

1 DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
2 david@yeremianlaw.com
Roman Shkodnik (SBN 285152)
3 roman@yeremianlaw.com
2540 Foothill Blvd., Suite 201
4 La Crescenta, California 91214
Telephone: (818) 230-8380
5 Facsimile: (818) 230-0308

6 DAVTYAN LAW FIRM, INC.
Emil Davtyan (SBN 299363)
7 emil@davtyanlaw.com
880 E Broadway
8 Glendale, CA 91205
Telephone: (818) 875-2008
9 Facsimile: (818) 722-3974

10 Attorneys for Plaintiff
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 DENISE RIVAS, on behalf of herself and
14 others similarly situated,

15 Plaintiff,

16 vs.

17 8X8, INC., a Delaware corporation; and
18 DOES 1 through 50, inclusive

19 Defendants.

Case No. 20STCV40104
Consolidated Case No. 20STCV49152

Judge: Hon. Sunil R. Kulkarni

Department: 1

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; AND (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT**

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATUS OF THE LITIGATION.....	1
A.	Procedural History	1
B.	Investigation.....	2
C.	Settlement Efforts.....	2
III.	SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS	3
IV.	CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE	4
A.	There Is A Numerous and Ascertainable Class.....	4
B.	There Is A Well-Defined Community of Interest	5
C.	The Named Plaintiff’s Claims Are Typical	6
D.	Adequacy of Class Counsel and Class Representatives.....	7
E.	Predominance and Superiority	7
V.	THE TWO-STEP APPROVAL PROCESS.....	7
VI.	THE SETTLEMENT IS FAIR AND ADEQUATE	8
A.	The Strength of Plaintiff’s Case.....	9
B.	The Risks Associated with the Merits.....	10
C.	The Risks Associated with Paystub Violations and Waiting Time Penalties.	10
D.	The Risks Associated with the PAGA Penalties.....	10
VII.	THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND REASONABLE	12
VIII.	THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.....	13
IX.	STANDING TO OBJECT TO PROPOSED SETTLEMENT	14
X.	THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED.	14
XI.	ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL.....	15

TABLE OF AUTHORITIES

CASES

<u>B.W.I. Custom Kitchens v. Owens-Illinois, Inc.</u> (1987) 191 Cal.App.3d 1341	5, 8
<u>Cartt v. Superior Court</u> 50 Cal.App.3d 960, 974 (1975).....	13
<u>Class Plaintiffs v. City Of Seattle</u> 955 F.2d 1268, 1276 (1992).....	8
<u>Classen v. Weller</u> (1983)145 Cal.App.3d 27	6
<u>Daar v. Yellow Cab Company</u> 67 Cal. 2d 695, 704 (1967)	4
<u>Gould v. Alleco, Inc.</u> 883 F.2d 281, 284 (4th Cir. 1998).....	14
<u>Hammon v. Barry</u> 752 F. Supp. 1087 (D.D.C. 1990)	9
<u>In Re NASDAQ Market-Makers Antitrust Litigation</u> 172 F.R.D. 119, 123 (SDNY 1997)	5
<u>In re School Asbestos Litigation</u> 921 F.2d 1330 (3rd Cir. 1990)	14
<u>In re Vitamin Cases</u> 107 Cal.App.4th 820, 828 (2003)	14
<u>Linder v. Thrifty Oil Co.</u> (2000) 23 Cal.4th 429, 439-441	4, 8
<u>Mullane v. Central Hanover Bank & Trust Co.</u> 339 U.S. 306 (1950).....	13
<u>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</u> 27 Cal.App.4th 1085, 1094-195 (1994)	8
<u>Priddy v. Edelman</u> 883 F.2d 438, 447 (6th Cir. 1989).....	8
<u>Prince v. CLS Transp., Inc.</u> 118 Cal. App. 4th 1320, 1328 (2004)	4
<u>Reyes v. Board of Supervisors of San Diego County</u> 196 Cal. App. 3d 1263, 1271 (1987).....	4
<u>Richmond v. Dart Industries, Inc.</u> 29 Cal. 3d 462 (1981)	4
<u>Rodriguez v. West Publ. Corp.</u> 2007 U.S. Dist. LEXIS 74767, 24-25 (C.D. Cal. August 10, 2007).....	8
<u>Rosack v. Volvo of America Corp</u> 131 Cal. App. 3d 741, 753 (1982).....	5
<u>Van Vranken v. Atlantic Richfield Co.</u> 901 F.Supp. 294 (N.D. Cal. 1995)	12
<u>Vasquez v. Superior Court</u> 4 Cal. 3d 800, 805-9 (1971)	4

1	<u>Wershba v. Apple Computer, Inc.</u> (2001). 91 Cal.App.4th 224	6
---	---	---

STATUTES

3	<u>Labor Code</u> § 2699.....	8
---	-------------------------------	---

OTHER AUTHORITIES

5	Judicial Council of California's Deskbook on the Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74.....	13
---	---	----

6	<u>Manual for Complex Litigation (Second)</u> (1985)	7
---	--	---

7	<u>Newberg</u> , § 11.25	8
---	--------------------------------	---

8	<u>Newberg</u> , § 12.1	12
---	-------------------------------	----

9	<u>Newberg</u> , §11.47	12
---	-------------------------------	----

8	<u>Newberg</u> , §11.51	8
---	-------------------------------	---

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Denise Rivas (“Plaintiff”), on behalf of herself and all persons similarly situated
4 seeks preliminary approval pursuant to the proposed Joint Stipulation of Class Action And the
5 Private Attorneys General Act of 2004 (“PAGA”) Action Settlement and Release (“Settlement
6 Agreement” or “Settlement”), filed concurrently herewith. The class consists of all current and
7 former non-exempt hourly California employees of Defendant 8X8, Inc. (“Defendant”) in the state
8 of California employed during the Class Period from September 25, 2016, through the date of
9 preliminary approval of the Settlement.

10 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
11 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
12 Defendant, hereby move this Court for an order: (1) granting preliminary approval of the
13 proposed class action settlement, as embodied in the Joint Stipulation of Class Action Settlement
14 (“Settlement” or “Settlement Agreement”) filed concurrently herewith; (2) approving the Notice
15 of Class Action Settlement to be sent to Class Members, and the notification schedule as set forth
16 in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (3)
17 setting a hearing for final approval of the class action settlement.

18 **II. STATUS OF THE LITIGATION**

19 **A. Procedural History**

20 On September 25, 2020, Plaintiff filed a class action complaint against Defendant in the
21 Superior Court for the State of California, in Santa Clara, Case Number 20CV370842 alleging
22 wage and hour violations and failure to make proper disclosure in violation of the Fair Reporting
23 Credit Act (“FCRA”) (“Class Action”). On October 29, 2020, Defendant timely removed the
24 Class Action to United States District Court, Northern District of California, where the case was
25 assigned to Judge Lucy H. Koh, Case No. 5:20-cv-07607-LHK. On December 1, 2020, Plaintiff
26 filed the PAGA Action against Defendant in the Superior Court for the State of California, in
27 Santa Clara, Case Number 20CV374192 (“PAGA Action”), seeking PAGA penalties for the same
28 underlying Labor Code violations alleged in the Class Action. Defendant filed an Answer to the

1 PAGA Action on January 26, 2021.

2 The parties mediated the Class Action and the PAGA Action on September 24, 2021, and
3 reached a successful settlement. On November 30, 2021, pursuant to the parties' stipulation,
4 Judge Koh remanded the Class Action to the Superior Court for the State of California, in Santa
5 Clara. On February 8, 2022, pursuant to the parties' stipulation, the Class Action was
6 consolidated with the PAGA Action.

7 **B. Investigation**

8 Before filing the lawsuit, Class Counsel investigated and researched the facts and
9 circumstances underlying the pertinent issues and the law applicable thereto. (Yeremian Decl., ¶
10 11.) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
11 claims giving rise to the action. (Yeremian Decl., ¶ 12.) Defendant have agreed to share the
12 information from these records with the Class Action Administrator in order to identify and
13 contact the Class Members. (*Id.*) Defendant agreed to share information from these records with
14 the Class Action Administrator in order to identify and contact the Class Members. (*Id.*) There are
15 approximately 450 total Class Members. (*Id.*)

16 Defendant, for their part, vigorously contested liability, the amount of claimed damages,
17 and the propriety of class certification. (Yeremian Decl., ¶ 13.) After Class Counsel analyzed the
18 relevant documents and other gathered data, Class Counsel believed that this case was appropriate
19 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties
20 elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

21 **C. Settlement Efforts**

22 On September 24, 2021, the parties mediated this case with Steve Rottman, Esq., a
23 respected and highly experienced mediator in wage and hour class actions. During mediation,
24 Plaintiff's and Defendant's counsel discussed all aspects of the case. (*Id.*) As a result of the
25 mediation, the parties agreed to settle the lawsuit according to the terms set forth in the Settlement
26 Agreement. (*Id.*; See Exhibit A attached to Yeremian Decl., "Settlement" or "Settlement
27 Agreement".)
28

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay \$1,000,000.00 (“Maximum Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class.

(Yeremian Decl., Exh. A ¶ 18.) The Settlement Agreement defines the “Class Members” as all current and former non-exempt hourly California employees of Defendant in the state of California employed during the Class Period. The Class Period is the period from September 25, 2016, through the date of preliminary approval of the Settlement. (Yeremian Decl., ¶ 16; Exh. A, ¶ 6.) The “Net Settlement Amount,” available for distribution to Class Members, shall be the Maximum Settlement Amount, less the Class Representative Enhancement Payments, Attorneys’ Fees and Costs, Settlement Administration Costs, and seventy-five percent (75%) of the PAGA Payment. (Yeremian Decl., ¶ 17; Exh. A, ¶ 22.) These amounts are detailed as follows:

- not more than Three Hundred Thirty Thousand Dollars and Thirty Three Cents (\$333,333.33) to Class Counsel for attorneys’ fees, and not more than Thirty Thousand Dollars (\$30,000) in costs; (Yeremian Decl., ¶ 17; Exh. A, ¶ 4.);
- not more than Ten Thousand Dollars (\$10,000.00) to the Class Representative for Service Enhancement Payment; (Yeremian Decl., ¶ 17; Exh. A, ¶ 8.);
- up to Eight Thousand Nine Hundred Ninety Nine Dollars (\$8,999.00) for the Settlement Administration Costs; (Yeremian Decl., ¶ 17; Exh. A, ¶ 36.);
- Fifty Thousand Dollars (\$50,000.00) shall be allocated for settlement of claims for civil penalties under PAGA, where 75% (\$37,500.00) will be paid to the Labor and Workforce Development Agency (“LWDA”) and 25% (\$12,500.00) will be included in the Net Settlement Amount and distributed to Settlement Class Members); (Exh. A, ¶ 22.)

The Individual Settlement Payment, which is each Class Member’s share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period as a non-exempt employee in California. (Yeremian Decl., Exh. A, ¶ 8.)

The settlement amount was a compromise figure, factoring in the inherent risks related to

1 certification, liability and damages. (Yeremian Decl., ¶ 19.) However, taking into account all of
2 the circumstances of the action and the defenses raised by Defendant against certification,
3 liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

4 Attached to the Settlement Agreement as **Exhibit 1** is the Notice of Class Action
5 Settlement (the “Class Notice”). The procedures for mailing notice and processing exclusions and
6 objections as well as distribution of the Net Settlement fund are detailed in the Stipulation.
7 (Yeremian Decl., ¶¶ 20-22; Exh. A, ¶ 54.)

8 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

9 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
10 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
11 (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved
12 in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at
13 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations
14 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
15 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

16 To certify a settlement class, the Court must find the two primary requirements for
17 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
18 defined community of interest in the questions of law and fact involving the parties to be
19 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
20 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

21 **A. There Is A Numerous and Ascertainable Class**

22 Whether a class is ascertainable is determined by examining the class definition, the size
23 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d
24 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
25 1271.) Class members are “ascertainable” where they may be readily identified without
26 unreasonable expense or time.

27 Plaintiff contends, and Defendant does not dispute for settlement purposes only, this
28 requirement and the requirement of numerosity is met. Class Members are all current and former

1 non-exempt hourly California employees of Defendant in the state of California employed during
2 the Class Period. The Class Period is the period from September 25, 2016, through the date of
3 preliminary approval of the Settlement. (Yeremian Decl., ¶ 65(a).) Documents and information
4 exchanged between the parties reflect a class of approximately 450 Class Members. (Yeremian
5 Decl., ¶ 65(a).) The Class Members have already been identified by reference to Defendant's
6 payroll and personnel records. (Yeremian Decl., ¶ 65(b).)

7 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

8 **B. There Is A Well-Defined Community of Interest**

9 A community of interest is established by the predominance of common issues of law and
10 fact. (*See Vasquez*, 4 Cal. 3d at 811.) The requirement of a community of interest:

11 [D]oes not depend upon an identical recovery, and the fact that each
12 member of the class must prove his separate claim to a portion of any
13 recovery by the class is only one factor to be considered ... The mere
14 fact that separate transactions are involved does not of itself preclude
15 a finding of the requisite community of interest so long as every
16 member of the alleged class would not be required to litigate
numerous and substantial questions to determine his individual right
to recover subsequent to the rendering of any class judgment which
determined in plaintiffs' favor whatever questions were common to
the class.

17 (*Id.* at 809.)

18 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
19 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
20 Class is united in its proof. (Yeremian Decl., ¶ 65(e).) Because Plaintiff has alleged a single
21 scheme, "the relevant proof [does] not vary among class members" and "clearly presents a
22 common question fundamental to all class members." (*See In Re NASDAQ Market-Makers*
23 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
24 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy"
25 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
26 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
27 inference "eliminates the need for each class member to prove individually the consequences of
28 the defendants' actions to him or her." (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*

1 (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

2 This action involves, *inter alia*, a determination about Defendant’s alleged failure to pay
3 wages and overtime due to allegedly common and unlawful policies, meal and rest periods, the
4 resulting failure to pay final wages when required, the failure to provide accurate paystubs, the
5 largely derivative claims under the Business & Professions Code and PAGA, along with claims
6 under the FCRA. Plaintiff contends these practices affected Class Members in the same way.
7 Plaintiff contends these practices resulted in a failure to compensate employees at termination,
8 and incomplete wages displayed on wage statements. The outcome of litigation on this matter
9 depends upon questions that are common to Class Members. (Yeremian Decl., ¶ 65(f).) While
10 Defendant maintained otherwise, these issues will not be decided on the basis of facts peculiar to
11 each Class Member, but rather on the basis of facts common to them all. It is also true that these
12 issues of liability can be determined on a class-wide basis. (*Id.*)

13 **C. The Named Plaintiff’s Claims Are Typical**

14 A class representative’s claims are typical when they arise from the same event, practice,
15 or course of conduct that gives rise to the claims of other putative class members, and if their
16 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
17 necessarily identical to the claims of other class members. It is sufficient that the representative is
18 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
19 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
20 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
21 representative must have identical interests with the class members.”) Thus, it is not necessary
22 that the class representative should have personally incurred all of the damages suffered by each
23 of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

24 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
25 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same factual
26 basis and are based on the same legal theories. (Yeremian Decl., ¶ 65(c).) Plaintiff was employed
27 by Defendant during the Class Period, and was subject to the allegedly unlawful meal and rest
28 policies, pay practices, and FCRA notices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is

1 a member of the Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay
2 all wages, whether Defendant failed to provide meal and rest periods, etc.), which would arise if
3 this was an individual action, applies to the other Class Members as well. The answer to these
4 questions would determine Defendant's liability to the putative class. (*Id.*) Thus, the claims of
5 Plaintiff is typical of the claims of the putative class. (*Id.*) Accordingly, the typicality requirement
6 is satisfied.

7 **D. Adequacy of Class Counsel and Class Representatives**

8 Class Counsel are experienced in class actions, have represented their clients zealously
9 and have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 65(d); Emil Davtyan Decl., ¶¶ 3-7.)
10 The Class Representatives' interests are aligned with those of the Class Members, they have
11 suffered the same injuries as the Class Members, and have no conflicts of interest. (*Id.*) Therefore
12 Class Counsel and the Class Representatives are adequate.

13 **E. Predominance and Superiority**

14 Individual issues do not predominate over those common to the class. (Yeremian Decl.,
15 ¶65(f).) The class action mechanism is superior to individualized actions because Class Members
16 have little incentive to bring claims that are small. (*Id.*)

17 **V. THE TWO-STEP APPROVAL PROCESS**

18 Any settlement of class action litigation must be reviewed and approved by the Court.
19 This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a
20 detailed review after the notice has been distributed to the class members for their comments or
21 objections. In this regard, the Manual for Complex Litigation (Second) explains:

22 A two-step process is followed when considering class settlements...
23 If the proposed settlement appears to be the product of serious,
24 informed, non-collusive negotiations, has no obvious deficiencies,
25 does not improperly grant preferential treatment to class
26 representatives or segments of the class, and falls within the range of
possible approval, then the court should direct that notice be given to
the class members of a formal fairness hearing, at which evidence
may be presented in support of and in opposition to the settlement.

27 (*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the
28 class action settlement by the trial court is simply a conditional finding that the settlement appears

1 to be within the range of acceptable settlements. (See, e.g., *Newberg*, § 11.25; *North County*
2 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.)
3 Thus, the preliminary approval of the class action settlement by the trial court is simply a
4 conditional finding that the settlement appears to be within the range of acceptable settlements.

5 Settlements to resolve PAGA claims also require court approval. (Labor Code §
6 2699(l)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements
7 for as little as \$0 have been approved. (See *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576,
8 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have
9 also approved settlements for \$20,000 or less. (See, e.g., *Hicks v. Toys 'R' Us—Delaware, Inc.*,
10 (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4
11 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,
12 at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
13 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
14 \$300,000 settlement).) A review of the preliminary approval criteria demonstrates a substantial
15 basis for granting the instant Motion and proceeding to a full settlement hearing.

16 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

17 As a matter of public policy, courts both encourage the use of the class action device and
18 favor settlement over continued litigation. (See, e.g., *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
19 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent
20 a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d
21 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class
22 action litigation is concerned.”).)

23 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
24 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
25 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.*
26 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
27 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents,
28

1 particularly when settlement has been reached by experienced counsel familiar with the litigation.
2 (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp.
3 1087.)

4 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
5 several factors that should be analyzed in determining if a class action settlement should be
6 approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
7 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
8 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
9 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
10 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

11 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
12 informal discovery before entering into meaningful settlement negotiations in this matter,
13 including a detailed analysis of Defendant's policies and a considerable sample of Defendant's
14 time and pay records. (Yeremian Decl., ¶¶ 11-12.) This discovery permitted Class Counsel to
15 fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class
16 Counsel is very experienced in the handling of wage and hour class actions and supports this
17 Settlement. (Yeremian Decl., ¶¶ 3-9.)

18 **A. The Strength of Plaintiff's Case.**

19 The claims in this action include failure to pay minimum and overtime wages, failure to
20 provide meal breaks or rest breaks or provide premium pay in lieu thereof, failure to provide
21 accurate wage statements, failure to pay final wages when due, and related claims for violations
22 of California's Business & Professions Code and for penalties under PAGA, as well as claims
23 under the FCRA. (Yeremian Decl., ¶ 10.)

24 Class Counsel felt confident that the claims in this case would be certified given that
25 Defendant's policies were applicable to all Class Members and unlawful on their face. (Yeremian
26 Decl., ¶¶ 24-51.) Defendant contend, however, that that the policies complied with California
27 law. Based on this analysis, Class Counsel believes that this settlement is fair and reasonable and
28 in the best interest of the Class.

1 **B. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

2 Given the risks outlined above, the issues in this case were complex and the risk for
3 Plaintiff and the Class Members associated with this litigation was high. (Yeremian Decl., ¶¶ 49-
4 52.) A class trial would have required the retention of expensive expert witnesses, the accrual of
5 extensive litigation costs, and the parties would have had to spend a substantial amount of time.

6 Finally, given the complexity and unsettled nature of the issues, it is likely that any
7 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
8 further delay for the Class Members who have already waited years for resolution in this matter.

9 **C. The Risk of Maintaining Class Action Status Through Trial.**

10 In class actions, decertification is always a possibility. There is always a risk that a trial of
11 this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*,
12 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
13 decertification is a real risk that Class Counsel must take into account.

14 **D. The Amount Offered in Settlement.**

15 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
16 collusive, and arms-length negotiations between the parties with an experienced mediator. In
17 order to determine the approximate potential damages which would be owed to each of the Class
18 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
19 Counsel with records for a sampling of the class members. By analyzing this information, Class
20 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

21 There are approximately 450 total Class Members. Class Counsel estimated the maximum
22 exposure for the meal period claim is \$1,491,232.50. (Yeremian Decl., ¶ 31.) Class Counsel
23 estimated the maximum exposure for the rest period claim is \$1,491,232.50. (Yeremian Decl., ¶
24 33.) The maximum exposure on the unpaid wage claim is \$932,996.25 and Plaintiff's expert
25 valued the regular rate claim at \$247,770. (*Id.* at ¶ 27.) The maximum exposure for the wage
26 statement claim is \$847,650. (*Id.* at ¶ 36.) The maximum exposure for the waiting time penalties
27 claim is \$1,553,976. (*Id.* at ¶ 40.) On the PAGA claim, Plaintiff's estimated maximum exposure
28 is \$861,100. (*Id.* at ¶ 44.) On the Federal FCRA claim, Plaintiff's Class Counsel valued this claim

1 at zero. (*Id.* at ¶ 46.)

2 Once Class Counsel was able to determine the maximum potential damages, it was able to
3 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 49-54.) Class Counsel analyzed
4 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
5 of success on the core claims. (*Id.*) However, Defendant disputes this contention, denies all
6 wrongdoing in this matter and is confident it has strong legal and factual defenses to Plaintiff's
7 claims. Moreover, Class Counsel determined that the likelihood of success on the claims for
8 unpaid wages and waiting time penalties were not as strong, because various defenses including
9 issues not suitable for class treatment, no detriment to the class members over time, and *de*
10 *minimis* defenses. Defendant may have had the opportunity to establish that they had a good faith
11 belief that they were complying with law. (*Id.*) After taking into account the likelihood of success
12 on each claim and the challenges faced with certifying these claims, Class Counsel determined
13 that the settlement amount of \$1,000,000.00 was fair and reasonable.

14 Under the Settlement, each of the approximately 450 Class Members will receive on
15 average \$1,289 after expenses. (*Id.* at ¶ 48.) Plaintiff feels that this Settlement is fair, reasonable,
16 and advantageous to the class. (*Id.*)

17 To summarize, the Settlement here is fair because it provides a substantial payment to
18 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and
19 provides a fair and adequate distribution of the settlement proceeds whereby the funds are
20 allocated to Class Members proportionally based on their Payout Ratio.

21 As detailed at length in the accompanying Declaration of David Yeremian, the settlement
22 is the result of extensive settlement negotiations between the parties, conducted at arm's length,
23 and informed by substantial factual and legal investigations. (Yeremian Decl., *passim*.)
24 Throughout this case, Class Members have been represented by experienced counsel with many
25 years of experience in employment class action litigation. (Yeremian Decl., ¶¶ 3-9.)

26 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
27 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
28 conducting considerable discovery, and meeting and conferring with defense counsel about same;

1 reviewing and analyzing time records and various handbooks and policies, Plaintiff's personnel
2 file, and other documentation; researching California law; preparing for and attending mediation;
3 and negotiating and finalizing the Settlement Agreement and related documents. (Yeremian
4 Decl., ¶¶ 11-14.)

5 Among those matters considered during the course of settlement negotiations were the
6 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and
7 length of further litigation, including class certification and the appeals process; the present state
8 of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present
9 value of a settlement versus the long wait necessitated by any potential judgment in class
10 members' favor; the burdens of proof necessary to establish liability against Defendant; and
11 Defendant's defenses to the action. (Yeremian Decl., *passim*.)

12 These factors each indicated that the interests of Class Members are best served by a
13 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
14 The Settlement Agreement confers a substantial benefit on the class of up to \$1,000,000.00.
15 Moreover, the settlement awards for each Class Member will be tailored to their workweeks
16 during the class period. (*Id.* at ¶ 18.) Additionally, the Parties agreed that the Individual
17 Settlement Payment shall be allocated as follows: 25% as alleged unpaid wages subject to all
18 applicable tax withholdings; and 75% as alleged unpaid interest and unpaid penalties.

19 Class Counsel believes that the settlement is fair and reasonable and serves the best
20 interests of the Class Members. Although the recommendations of counsel proposing the class
21 settlement are not conclusive, the Court can properly take the recommendations into account,
22 particularly if counsel has been involved in litigation for some period of time, appear to be
23 competent, and have experience with this type of litigation, and significant discovery has been
24 completed. *See Newberg*, §11.47.

25 **VII. THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND** 26 **REASONABLE**

27 It is appropriate to provide a relatively modest additional incentive payment to the class
28 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901

1 F.Supp. 294.

2 Plaintiff is entitled to reasonable service payments for her efforts and initiative in bringing
3 and helping to prosecute this class action. Plaintiff spent significant time better apprising herself
4 of her rights, deciding whether remedial action should be taken, how it should be taken, searching
5 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing her
6 case and the law. (Yeremian Decl., ¶¶ 60-64; Denise Rivas Decl., ¶¶ 3-5.) In light of the
7 foregoing, Class Counsel believes that the incentive award in the amount of \$10,000.00 to the
8 Class Representatives is fair and reasonable. (*Id.*)

9 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
10 **CLASS MEMBERS.**

11 Constitutional due process requires that class members be provided with notice sufficient
12 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
13 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
14 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
15 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
16 convey information regarding the settlement and the class members' rights, entitlements, and
17 obligations; and afford class members the opportunity to present their objections. (*Id.*)

18 The Notice meets constitutional standards because it provides all the information a
19 reasonable person would need to make a fully informed decision about the settlement. It will
20 notify all class members of the terms of the settlement, of its effect on their rights, of their options
21 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
22 exercising those options. (Yeremian Decl., ¶¶ 53-55.) Moreover, the Notice will specifically
23 direct any class members who have questions or concerns to contact the Class Action
24 Administrator, Simpluris, or Class Counsel. (*Id.*)

25 The standard for determining the adequacy of notice is whether the notice has "a
26 reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior*
27 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the
28 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual

1 notice by mail is preferred when possible and dissemination of combined certification/settlement
2 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
3 828.)

4 Here, the Class Notice packet will be sent via first-class mail to each class member.
5 (Yeremian Decl., ¶ 53.) If any Class Notices are returned undeliverable without a forwarding
6 address, the Settlement Administrator will use the national change of address database and
7 perform a skip trace to locate the class member and mail a new Class Notice to him or her at the
8 correct address. (*Id.*) Thus, most, if not all, class members will likely receive the Notice Packet.

9 Pursuant to controlling authority, the proposed Class Notice and method of distribution
10 fully comport with due process requirements. Therefore, the Court should approve the Class
11 Notice and direct that it be distributed as proposed herein.

12 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

13 Non-settling parties and third parties periodically may attempt to object to proposed class
14 action settlements, but the right of non-settling parties to object at the final settlement approval
15 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
16 members have standing to object to a proposed settlement. “Beginning from the unassailable
17 premise that settlements are to be encouraged, it follows that to routinely allow non-class
18 members to inject their concerns via objection at the settlement stage would tend to frustrate this
19 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
20 filed to obtain a good faith determination, no persons other than class members have standing to
21 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
22 1330.)

23 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS** 24 **REASONABLE AND SHOULD BE APPROVED.**

25 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
26 seek an award of fees of no more than \$333,333.33, approximately one-third of the Maximum
27 Settlement Amount, and not more than \$30,000 in costs. The requested fees are fair compensation
28 for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation

1 solely on a contingent basis. (Yeremian Decl. ¶¶ 57-59.) Defendant will not oppose Class
2 Counsel's fees and cost request.

3 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
4 any compensation until recovery is obtained. (See Yeremian Decl., ¶¶ 57-59.) The Court should
5 also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the
6 requested award for Class Counsel is reasonable.

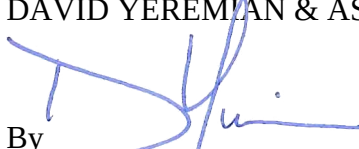
7 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
8 **APPROVAL**

9 The parties respectfully request this Court, as part of the preliminary approval process, to
10 grant the following relief and make the following orders: (1) Review and approve the Settlement
11 Agreement and approve the Class Notice, attached to the Settlement Agreement as Exhibit 1; (2)
12 Consider and determine that the proposed class action settlement as set forth in the Settlement
13 Agreement preliminarily appears fair, reasonable, and adequate; (3) Enter an order conditionally
14 certifying the action as a class action for settlement purposes only and preliminarily approving the
15 proposed class action settlement and the Settlement Agreement; (4) Approve and appoint David
16 Yeremian of David Yeremian & Associates, Inc. and Emil Davtyan of Davtyan Law Firm, Inc. to
17 serve as Class Counsel for settlement purposes; (5) Approve and appoint Simpluris as the Class
18 Action Administrator to handle the notice and claims procedures as set forth in the Settlement
19 Agreement; (6) Approve the proposed settlement's allocation of funds to claims made under
20 PAGA; (7) Order Defendant to disclose to Simpluris the names, last-known addresses, dates of
21 employment, and social security numbers of class members as set forth in the Settlement
22 Agreement and that Simpluris mail the Class Notice to class members; and (8) Set a date for the
23 Final Approval Hearing.

24 Dated: May 17, 2022

Respectfully submitted,

DAVID YEREMIAN & ASSOCIATES, INC.

26
27 By 

David Yeremian
Attorneys for Plaintiff
Denise Rivas