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and DANA MILES, individually, and on behalf
7 of all others similarly situated and aggrieved

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

10 KENTOYA MITCHELL and DANA MILES,
11 individually, and on behalf of all others
similarly situated,

12 Plaintiffs,

13 vs.
14

15 PACIFIC INVESTMENT &
MANAGEMENT, INC., a California
16 Corporation; PREMIER INVESTORS
GROUP, INC., a California Corporation;
17 LINCOLN PETROLEUM INC., a California
Corporation; FARHAD GHADOOSHAHY, a
18 natural person; FARZAN GHADOOSHAHY,
a natural person; and DOES 3 through 50,
19 inclusive,

20 Defendants.
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Case No.: 20STCV43188

[Assigned for all purposes to the Hon. Elihu M.
Berle, Dept. 6]

COMPLEX CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT;**

PROOF OF SERVICE

Date: March 6, 2023
Time: 9:00 a.m.
Dept: 6

*[Filed concurrently with Declaration of Taras
Kick; Declaration of Evelin Reyes; and
Declaration of Robert Weissman]*

Complaint filed: November 10, 2020
FAC filed: August 26, 2021
SAC filed: December 2, 2021
Trial date: None set

1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS:**

2 **PLEASE TAKE NOTICE** that on March 6, 2023, at 9:00 a.m. in Department 6 of this Court,
3 or as soon thereafter as the matter as the matter may be heard, Plaintiffs Kentoya Mitchell and Dana
4 Miles (“Plaintiffs”) respectfully move this Court for an order that:

5 1. Finally approves of the proposed class action settlement described herein and as set forth
6 in the parties’ Revised Settlement and Release Agreement (“Settlement” or “Settlement Agreement”),
7 on the grounds that the Settlement is fair, reasonable and adequate for all Class Members;

8 2. Finally certifies and binds the Class for settlement purposes only;

9 3. Finds that the Court-approved Class Notice distributed to the Settlement Class pursuant
10 to the Court’s October 25, 2022 Order granting preliminary approval constituted the best notice
11 practicable under the circumstances;

12 4. Orders Defendants to remit payment of \$1,624,000 to the Settlement Administrator;

13 5. Orders the Settlement Administrator to distribute \$56,250.00 to the California Labor and
14 Workforce Development Agency (“LWDA”) for penalties pursuant to the Labor Code Private
15 Attorneys General Act of 2004 (“PAGA”); and to distribute \$18,750.00 in PAGA penalties to
16 Aggrieved Employees;

17 6. Approves the award of Class Representative Service Awards of \$10,000.00 each to
18 Plaintiffs Kentoya Mitchell and Dana Miles, totaling \$20,000.00, for their time and effort in
19 representing the Class and orders the Settlement Administrator to distribute the awards to Plaintiffs
20 Mitchell and Miles; and

21 7. Approves Class Counsel’s Attorneys’ Fees Award in the amount of \$541,333.33 or one-
22 third (33-1/3%) of the total recovery and orders the Settlement Administrator to distribute the fee
23 award to The Kick Law Firm, APC and costs of \$24,694.23 for reimbursement of costs incurred by
24 Class Counsel in connection with the prosecution of this action, and to distribute up to \$9,600.00
25 Settlement Administration Costs to itself, Simpluris, Inc.

26 Plaintiffs shall also request that this Court enter a Final Judgment, which includes a provision
27 for this Court’s retention of jurisdiction over the parties to enforce the terms of the judgment.
28

1 This Motion is made pursuant to Rules of Court, Rules 3.764, 3.766, and 3.769, and Code of
2 Civil Procedure section 382, and is based on this Notice, the attached Memorandum of Points and
3 Authorities, the accompanying Declaration of Taras Kick and exhibits thereto, the Declaration of
4 Evelin Reyes Regarding Notice and Settlement Administration, the Declaration of Robert Weissman,
5 the complete files and records of this case, and any other evidence or oral argument which may be
6 considered by the court at the time of the hearing.

7
8 Dated: December 16, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

9
10 By: /s/ Taras Kick
11 Taras Kick
12 Greg Taylor
13 Attorneys for Plaintiffs Kentoya
14 Mitchell, Dana Miles and the Class
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TABLE OF AUTHORITIES

CASES

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19	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	- 17 -
20	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F. Supp. 294	- - 17-, 18 -
21	<i>Washington Mut. Bank v. Superior Court</i> , 24 Cal. 4th 906 (2001))	- 20 -
22	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	- 9 -, - 14 -

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1 **OTHER AUTHORITIES**

2 Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47 - 14 -

3 Newberg on Class Actions, 4th Ed. 2002..... - 16-

4 *Newberg*, § 3:13 - 20 -

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY**

3 Plaintiffs Kentoya Mitchell and Dana Miles (“Plaintiffs”) filed this class and representative
4 action (“the Action”), individually and on behalf of all others similarly situated, on November 10,
5 2020, alleging systematic illegal payroll practices and policies of Defendants Pacific Investment &
6 Management, Inc., Premier Investors Group, Inc., and Lincoln Petroleum Inc., which own and operate
7 gas stations in Los Angeles and San Diego counties. (“Defendants”) (collectively with Plaintiffs, the
8 “Parties”). Defendants deny any wrongdoing.

9 After engaging in arm’s length negotiations with the assistance of an experienced mediator,
10 the Parties ultimately reached the proposed Settlement. (*See* concurrently filed Declaration of Taras
11 Kick [“Kick Declaration”], ¶ 20.) A true and correct copy of the fully executed Revised Settlement
12 and Release Agreement (“Settlement” or “Settlement Agreement”) is attached as **Exhibit 1** to the
13 Kick Declaration.

14 This Court granted preliminary approval of the proposed Settlement, as revised, in an Order
15 dated October 25, 2022, and conditionally certified the following Settlement Class: All current or
16 former non-exempt employees who worked in California for Defendants and/or any of the Fueling
17 Stations during the period from November 10, 2016, to April 1, 2022 (“Class Period”). (*See* Order
18 Granting Motion for Preliminary Approval of Stipulation of Class and Representative Action
19 Settlement [“Preliminary Approval Order”], ¶ 1.) The Court preliminarily found the terms of the
20 Settlement “to be within the range of reasonableness of a settlement that ultimately could be granted
21 final approval by the Court at the Final Approval Hearing.” (*Id.*) The Court also found for purposes
22 of the Settlement “that the proposed Class is ascertainable and presents a sufficiently well-defined
23 community of interest in questions of law and fact.” (*Id.*)

24 In its Order, the Court also appointed Simpluris, Inc. (“Simpluris”) as the Settlement
25 Administrator (*Id.*, ¶ 5); approved the proposed Class Notice as to form and content (*Id.*, ¶ 9); and
26 found that the forms and methods of giving notice prescribed in the Settlement Agreement constitute
27 the best notice practicable under the circumstances, and constitute valid, due and sufficient notice to
28 all Class Members (*Id.*, ¶ 10). The Court further found that the forms and methods of giving notice to

1 Class Members comply fully with the requirements of California Code of Civil Procedure section
2 382, California Civil Code section 1781, California Rules of Court, Rules 3.766 and 3.769, the
3 California and United States Constitutions and other applicable law. (*Id.*) The Court ordered
4 Simpluris to distribute the Notice to the Class Members and ordered the Parties “to carry out the
5 proposed Settlement according to the terms of the Agreement.” (*Id.*, ¶¶ 13, 16.)

6 Plaintiffs can now report that the notice program ordered by this Court has been successful,
7 and Plaintiffs therefore present the matter for final approval. Specifically, as evidenced by the
8 contemporaneously filed Declaration of Evelin Reyes of the court-appointed claims administrator
9 Simpluris, notice of the proposed Settlement was mailed by Simpluris to 868 unique Class Members,
10 with a 96.1% anticipated successful deliverable rate. (*See* Declaration of Evelin Reyes Regarding
11 Notice and Settlement Administration [“Simpluris Decl.”], ¶¶ 8-9.)

12 To date, no Class Member has objected to any aspect of the proposed Settlement, and no Class
13 Member has disputed their workweeks. (*Id.*, ¶¶ 12-13.) In addition, there has not been any opt out
14 request received to date. (*Id.*, ¶ 11.) Therefore, if these numbers do not change, if this Court approves
15 the proposed Settlement in full, 868 Settlement Class Members will be paid their portion of the Net
16 Settlement Amount averaging \$1,099.50, including a highest estimated payment of \$5,188.32. (*Id.*,
17 ¶¶ 14-16.) This is in addition to 448 Aggrieved Employees receiving their proportionate share of
18 \$18,750.00 in PAGA penalties, with an estimated average Individual PAGA Settlement Payment of
19 \$41.85 and the highest estimated award of \$101.63. (*Id.*, ¶ 17.)

20 In sum, the proposed settlement of this class action is an excellent result for class members,
21 and Class Members’ reaction to it to date has been overwhelmingly favorable. For these reasons, and
22 in keeping with the points and authorities below, Plaintiffs respectfully request this Court enter a Final
23 Approval Order and an accompanying Final Judgment that: (1) finally approves the Settlement; (2)
24 finally certifies and binds the Class to the Settlement; (3) directs payments to Participating Class
25 Members; (4) directs payments to the Settlement Administrator; (5) directs payment to Plaintiffs; and
26 (6) directs payments to Class Counsel in accordance with Settlement terms.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Defendants Pacific Investment & Management, Inc. (“Pacific”), Premier Investors Group, Inc. (“Premier”), Lincoln Petroleum Inc. (“Lincoln”), Farhad Ghadooshahy, and Farzan Ghadooshahy own and operate gas stations in California. (Declaration of Kentoya Mitchell in Support of Motion for Preliminary Approval of Class Action Settlement [“Mitchell MPA Decl.”], ¶ 4.) Plaintiffs Kentoya Mitchell and Dana Miles worked for Defendants as non-exempt employees during the Class Period. Specifically, Plaintiff Mitchell worked for Defendants from approximately May 31, 2019, through January 3, 2020. (*Id.*) Plaintiff Miles worked for Defendants from approximately July 2, 2018, through August 16, 2019. (Declaration of Dana Miles in Support of Motion for Preliminary Approval of Class Action Settlement [“Miles MPA Decl.”], ¶ 4.)

B. Procedural History

On September 1, 2020, Plaintiff Mitchell submitted a PAGA Notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendants, Case No. LWDA-CM-804755-20, pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), alleging Defendants violated various provisions of the California Labor Code and IWC Wage Orders. (Kick Decl., ¶ 10, Ex. 2.)

On November 10, 2020, Plaintiff Kentoya Mitchell filed this putative class and representative action, entitled *Mitchell v. Pacific Investment & Management, Inc., et al.*, Los Angeles County Superior Court, Case No. 20STCV43188 (the “Action”), on behalf of herself and others similarly situated to recover for wage and hour violations alleged against Defendants, including: failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest periods; failure to indemnify employees for necessary expenditures incurred in discharge of duties; failure to provide accurate wage statements; and failure to timely pay all wages due at termination. (Kick Decl., ¶ 11.) Plaintiff Mitchell alleged further that these Labor Code violations constituted unfair and unlawful business practices under to the Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200, *et seq.* Lastly, Plaintiff alleged violation of the Private Attorneys General Act of 2004 (“PAGA”), Lab. Code § 2698, *et seq.*

1 On December 12, 2020, Plaintiff Mitchell filed an Amended PAGA Notice to the LWDA and
2 to Defendants to add Pacific as a legal entity employer. (Kick Decl., ¶ 13, Ex. 3.) On July 16, 2021,
3 Plaintiff Mitchell further amended her PAGA Notice to name Defendants Farhad Ghadooshahy and
4 Farzan Ghadooshahy as employers and to add Plaintiff Miles as an aggrieved employee. (*Id.*, ¶ 14,
5 Ex. 4.) On July 16, 2021, Plaintiff Miles submitted a separate PAGA Notice to the LWDA and to all
6 Defendants, LWDA Case No. LWDA-CM-838171-21. (*Id.*, ¶ 15, Ex. 5.)

7 On June 3, 2021, the Court ordered that the scope of the putative class for discovery purposes
8 included all employees “who worked at any one of the Defendants’ ‘Fueling Stations’ during the
9 putative class period of November 10, 2016, to the present, which include the retail gasoline stations
10 under the common ownership, management and/or corporate control of Messrs. Farhad Ghadooshahy
11 and Farzan Ghadooshahy, and regardless of the legal entities whose names appear on putative class
12 members’ wage statements for the work performed.” (*Id.*, ¶ 12.)

13 On August 26, 2021, Plaintiff Mitchell filed a First Amended Complaint (“FAC”), adding
14 Plaintiff Miles and Defendants Farzan Ghadooshahy and Farhad Ghadooshahy as named parties to
15 the Action. A Second Amended Complaint (“SAC”) was filed on December 2, 2021, to correct
16 defective service of the FAC. (*Id.*, ¶ 11.)

17 Defendants have denied, and continue to deny, any liability and wrongdoing of any kind
18 associated with any of the allegations in the Action. (*Id.*)

19 **C. Investigation and Discovery, Settlement Negotiations, and Preliminary Approval.**

20 Prior to attending private mediation, Plaintiffs gathered the facts and data necessary to reach
21 a fair and reasonable settlement. (Kick Decl., ¶¶ 16-20.) The Parties engaged in formal discovery, and
22 Class Counsel prepared and propounded interrogatories, requests for admissions, and production
23 demands on Premier and Lincoln. (*Id.*, ¶ 17.) In addition to formal requests for production of
24 documents, the Parties engaged in substantial informal discovery, which Class Counsel used to
25 evaluate the value of the claims. (*Id.*) Defendants’ production included a sample of timekeeping and
26 payroll records for 313 randomly selected putative Class Members employed by Defendants during
27 the period from January 2018 to December 2020, which represents approximately 36% of the putative
28 class. (*Id.*) Personnel files and Defendants’ written policies were also produced. (*Id.*) Review of all

1 records confirmed substantial violations, including Defendants’ systemic failure to provide
2 employees the opportunity to take timely, duty-free meal periods. (*Id.*, ¶¶ 18-19.) Class Counsel
3 carefully considered the class claims at issue and its expert’s analysis of violation rates for
4 Defendants’ sample of time and payroll data. (*Id.*)

5 Based on good faith meet and confer efforts, the Parties agreed to proceed to mediation with
6 Lynn Frank, Esq., a well-respected and experienced mediator. (*Id.*, ¶ 20.) On February 3, 2022, the
7 Parties attended a full-day, private mediation with Ms. Frank. (*Id.*) Additional information was
8 exchanged during the mediation. (*Id.*) With the assistance of the mediator, the Parties were successful
9 in reaching a settlement in principle. (*Id.*) Thereafter, the Parties continued to negotiate at arm’s-
10 length to reach the terms of the proposed Settlement. (*Id.*, Ex. 1.)

11 On June 30, 2022, Plaintiffs filed an Unopposed Motion for Preliminary Approval of Class
12 Action Settlement (“MPA”), which was before this Court on August 25, 2022, and again on October
13 13, 2022. (*Id.*, ¶ 22.) Following the hearing on August 25, 2022, additional briefing and revisions
14 were completed as requested by the Court, including revisions to the Settlement Agreement. (*Id.*)

15 On October 25, 2022, the Court confirmed the revisions it had ordered were made, and entered
16 its Order Granting Plaintiffs’ MPA (“Preliminary Approval Order”), preliminarily approving the
17 terms of the Settlement Agreement, the Class Notice, and the proposed administration procedures and
18 associated deadlines. (*Id.*, ¶ 23.)

19 **III. SUMMARY OF PROPOSED SETTLEMENT AGREEMENT**

20 **A. Settlement Amount and Funding after Final Judgment.**

21 Defendants have agreed to pay a gross settlement amount of \$1,624,000 to fund all payments
22 pursuant to the Settlement, including: Individual Class Settlement Payments for wages, penalties, and
23 interest; a proposed Class Representative Service Award, subject to Court approval; Attorneys’ Fees
24 and Costs to Class Counsel, as approved by this Court; Settlement Administration Costs; and an
25 allocation for penalties under PAGA (the “PAGA Penalties”). (Kick Decl., ¶ 21, Ex. 1, Agreement,
26 ¶ V.1.A.) In the Settlement Agreement, the “Gross Settlement Amount” (or “GSA”) is the actual
27 amount to be paid by Defendants, as no claims are being required, and there is no reversion of any
28 residual funds to Defendants. (*Id.*, ¶ VIII.4.B.) Defendants will deposit the GSA with the Settlement

1 Administrator within thirty (30) days of the Effective Date. (*Id.*, ¶ VIII.1.B.) Defendants will pay the
2 employer’s payroll tax obligations on the wage portion of Individual Class Settlement Payments
3 (“Employer Taxes”) separately and in addition to the GSA. (*Id.*, ¶ V.1.A.)

4 **B. No-Claim Form Settlement Binding on Parties.**

5 Participating Class Members and Aggrieved Employees will not be required to submit claim
6 forms to receive Individual Class Settlement Payments or Individual PAGA Settlement Payments.
7 (*Id.*, ¶ VII.3.)

8 **C. Release.**

9 After Defendants remit the GSA in full to the Settlement Administrator, Plaintiffs and
10 Participating Class Members shall be deemed to have settled and released the Released Parties of all
11 Released Claims, (*Id.*, ¶¶ VI.2.A, VI.3.A), and the State of California, by and through Plaintiffs and
12 PAGA representatives Mitchell and Miles, shall be deemed to have settled and released the Released
13 Parties of its PAGA Claims. (*Id.*, ¶ VI.4.A.)

14 As defined in the Settlement, Released Claims means “any and all claims during the Class
15 Period which were or could have been raised based on the facts, conduct, and/or omissions alleged in
16 the operative complaint.” (*Id.*, ¶ I.20.) The release of PAGA Claims releases “any and all known and
17 unknown claims for the recovery of civil penalties under the California Private Attorneys General
18 Act, California Labor Code § 2698, *et. seq.*, that were or could have been pled based on the allegations
19 of the operative complaint and/or the PAGA Notice letters that Plaintiffs submitted to the LWDA on
20 September 1, 2020, December 12, 2020, and July 16, 2021, for the PAGA Period.” (*Id.*, ¶ VI.3.A.)
21 The Release agreed to by the Parties does not contain any terms outside the scope of the Action. (*Id.*,
22 ¶ I.20.)

23 **D. Net Settlement Amount and Settlement Payments to Participating Class Members.**

24 The Net Settlement Amount (“NSA”) shall be calculated by deducting from the Gross
25 Settlement Amount the following: (i) Class Counsel’s attorneys’ fees and costs, (ii) the Class
26 Representative Service Awards, (iii) the PAGA Penalties, and (iv) the fees and expenses of the
27 Settlement Administrator. (*Id.*, ¶¶ V.5.) Under the Settlement, each Participating Class Member will
28 be entitled to payment of a pro rata portion of the Net Settlement Amount. (*Id.*)

1 Individual Class Settlement Payments will be calculated based on the total number of
2 workweeks Class Members worked during the Class Period, based on Defendants' records ("Total
3 Workweeks"). (*Id.*, ¶ VIII.2.) The amount to be paid for weeks worked by a Class Member who does
4 not opt out ("Participating Class Member") will be calculated by dividing the NSA by the Total
5 Workweeks. (*Id.*, ¶ VIII.2.A.iii) Defendants' payroll records shall be determinative for purposes of
6 calculating the Total Workweeks and the Individual Settlement Payments, absent proof to the
7 contrary. (*Id.*, ¶ VIII.2.A.iv.) Each Individual Settlement Payment of the Net Settlement Amount will
8 be reported as 20% wages, 70% interest, and 10% penalties, premiums, and waiting time penalties.
9 (*Id.*, ¶¶ VIII.4.C.i.)

10 **E. PAGA Payment to the LWDA and Aggrieved Employees.**

11 The PAGA Award is \$75,000, with \$56,250.00, or 75%, to be made payable to the Labor and
12 Workforce Development Agency ("LWDA"), and the remaining \$18,750.00, or 25%, to be
13 distributed to Aggrieved Employees based on the number of weeks that each Aggrieved Employee
14 worked between September 1, 2019, and April 1, 2022 ("the PAGA Period"). (*Id.*, ¶¶ V.6.)

15 The amount to be paid per pay period to eligible Class Members who worked for Defendants
16 during the PAGA Period ("Aggrieved Employees"), will be calculated by the Settlement
17 Administrator by dividing the \$18,750.00 PAGA payment due to Aggrieved Employees by the total
18 number of pay periods for all Aggrieved Employees. Each Individual PAGA Settlement Payment will
19 be based on the number of pay periods worked during the PAGA Period by each Aggrieved
20 Employee. (*Id.*, ¶ VI.6.A.) Aggrieved Employees may not opt out of the PAGA Settlement. (*Id.*, ¶
21 VI.6.B.) Individual PAGA Settlement Payments will be reported as one hundred percent (100%) non-
22 wage income on IRS Form 1099-MISC. (*Id.*, ¶ VIII.4.C.3.)

23 **F. Settlement Checks Void at 180 Days and *Cy Pres* Transfer.**

24 No money will revert to Defendants under any circumstances. (*Id.*, ¶ VIII.4.B.) If any
25 Individual Settlement Payment check remains uncashed after one hundred eighty (180) days from the
26 date the check is issued, such check(s) will be cancelled. (*Id.*) Thereafter, the funds represented by
27 any uncashed checks shall be distributed to *cy pres* recipients approved by the Court, with Plaintiffs
28 and Defendants each proposing a recipient to receive 50% of such funds, subject to Court approval.

(*Id.*) Plaintiffs nominate Public Citizen Foundation, a 501(c)(3) consumer advocacy organization that engages in research and litigation related to worker rights and worker safety. (*See* Declaration of Robert Weissman, ¶¶ 2-11.) The proposed *cy pres* distribution to Public Citizen fulfills the purpose of the underlying causes of action by ensuring the non-reversionary nature of the GSA, which serves to deter the misconduct alleged, and promotes justice for all Californians. *See, e.g., In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 722. (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472.) Class Counsel is not aware of any involvement by any counsel or party in the governance of the proposed *cy pres* recipient. (Kick Decl., ¶ 32.)

IV. THE SETTLEMENT ADMINISTRATION PROCESS

On November 18, 2022, Defense Counsel provided Simpluris with a mailing list (“Class List”) containing contact information and dates of employment for all Class Members and Aggrieved Employees. The Class List contained data for eight hundred sixty-eight (868) Class Members. (Simpluris Decl., ¶ 6.) The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. (*Id.*, ¶ 7.) From the Class List, 448 individuals were identified as Aggrieved Employees, who worked during the PAGA Period from November 10, 2016 through April 1, 2022. (*Id.*, ¶ 17.)

On October 20, 2022, Simpluris received the Court-approved Notice of Proposed Class Action Settlement (“Notice Packet” or “Class Notice”). (*Id.*, ¶ 5.)

On November 18, 2022, Class Notice was mailed to eight hundred sixty-eight (868) Class Members with addresses contained in the Class List via First Class mail or updated via the NCOA search. (*Id.*, ¶ 8.) A total of 69 Class Notices were returned as undeliverable. (*Id.*, ¶ 9.) For those returned without a forwarding address, Simpluris performed an advanced address search (i.e., skip trace), and Simpluris re-mailed a Class Notice to 39 updated addresses and is in the process of re-mailing Notices to additional updated addresses located through skip tracing. (*Id.*) Currently, there are 34 undeliverable Class Notices, resulting in an expected successful delivery rate of 96.1%. (*Id.*)

To date, Simpluris has received no objections to the Settlement, no opt-out requests, and no workweek/pay period disputes. (*Id.*, ¶¶ 11-13.) Moreover, Plaintiffs will update the Court with final statistics regarding notice administration one week prior to the March 6, 2023, final approval hearing.

1 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

2 “The trial court has broad discretion to determine whether the settlement is fair. [Citation.]”
3 (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581.)¹ The proponent of the settlement has the
4 burden to show that it is fair and reasonable. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
5 224, 245.) “‘Ultimately, the [trial] court’s determination is nothing more than an ‘amalgam of delicate
6 balancing, gross approximations and rough justice.’” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
7 1794, 1801.) A presumption of fairness exists where: (1) the settlement is reached through arm’s-
8 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
9 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
10 small. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *7-Eleven Owners for Fair*
11 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.)

12 In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues
13 of fact and law that underlie the dispute. (*7-Eleven, supra*, 85 Cal.App.4th at 1146.) The inquiry is
14 not whether the settlement agreement is the best one that class members could have possibly obtained,
15 but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” (*Chavez v. Netflix,*
16 *Inc.* (2008) 162 Cal.App.4th 43, 55.) Even if the settlement affords relief that is substantially narrower
17 than it would be if the case were to be successfully litigated, that is no bar to a class settlement because
18 the public interest may indeed be served by a voluntary settlement in which each side gives ground
19 in the interest of avoiding prolonged litigation. (*Wershba, supra*, 91 Cal.App.4th at 251.)

20 **A. The Settlement Resulted from Arm’s-Length Bargaining through Mediation After**
21 **Extensive Investigation and Discovery**

22 The investigation and discovery conducted in this matter have been adequate to give the
23

24 ¹ “It should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,
25 complexity and likely duration of further litigation, the risk of maintaining class action status through
26 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
27 proceedings, the experience and views of counsel, the presence of a governmental participant, and
28 the reaction of the class members to the proposed settlement ... Due regard should be given to what
is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the
extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned.’” (*Nordstrom Com. Cases* (2010) 186
Cal.App.4th 576, 581.)

1 Plaintiffs and Class Counsel a sound understanding of the merits of their position, Defendants’
2 defenses, and to evaluate the reasonable value range of the claims of the Class. (Kick Decl., ¶¶ 16-
3 20.) In the pre-mediation time period, Defendants produced a statistically significant sample of Class
4 Members’ timekeeping and payroll records as well as their written company policies. (*Id.*) Class
5 Counsel and Plaintiffs’ expert conducted significant investigation into the claims and estimates,
6 including careful analysis of this data, which was used as a damages model for the mediation. (*Id.*)
7 Based on the information gathered, including these damages calculations, Plaintiffs’ expert estimated
8 the recovery the Class could potentially obtain, if Plaintiffs were to prevail. (*Id.*)

9 On February 3, 2022, the Parties engaged in a full-day mediation session with an experienced
10 and very highly regarded California mediator, Lynn Frank, Esq. (*Id.*, ¶ 20.) Additional information
11 was exchanged during the mediation. (*Id.*) With the assistance of the mediator, the Parties were
12 successful in reaching a settlement in principle. (*Id.*) Thereafter, the Parties continued to negotiate at
13 arm’s-length to memorialize the terms of the proposed Settlement. (*Id.*, Ex. 1.)

14 **B. The Risks Inherent in Continued Litigation and Individual Settlement Favor Final**
15 **Approval of the Settlement**

16 Had the Action not settled, Defendants would have challenged class certification and liability.
17 Defendants contended that individualized questions of fact predominate over any common issues, and
18 these issues would pose challenges to certification. (Kick Decl., ¶ 33.) Defendants would have likely
19 argued again at trial, if any, that Plaintiffs’ claims were not appropriate for class-wide adjudication.
20 On the other hand, Defendants also faced the risk of the Court certifying a class and allowing a jury
21 to decide Plaintiffs’ claims on a class-wide basis. Additionally, preparation for trial would have been
22 expensive for all Parties. (*Id.*)

23 It is preferable to reach an early resolution of a dispute because such resolutions save time and
24 money that would otherwise go to litigation. Were litigation to proceed, there is a strong likelihood
25 it would be protracted and contentious, as Defendants dispute almost all aspects of Plaintiffs’ claims.
26 (*Id.*) Defendants also argue they were not alter-egos and maintained appropriate corporate formalities
27 and separation. (*Id.*) As a threshold matter, if the Agreement is not approved, Plaintiffs will have to
28 prepare and file a motion for class certification, which outcome is uncertain based on Defendants’

1 contentions, *inter alia*, that individual questions of fact predominate, and that Plaintiffs cannot show
2 the “willfulness” requirement for Labor Code section 203 penalties. If the proposed class were
3 certified, Defendants likely would appeal certification, move for decertification, and/or move for
4 Summary Judgment. (*Id.*) Plaintiffs believe they would prevail on the question of certification, but
5 the risks of further litigation to absent Class Members are significant. (*Id.*)

6 To succeed on the merits, Plaintiffs would have to prove that Defendants actually engaged in
7 the practices and policies alleged and that those practices and policies violated the law. (*Id.*, ¶ 34.)
8 While Class Counsel believe strong evidence exists showing Defendants’ liability, there remains a
9 risk that the trier of fact might find otherwise. (*Id.*) If the case were to proceed to trial, additional
10 discovery would be needed and the Parties would thus incur significant additional expenses, which
11 money could go instead to fund a settlement for the benefit of the Class as a whole. (*Id.*) Moreover,
12 discovery disputes would have certainly arisen, which would have cost the Parties additional time
13 and money. (*Id.*) Further, regardless of which Party prevailed, appellate practice likely would ensue,
14 further delaying any possible recovery by Class Members. (*Id.*) In other words, both Parties would
15 likely incur substantial attorneys’ fees and costs from continued litigation, likely approaching
16 hundreds of thousands of dollars. (*Id.*) In contrast, the Settlement provides real and significant
17 benefits for the Class Members here and now, while avoiding the further expenses, risks, and delay
18 of prolonged litigation with only the possibility of recovery.

19 Along with determining a well-defined community of interest, courts may also evaluate “the
20 probability that each class member will come forward ultimately to prove his or her separate claim to
21 a portion of the total recovery and whether the class approach would actually serve to deter and redress
22 alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Here, if absent Class
23 Members wish to seek individual legal redress from Defendants for their wage and hour claims by
24 filing suit on their own, they may opt out of the Settlement. (Kick Decl., Ex. 1, ¶ IX.1.) Moreover,
25 individual litigation arising from similar operative facts unduly burden the courts and may produce
26 inconsistent results, which may be avoided here. The Settlement fund created will deter and redress
27 the wage-and-hour violations that Defendants are alleged to have committed.

28 It would be grossly inefficient for such a large class of current and former employees to bring

1 individual actions to recover from Defendants for the alleged wage-and-hour violations. Moreover,
2 the potential individual recovery that could be obtained by a Class Member would not be significant
3 enough to provide him or her with the incentive to sue. By granting final approval of the Settlement,
4 the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

5 **C. The Proposed Settlement is Fair and Reasonable.**

6 A trial court has “broad discretion” to determine “whether a settlement [is] fair and
7 reasonable.” (*Wershba, supra*, 91 Cal.App.4th at 234-235; *In re Cellphone Fee Termination Cases*
8 (2010) 186 Cal.App.4th 1380, 1389.) A trial court should consider relevant factors, which may
9 include the strength of a plaintiff’s case, the risk, expense, complexity and likely duration of further
10 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
11 the extent of discovery completed and the stage of the proceedings, the experience and views of
12 counsel, the presence of a governmental participant, and the reaction of the class members to the
13 proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) The court
14 must satisfy itself that the settlement is within the “ballpark” of reasonableness. (*Id.*, at p. 133.)

15 Here, the Settlement, which provides for a gross settlement amount of \$1,624,000, is fair,
16 adequate and reasonable to Class Members. The Settlement was calculated using information and
17 data uncovered through case investigation, formal and informal discovery, and the exchange of
18 information in the context of mediation. (Kick Decl., ¶¶ 16-20.) The Settlement takes into account
19 the potential risks and rewards inherent in any case and in this matter, in particular. Moreover,
20 considering all of the facts in this case, the Settlement represents a considerable recovery.

21 To date, there are 868 Participating Class Members who will receive an average Individual
22 Settlement Award currently estimated to be \$1,099.50, with a highest estimated payment of
23 \$5,188.32. (Simpluris Decl., ¶ 16.) This is in addition to 448 Aggrieved Employees receiving an
24 estimated average payment of \$41.85. (*Id.*, ¶ 17.) These are significant individual recoveries in light
25 of the risks and costs of litigation.

26 Throughout negotiations, Class Counsel carefully considered the viability of Plaintiffs’
27 claims, including careful analysis of potential violation rates from Defendants’ sample of timekeeping
28 and payroll data. The information they gathered, including their expert’s calculations, resulted in

1 estimates of Defendants' exposure and the potential recovery for the putative Class, if Plaintiffs were
2 to prevail on each theory of liability at trial. (Kick Decl., ¶¶ 18-19.) Had this case gone to trial and
3 Plaintiffs prevailed on all legal theories, Defendants' maximum exposure for underpayment of wages
4 is approximately \$8,884,416, without penalties. (*Id.*) This means that the proposed settlement of
5 \$1,624,000.00 is approximately 18% of the total recovery possible for unpaid wages.

6 Courts have determined that settlements are, of course, reasonable even where plaintiffs
7 recover only a portion of their actual losses. *See, e.g., Behrens v. Wometco Enters., Inc.* (S.D. Fla.
8 1988) 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement
9 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or
10 inadequate.”) Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even—a
11 thousandth of a single percent of the potential recovery.” (*Id.*; *see also Martel v. Valderamma* (C.D.
12 Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement of \$75,000 when potential
13 damages were \$1.2 million, or about 6%); *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D.
14 438, 453 (approving settlement with vouchers, not cash, potentially worth a maximum of 3% if all
15 possible claims were actually made, or \$391.5 million aggregate voucher potential where the class
16 could have recovered \$13.05 billion); *City of Detroit v. Grinnell Corp.* (S.D.N.Y. 1972) 356 F. Supp.
17 1380, 1386, *aff'd in part, rev'd on other grounds*, (2d Cir. 1974) 495 F.2d 448 (a recovery of 3.2 %
18 to 3.7 % of the amount sought is “well within the ball park.”)

19 As this Court knows, the inquiry is not whether the settlement agreement is the best one that
20 class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair,
21 adequate, and reasonable.” (*Chavez*, 162 Cal.App.4th at 55.) The Action involves multiple complex
22 legal issues, including Defendants' liability for alleged Labor Code and UCL violations, contractual
23 interpretation, and class certification. If the proposed Agreement is not approved, the litigation could
24 go on for several years, which would be extremely expensive and an inefficient use of judicial
25 resources. For example, thorough and exhaustive analysis of Defendants' timekeeping and payroll
26 records would have been required for presentation at trial. (Kick Decl., ¶¶ 33-35.) Continued litigation
27 would also have been expensive, including the expense of expert witnesses and trial consultants, and,
28 potentially hundreds of thousands of additional dollars in attorney fees for both sides. (*Id.*)

1 Accordingly, Class Counsel believes that \$1,624,000 represents a victory on multiple theories
2 and commensurate with any potential recovery at trial, had Plaintiffs certified a class and then
3 prevailed, which outcome is not certain. (*Id.*) Given the risks inherent in continuing to litigate,
4 including 1) the possibility of an unfavorable, or less favorable, result at trial, 2) the likely possibility
5 that post-trial motions may similarly result in a less favorable result than at trial, and 3) the possibility
6 of a less favorable result on appeal, with the certainty that the appeal process would be lengthy, the
7 Agreement is a fair, adequate, and reasonable resolution for the Class as a whole. (*Id.*, ¶ 35.)

8 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational
9 basis [to warrant approval], particularly if recommended by experienced and competent class
10 counsel.” (*In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127
11 F.Supp.2d 418, 429-30.) The *pro rata* allocation here is a fair and reasonable way to distribute the
12 Net Settlement Amount. In light of the above considerations, Class Counsel believes that the
13 Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.
14 (Kick Decl., ¶ 35.) Although the recommendations of Class Counsel are not conclusive, the Court can
15 properly take the recommendations into account, particularly if Class Counsel appears to be
16 competent, has experience with this type of litigation, and significant discovery and investigation
17 have been completed, as is the case here. (Conte & Newberg, *Newberg on Class Actions* (4th Ed.,
18 2002) § 11.47.) As such, the Court should grant final approval of the Settlement.

19 **VI. PLAINTIFFS’ REQUEST FOR ATTORNEYS’ FEES AND COSTS IS REASONABLE**

20 Class Counsel request an award of attorneys’ fees of one-third of the GSA, which equals
21 \$541,333.33. Although Plaintiffs apply pursuant to the percentage-of-the-benefit methodology, the
22 requested fee award is appropriate under both a percentage-of-the-benefit methodology, as well as
23 under a lodestar cross-check. Defendants do not oppose this request.

24 **A. Plaintiffs Request a One-Third Percentage-Based Fee Award**

25 California law allows the award of attorneys’ fees in class actions based on the percentage-
26 of-the-fund method. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 486; *Chavez v. Netflix*
27 (2008) 162 Cal.App.4th 43, 63 [“fees based on a percentage of the benefits are in fact appropriate in
28 large class actions when the benefit per class member is relatively low”]; *Wershba v. Apple Computer,*

1 *Inc.* (2001) 91 Cal.App.4th 224, 255; *Consumer Cause v. Mrs. Gooch's Natural Food Markets* (2005)
2 127 Cal.App.4th 387, 397 [the common fund doctrine is “frequently applied in class actions when the
3 efforts of the attorney for the named class representatives produce monetary benefits for the entire
4 class”].) There is substantial authority for determining the fee award based on a percentage of the
5 total value of the recovery. The requested fees fall well within an appropriate range under the
6 common fund approach as it is common to award attorney’s fees to class counsel of one-third (33-
7 1/3%) of the settlement amount or higher. (*Chavez*, at 66: “[e]mpirical studies show that, regardless
8 whether the percentage method or the lodestar method is used, fee awards in class actions average
9 around one-third of the recovery.”)

10 In *Laffitte*, the Supreme Court of California, in a case involving an objection to a one-third
11 percentage based recovery in a \$19 million employment class action lawsuit, stated: “We hold further
12 that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee ... [and] *also*
13 *retain the discretion to forego a lodestar cross-check* and use other means to evaluate the
14 reasonableness of a requested percentage fee.” (*Laffitte*, 1 Cal.5th at 506, emphasis added.) Several
15 courts have expressed frustration with the alternative “lodestar” approach, which usually involves
16 wading through voluminous and often indecipherable time records. (See, e.g., *In re Activision*
17 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375.) The percentage approach is
18 preferable to the lodestar because: (1) it provides predictability to class counsel and class members;
19 (2) encourages efficient resolution by providing an incentive for early, yet reasonable, settlement; and
20 (3) reduces the demands on judicial records. (*Id.*, at 1378-79.) In fact, “[a] task force commissioned
21 by the Third Circuit concluded that the lodestar approach... is a cumbersome, enervating, and often
22 surrealistic process of preparing and evaluating fee petitions that now plagues the Bench and Bar and
23 recommended a return to the percentage of the recovery fee formula in cases involving a settlement
24 fund.” (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28, citations and quotation
25 marks omitted.) In *Lealao*, the Court of Appeal considered counsel’s efficiency and skill in bringing
26 the case to an early resolution.

27 [T]he promptness of settlement cannot be used to justify the refusal to apply a
28 multiplier to reflect the size of the class recovery without exacerbating the disincentive
to settle promptly inherent in the lodestar methodology. Considering that our Supreme

1 Court has placed an extraordinarily high value on settlement . . . it would seem counsel
2 should be ***rewarded, not punished***, for helping to achieve that goal....
3 (*Id.*, at 52, citations omitted, emphasis added.) Newberg notes that achievement of a substantial
4 recovery with modest hours expended should not be penalized but should be rewarded for
5 considerations of time saved by superior services performed. (Newberg on Class Actions, 4th Ed.
6 2002, § 14:6.) Courts should not only consider the size of the class or the amount of the recovery;
7 instead, it should also examine the size of the individual settlement amount of each class member as
8 an indication of counsel’s contribution to the case. (*Lealao*, 82 Cal.App.4th at 53.)

9 Here, not only have there been no objections to any aspect of this proposed settlement, but
10 Class Counsel obtained an exceptional result – a proposed settlement of \$1,624,000 for a Class of
11 868 employees.

12 **B. Analysis Pursuant to the Lodestar Methodology.**

13 Regarding the lodestar methodology, a lodestar figure is calculated by multiplying the
14 reasonable hours expended by a reasonable hourly rate. (*Wershba v. Apple Computer* (2001) 91
15 Cal.App.4th 224, 254.) A lodestar amount may be increased by a multiplier. (*Serrano*, 20 Cal.3d at
16 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407.) “Multipliers can range from 2 to 4 or
17 even higher.” (*Wershba*, at 255.) Class Counsel’s lodestar totals \$325,665, after voluntary deductions
18 based on business judgment. (Kick Decl., ¶¶ 6-9.)² This would mean a modest multiplier of only
19 1.67x to get to the requested fee of \$541,333.33.³

20 The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group,*
21 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). “[I]n assessing a reasonable hourly rate, the trial court
22 is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’
23 reputation and status.” (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The

24 ² Under California law, this Court may award the attorneys’ fees without the attorneys’ timesheets *Concepcion*
25 *v. Amscan Holdings* (2014) 223 Cal.App.4th 1309, 1324; *Raining Data v. Barrencea* (2009) 175 Cal.App.4th
26 1363, 1375-76 (“[t]he law is clear, however, that an award of attorney fees may be based on counsel's
27 declarations, without production of detailed time records”). The concurrently filed declaration by Taras Kick
28 summarizes and categorizes the firm’s time records. Class Counsel can also provide time sheets and make
them available for *in camera* review by this Honorable Court if the Court so wishes.

³ Were this Court for some reason not to accept all of the hours or rates specified in the concurrently filed Kick
Declaration, Class Counsel respectfully request a multiplier which will allow the awarded attorneys’ fees to
reach the one-third of the \$1,624,000 recovery, meaning \$541,333.33.

1 trial court may also “find hourly rates reasonable based on evidence of other courts approving similar
2 rates.” (*Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.) The
3 current prevailing billing or “market” rates in the Los Angeles and Southern California area range
4 from over \$300.00 to over \$1,000.00 per hour.⁴ As can be seen in the Kick Declaration at Paragraph 5,
5 the rate sought here has been approved by numerous courts across the country, including in this Los
6 Angeles County Complex Court. (Kick Decl., ¶ 5.) Further, the rates are well within the range of
7 rates awarded in class action litigation in Southern California. (*In re Toyota Motor* (C.D. Cal. 2013)
8 2013 U.S. Dist.Lexis 123298 [approving rate of \$950]; *Banas v. Volcano Corp.* (N.D. Cal. 2014) 47
9 F.Supp.3d 957 [approving 2014 rate of \$1,095; *In re High Tech Empl. Antitrust Litig.*, (N.D. Cal.
10 2015) 2015 U.S. Dist. LEXIS 118052 *33 [approving rates of \$975 an hour].)

11 Trial courts consider the following factors when determining whether to apply a multiplier:
12 “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them,
13 (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4)
14 the contingent nature of the fee award.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, citations
15 omitted.) Each is present here. (Kick Decl., ¶¶ 25, 33-35.) In California, “[m]ultipliers can range from
16 two to four or even higher” and are routinely applied. (*Wershba*, 91 Cal.App.4th at 254.)⁵ The goal is
17 “to entice competent counsel to undertake difficult public interest cases.” (*San Bernardino Valley*
18 *Audubon Soc. v. County of San Bernardino* (1985) 155 Cal.App.3d 738, 755.) Fee awards that are too

20
21 ⁴ See, e.g., *McKnight, et al., v. Uber Technologies, Inc., et al.* 3:14-CV-05615-JST, Docket No. 148, [December
22 8, 2017 attorney fee declaration citing *In re High-Tech Employee Antitrust Litig.* (N.D. Cal. Sept. 2, 2015)
23 2015 WL 5158730, at *9 (finding reasonable “billing rates for partners [that] range from about \$490 to \$975
24 ... billing rates for non-partner attorneys, including senior counsel, counsel, senior associates, associates, and
25 staff attorneys, [that] range from about \$310 to \$800...”]; *Bickley v. CenturyLink, Inc.* (C.D. Cal. Nov. 29,
2016) No. CV 15-1014-JGB (ASX), 2016 WL 9046911, at *3-4 [finding six years ago attorneys’ fee requests
of up to \$750 per hour reasonable and in line with the prevailing rate in the District].). In *Bickley*, a billing
survey was submitted from 2013 listing the rates for partners and associates from large law firms, noting that
those rates ranged from a low of \$515/per hour for associates to \$1,220/per hour for partners. (*Id.*, at ¶ 4.) The
majority of the rates for partners were between \$700 and \$1000 per hour. (*Ibid.*)

26 ⁵ See also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora*
27 *Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that
28 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125
(awarding a common fund fee award that amounted to a 5.2 multiplier); *Vizcaino v. Microsoft Corp.* (9th Cir.
2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*, 901 F.Supp. at 298-299 (approving
multiplier of 3.6).

1 small “chill the private enforcement essential to the vindication of many rights[.]” (*Lealao* at 53.)⁶

2 Although there are a number of valid reasons for a multiplier in this case, one is the contingent
3 risk as explained by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133:
4 “A lawyer who both bears the risk of not being paid and provides legal services is not receiving the
5 fair market value of his work if he is paid only for the second of these functions.”

6 Class Counsel seek reimbursement of necessary litigation costs in the amount of \$24,694.23,
7 which is the amount that has been advanced on behalf of the class members to date. (*Id.*, ¶ 22). These
8 costs include already incurred costs of filing fees, legal research, mediation fees, and others. (*Id.*)

9 **VII. PLAINTIFFS SERVED ADMIRABLY AS CLASS REPRESENTATIVES AND THE**
10 **REQUESTED SERVICE AWARDS ARE REASONABLE**

11 Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
12 compensation “for the expense or risk they have incurred in conferring a benefit on other members
13 of the class.” (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th
14 399, 412.) It is within a court’s discretion to award payment to a class representative for their efforts
15 and work. (*Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299 [approving
16 \$50,000 participation award to a single class representative].)

17 The criteria courts may consider in determining whether to make an incentive award
18 include: 1) the risk to the class representative in commencing suit, both financial and
19 otherwise; 2) the notoriety and personal difficulties encountered by the class
20 representative; 3) the amount of time and effort spent by the class representative; 4)
the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by
the class representative as a result of the litigation. [Citations.] (*Ibid.*)

21 Here, Plaintiffs Kentoya Mitchell and Dana Miles have requested Class Representative
22 Service Awards of \$10,000 each, for a total of \$20,000.00, and Defendants do not oppose this request.
23 (Kick Decl., Ex. 1, ¶ I.21.) This Service Award request is fair and appropriate given: (1) the substantial
24 time and effort Plaintiffs expended; (2) the risks they faced and continue to face as a result of bringing
25 the Action; (3) the fact they put Class Members’ interests ahead of their own; and (4) the substantial

27 ⁶ If for whatever reason the Court wishes to apply a lower hourly rate such that the fee award were lower than the one-
28 third leading to the \$541,333.33 sought, Class Counsel respectfully requests an increased multiplier to bring it to that
amount. If for whatever reason the Court were inclined to use a percentage lower than one-third, Class Counsel request
the lodestar and multiplier be used to arrive at \$541,333.33.

benefit conferred upon the Class. (Kick Decl., ¶¶ 30-31; Mitchell MPA Decl., ¶¶ 6-9; Miles MPA Decl., ¶¶ 6-9.) Ms. Mitchell and Ms. Miles spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations. (*Id.*) Ms. Mitchell and Ms. Miles assisted actively in the investigation of the claims alleged, conferred regularly with counsel, aided in preparation for the Parties' mediation, made themselves available the entire day of mediation, and provided all information requested by counsel to benefit the Class. (*Id.*) Accordingly, it is appropriate and just for Plaintiffs to receive Class Representative Service Awards for their services on behalf of the Class, in addition to their Individual Settlement Payment as Class Members. Furthermore, the Class was given notice of the requested Service Awards and to date, no objections have been received. (Simpluris Decl., ¶ 11.)

VIII. REASONABLE SETTLEMENT ADMINISTRATION COSTS TO BE APPROVED

As set forth in the accompanying Declaration of Evelin Reyes from Simpluris, Inc., the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process is \$9,600.00. (Simpluris Decl., ¶ 18.) The costs incurred and to be incurred include, but are not limited to, expenses for printing and mailing the Notice of Class Action Settlement to Class Members; establishing and maintaining a means to receive and validate opt out requests submitted by Class Members, including a toll-free telephone number; establishing and maintaining a settlement fund account; calculating Individual Class Settlement Payments and distributing funds to Class Members; calculating Employer Taxes and providing appropriate forms and calculations to Defendants; and providing counsel with weekly reports; among other things. (*Id.*, ¶¶ 3-4, Ex. B.) Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$9,600.00.

IX. THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

In granting preliminary approval, this Court already determined that the proposed settlement class fulfills all the criteria of California Code of Civil Procedure section 382, and applicable case law, and is appropriate for certification. None of these factors have changed.

Numerosity is readily satisfied because there are 868 members in the settlement Class. (*See, Vasquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971); Simpluris Decl., ¶ 14.) Common questions

1 of law and fact predominate because all Class members were subject to a common policies and
2 practices and were paid according to uniform formulae. *See Arenas v. El Torito Rests., Inc.*, 183 Cal.
3 App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913
4 (2001)). Typicality and adequacy of representation are also satisfied as Plaintiffs were also subject to
5 the same compensation and employment policies and practices. (Miles MPA Decl. ¶ 5; *See Newberg*,
6 § 3:13). Plaintiffs' interests are essentially identical, if not exactly identical, to those of the Class and
7 there is no conflict between Plaintiffs or their counsel, on the one hand, and any other Class Member.
8 (Kick Decl., ¶ 30; *See Richmond v. Dart Industries*, 29 Cal.App.3d 462, 470 (1981).)

9 The requirement of ascertainability is easily met because Class members, who all worked for
10 Defendants during the Class Period, share "a set of common characteristics sufficient to allow a
11 member of that group to identify himself or herself as having a right to recover based on the
12 description," (*See Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828), and in
13 addition, Defendants' records readily identified the Class members based on their dates of
14 employment. (Kick Decl., ¶ 29.) Lastly, in this matter, where global resolution is achieved for 868
15 Class members whose claims which would otherwise be too small to warrant individual litigation, a
16 class action is demonstrably superior to other methods of adjudication. (*Richmond, supra*, 29 Cal.3d
17 462, 469; *Simpluris Decl.*, ¶ 14.)

18 With each of these factors satisfied, it is appropriate now to grant final certification.

19 **X. CONCLUSION**

20 Plaintiffs, hence, respectfully request that this Court enter a Final Approval Order as set forth
21 above and an accompanying Judgment.

23 DATED: December 16, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

25 By: /s/ Taras Kick
26 Taras Kick
27 Greg Taylor
28 Attorneys for Plaintiffs Kentoya
Mitchell, Dana Miles and the Class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049.

On **December 16, 2022**, I served the document(s) described as:

- **PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;**
- **DECLARATION OF TARAS KICK IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;**
- **DECLARATION OF ROBERT WEISSMAN IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;**
- **DECLARATION OF EVELIN REYES REGARDING NOTICE AND SETTLEMENT ADMINISTRATION.**

on the interested parties in this action by sending a true copy thereof to interested parties as follows:

[✓] **BY E-SERVICE:** I caused the documents to be electronically transmitted to Case Anywhere, an electronic filing service provider, at www.caseanywhere.com, pursuant to the Court's Electronic Case Management Order governing the matter and mandating electronic service to person(s) at the address(es) listed above.

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

Executed on December 16, 2022, in Los Angeles, California.

/s/ Dariane Rose
Dariane Rose