursuant to Rule 3.770 of the California Rules of Court.
6 After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
7 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
8 administration matters, and (iii) such post-Judgment matters as may be appropriate under court
9 rules or as set forth in this Agreement.

10 69. Exhibits and Headings. The terms of this Stipulation of Settlement include the
11 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
12 set forth herein. The Exhibits to this Stipulation of Settlement are an integral part of the
13 Settlement. The descriptive headings of any paragraphs or sections of this Stipulation of
14 Settlement are inserted for convenience of reference only.

15 70. Amendment or Modification. This Stipulation of Settlement may be amended or
16 modified only by a written instrument signed by counsel for all Parties or their successors-in-
17 interest.

18 71. Entire Agreement. This Stipulation of Settlement and any attached Exhibits
19 constitute the entire agreement between the Parties, and no oral or written representations,
20 warranties, or inducements have been made to Plaintiff or Defendant concerning this Stipulation
21 of Settlement or its Exhibits other than the representations, warranties, and covenants contained
22 and memorialized in this Stipulation of Settlement and its Exhibits. No other prior or
23 contemporaneous written or oral agreements may be deemed binding on the Parties.

24 72. Authorization to Enter Into Settlement Agreement. Class Counsel and Defense
25 Counsel warrant and represent they are expressly authorized by the Parties whom they represent
26 to negotiate this Stipulation of Settlement and to take all appropriate actions required or permitted
27 to be taken by such Parties pursuant to this Stipulation of Settlement to effectuate its terms, and to
28 execute any other documents required to effectuate the terms of this Stipulation of Settlement.

1 The Parties, Class Counsel, and Defense Counsel shall cooperate with each other and use their
2 best efforts to carry out the implementation of the Settlement. In the event the Parties are unable
3 to reach agreement on the form or content of any document needed to implement the Settlement,
4 or on any supplemental provisions that may become necessary to effectuate the terms of this
5 Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The
6 person signing this Stipulation of Settlement on behalf of the Defendant represents and warrants
7 that he/she is authorized to sign this Stipulation of Settlement on behalf of Defendant. Plaintiff
8 represents and warrants that she is authorized to sign this Stipulation of Settlement and that she
9 has not assigned any claim, or part of a claim, covered by this Stipulation of Settlement to a third
10 party. The Parties have cooperated in the drafting and preparation of this Stipulation of
11 Settlement. Hence, in any construction made of this Stipulation of Settlement, the same shall not
12 be construed against any of the Parties.

13 73. Binding on Successors and Assigns. This Stipulation of Settlement shall be
14 binding upon, and inure to the benefit of, the successors and assigns of the Parties.

15 74. California Law Governs. All terms of this Stipulation of Settlement and the
16 Exhibits hereto shall be governed by and interpreted according to the laws of the State of
17 California, without giving effect to any law that would cause the laws of any jurisdiction other
18 than the State of California to be applied.

19 75. Counterparts. This Stipulation of Settlement may be executed in one or more
20 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
21 instrument.

22 76. This Settlement is Fair, Adequate, and Reasonable. Plaintiff represents that this
23 Settlement is a fair, adequate, and reasonable settlement of the Action and she has arrived at this
24 Settlement after extensive arm's-length negotiations, taking into account all relevant factors,
25 present and potential.

26 77. Jurisdiction of the Court. Following entry of the Final Order and Judgment, the
27 Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement
28 of the terms of this Stipulation of Settlement and all orders and judgments entered in connection

1 therewith, and the Parties, Class Counsel, and Defense Counsel shall submit to the jurisdiction of
 2 the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in
 3 this Stipulation of Settlement and all orders and judgments entered in connection therewith.

4 78. Invalidity of Any Provision. Before declaring any term or provision of this
 5 Stipulation of Settlement invalid, the Parties request that the Court first attempt to construe the
 6 terms or provisions valid to the fullest extent possible consistent with applicable precedents so as
 7 to define all provisions of this Stipulation of Settlement as valid and enforceable. In the event the
 8 Court declares any material provision of this Stipulation of Settlement invalid, the Stipulation of
 9 Settlement will be void and its terms will be of no force and effect, except as otherwise agreed to
 10 by the Parties in writing.

11 79. Binding Nature of Notice of Class Action Settlement. It is agreed that, because the
 12 Class Members are so numerous, it is impossible or impractical to have each Class Member
 13 execute the Stipulation of Settlement. The Class Notice shall advise all Class Members of the
 14 binding nature of the Settlement, and the release of Released Claims shall have the same force
 15 and effect as if this Stipulation of Settlement were executed by each Participating Class Member.

16 80. Notice to LWDA. Class Counsel shall take of submitting any required notices of
 17 this Agreement to the LWDA, as may be required by Labor Code sections 2699(1)(2) and (3).

18 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
 19 Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiff, on the one
 20 hand, and Defendant, on the other hand, as of the date(s) set forth below:

21 Dated: 11/12/2021 _____

DocuSigned by:

 57548770A62B416...

Plaintiff Denise Rivas

23 Dated: November 23, 2021 _____

8x8, INC.

DS


Matt Zinn, General Counsel

APPROVED AS TO FORM:

Dated: 11/12/2021

DAVID YEREMIAN & ASSOCIATES, INC.
DAVTYAN LAW FIRM, INC.

BY:

DAVID YEREMIAN

ROMAN SHKODNIK
EMIL DAVTYAN

Attorneys for Plaintiff DENISE RIVAS

GBG LLP

Dated: November 23, 2021

BY:

JEN CORNELL
TERESA W. GHALI

Attorneys for Defendant 8X8, INC.

EXHIBIT 1

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL HEARING

Rivas v. 8X8, Inc.

(County of Santa Clara, California Superior Court Case Nos. 20CV370842 and 20CV374192)

As a current or former non-exempt hourly California employee of 8X8, Inc. you may be entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of 8X8, Inc. (“Defendant”) shows you are a “Class Member,” and therefore entitled to a payment from this class action settlement. Class Members are all persons who are currently or formerly employed by Defendant, either directly or through any affiliate, staffing agency, or professional employer organization, as non-exempt employees in the State of California any time from September 25, 2016, through the date of preliminary approval of the Settlement (“Class Period”).

The parties reached a settlement (“the Class Action Settlement”) that resolves a class action lawsuit and consolidated representative action lawsuit, entitled *Denise Rivas v. 8X8, Inc.*, Case Nos. 20CV370842 and 20CV374192 (the “Lawsuits”). Both Lawsuits were filed in California Superior Court in Santa Clara County.

The Class Action Lawsuit contains claims against Defendant for: (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) meal period violations; (4) rest break violations; (5) failure to keep required payroll records; (6) violation of Labor Code section 226(a); (7) violation of Labor Code section 221; (8) penalties pursuant to Labor Code section 203; (9) violation of Business & Professions Code sections 17200, *et seq.*; and (10) failure to make proper disclosure in violation of the Fair Credit Reporting Act. In the PAGA Lawsuit, based on these alleged Labor Code violations, Plaintiff also seeks penalties under the California Labor Code Private Attorney General Act (“PAGA”). (The Lawsuits, including the Class Action Lawsuit and PAGA Lawsuit may collectively be referred to as the “Lawsuits.”)

On [REDACTED], the Santa Clara Superior Court granted preliminary approval of this Class Action Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuits. Defendant vigorously deny the claims in the Lawsuits and contend that they fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuits.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Class Action Settlement, get no payment for settlement of the class and representative claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuits. If you worked from September 16, 2019 through the date of preliminary approval of the Settlement (“PAGA Period”) as a non-exempt employee of Defendant, directly or through any affiliate, staffing agency, or professional employer

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

	organization, as well, then you will still be deemed an “Aggrieved Employee” as to the PAGA Lawsuit, and you will still receive your share of the proceeds available from the settlement of the PAGA Released Claims, defined below, (your “Individual PAGA Payment”) regardless of whether you opt out of the class settlement.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Simpluris, about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval Hearing scheduled for [DATE AND TIME] in Department 1 of the Downtown Superior Court of Santa Clara Superior Court, located at 191 North First Street, San Jose, California, 95113.

The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [REDACTED] m. on [REDACTED], in the Downtown Superior Court of Santa Clara Superior Court, located at 191 North First Street, San Jose, California, 95113 in Department 1. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendant’s records show that you currently work, or previously worked, for Defendant, as a non-exempt, hourly-paid employee at some point during the Class Period. You were sent this Class Notice because you have a right to know about a proposed settlement of a class and representative action Lawsuits, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuits, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

What Is This Case About?

Denise Rivas was a non-exempt employee of Defendant. She is the “Plaintiff” in this case and is suing on behalf of herself and Class Members for Defendant’s alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or associated premium compensation, failure to provide rest breaks or associated premium compensation, failure to pay all wages owed upon termination or resignation from employment, failure to provide accurate itemized wage statements, failure to maintain payroll records, and failure to timely pay final wages upon separation from employment, failure to make proper disclosure in violation of the Fair Credit Reporting Act. Based on these and other alleged Labor Code violations, Plaintiff also seeks to recover penalties under the California Labor Code Private Attorney Generals Act.

Defendant denies all of the allegations made by Plaintiff and denies that it violated any law. The Court has made no ruling on the merits of Plaintiff’s claims. The Court has only preliminarily approved this Class Action

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Settlement. The Court will decide whether to give final approval to the Class Action Settlement at the Final Approval Hearing.

Summary of the Settlement Terms

Plaintiff and Defendant have agreed to settle this case on behalf of themselves, Class Members, and Aggrieved Employees for the Maximum Settlement Amount of One Million Dollars (\$1,000,000.00), which shall be paid by Defendant. The Maximum Settlement Amount includes: (1) Administration Costs up to \$8,999.00; (2) a service payment of up to \$10,000.00 to Plaintiff for his time and effort in pursuing this case and in exchange for a broader release of claims against Defendant; (3) one-third of the Maximum Settlement Amount which, unless escalated pursuant to the Settlement Agreement, shall amount to \$333,333.33; (4) up to \$30,000.00 in litigation costs to Class Counsel, according to proof; and (5) payment allocated to PAGA penalties in the amount of \$50,000.00, of which 75% (or \$37,500.00) will be paid to the California Labor and Workforce Development Agency (“LWDA”) and 25% (\$12,500.00) will be distributed to Aggrieved Employees. After deducting these sums, a total of approximately not less than \$580,167.67 will be available for distribution to Class Members (“Net Settlement Amount”), and \$12,500.00 will be available for distribution to Aggrieved Employees.

Distribution to Class Members

Class Members who do not opt out of the Class Action Settlement will receive a *pro rata* payment of the Net Settlement Amount based on the number of verified actual weeks worked by Class Members for Defendant, either directly or through an affiliate, staffing agency, or professional employer organization, in California during the Class Period (“Eligible Workweeks”). Specifically, Class Members’ payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (Individual’s Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Class Members who worked during the PAGA Period (*i.e.*, Aggrieved Employees) will receive a *pro rata* share of the \$2,500.00 allocated as PAGA penalties, whether or not they opt out, based on the number of Eligible Workweeks worked by each Aggrieved Employee during the PAGA Period.

Defendant’s records indicate that you worked [Eligible Workweeks] as a non-exempt employee in California during the Class Period and [Eligible Workweeks] during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award] and your estimated payment as an Aggrieved Employee would be [\$Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

Tax Reporting

100% of the payments for PAGA penalties to Aggrieved Employees will be allocated as penalties reported on IRS Form 1099. 25% of each Settlement Payment to Class Members who do not opt out will be allocated as wages and reported on an IRS Form W-2, and 75% will be allocated as penalties and interest reported on IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

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Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the entire release in the settlement and receive a your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an Aggrieved Employee. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment(s) set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Class Released Claims he or she may have or had upon final approval of this Settlement and payment by Defendant to the Settlement Administrator.

“Released Claims” refers to any and all claims, rights, demands, liabilities, and causes of action of every nature and description arising from September 25, 2016, through the date on which the Court grants preliminary approval of the Settlement, including statutory, contractual, or common law claims, for wages, damages, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, arising out of and based on the following categories of claims that were specifically alleged, or are in substance the same as or related to those specifically alleged, in Plaintiff’s Complaint in the Class Action Lawsuit under California Labor Code sections 201-204, 210, 221, 226, 226.7, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699 *et seq.*, Business and Professions Code §§17200-17208, and the applicable wage orders at California Code of Regulations, Title 8, section 11000, *et seq.*, and: (a) any and all claims for failure to pay any type of wages, including overtime wages, minimum wages, and/or regular pay, due to Defendant’s rounding policy, any alleged policy or practice of off-the-clock work or alleged demand or pressure to work through breaks or before or after clocking in, any alleged unlawful deduction from pay, and any alleged failure to incorporate sick time, commissions, incentive pay, or nondiscretionary bonuses in regular rate of pay for purposes of calculating overtime; (b) any and all claims for failure to provide meal breaks and/or premiums in lieu thereof; (c) any and all claims for failure to authorize and permit rest periods and/or pay premiums in lieu thereof; (d) any and all claims for failure to furnish accurate itemized wage statements, both derivative and claims that employee’s wage statements failed to include total hours worked, hourly rates in effect during the pay period, and corresponding number of hours worked at each rate, in violation of Labor Code §§ 226(a)(2), (9); (e) any and all claims for failure to maintain wage and time records; (f) any and all claims for failure to provide wages when due upon separation of employment; (g) any and all claims for violation of California Business and Professions Code §§ 17200 *et seq.* related only to the above alleged claims; (h) any claims for violation under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 *et seq.*; (“Class Released Claims”).

For Aggrieved Employees, the release includes, for the duration of the PAGA Period, claims that were pled in the action and were alleged in the PAGA Notice, or that could have been plead based on the facts alleged in the Litigation and were also alleged in the PAGA Notice (“PAGA Released Claims” and, collectively with Class Released Claims, “Released Claims”).

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]

“Released Parties” shall mean: (a) Defendant; (b) Defendant’s respective past, present, and future parents, subsidiaries, affiliates, divisions, fiduciaries, predecessors, successors, and assigns; and (c) the past, present, and future shareholders, directors, owners, officers, directors, agents, representatives, employees, attorneys, insurers, and the predecessors, successors, and assigns of any of the foregoing.

Option 2 – Opt Out of the Settlement

If you do not wish to receive your Individual Settlement Payment or release the Class Released Claims, you may exclude yourself by submitting a written request to be excluded from the Class. The written request for exclusion must include your name, your Social Security Number, and the following statement or something to its effect: “Please exclude me from the Settlement Class in the *Rivas v. 8X8, Inc.* matter”. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail to the address below.

[INSERT ADMINISTRATOR’S ADDRESS HERE]

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, if you are an Aggrieved Employee, you will still receive your Individual PAGA Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Option 3 – File an Objection to the Settlement

If you wish to object to the Settlement, you may file an objection in writing stating why you object to the Settlement. Your written objection must provide your full name, your current address, telephone number, and the last four digits of your Social Security number, all objections and reasons, including any and all supporting papers, as to why you believe that the Court should not approve the Settlement. Your written objection must be mailed the Administrator no later than **[RESPONSE DEADLINE]**. Please note that you cannot both object to the Settlement and exclude yourself. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Final Approval Hearing

Regardless of whether you submit a written objection you may also appear at the Final Approval Hearing set for _____ at _____m. in the Downtown Superior Court of Santa Clara Superior Court, located at 191 North First Street, San Jose, California, 95113 in Department 1 and orally object to the Settlement, discuss your written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense, provided you notify the Court of your intention to do so. You may also retain an attorney to represent you at the Hearing at your own expense.

All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number ([*** v. ***], Case Number [1-**-CV-*****]), (b) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, or by filing in person at the same location; (c) also be mailed to the law firms identified [*****] and (d) be filed or postmarked on or before _____, 20**.”

Questions? Contact the Settlement Administrator toll free at **[PHONE NUMBER]**

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit www._____.com, call the Settlement Administrator at [PHONE NUMBER] or contact Class Counsel:

DAVID YEREMIAN & ASSOCIATES, INC.

David Yeremian (SBN 226337)

david@yeremianlaw.com

Roman Shkodnik (SBN 285152)

roman@yeremianlaw.com

2540 Foothill Blvd., Suite 201

La Crescenta, California 91214

Telephone: (818) 230-8380

Facsimile: (818) 230-0308

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Downtown Superior Court of Santa Clara Superior Court, located at 191 North First Street, San Jose, California, 95113, during regular business hours of each court day.

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara's Electronic Filing and Service Website at www.scefiling.org, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. First Street, Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures, or you may contact Class Counsel or the Settlement Administrator.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT, OR DEFENDANT'S ATTORNEYS WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at [PHONE NUMBER]