

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff Yanet Garcia and Proposed Plaintiff Austin Wilder

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

YANET GARCIA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

JOHNSON MATTHEY, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 2019-00003740-CU-OE-CTL

Honorable Eddie C. Sturgeon
Department C-67

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declarations of
Proposed Class Representatives (Yanet
Garcia and Austin Wilder); and
[Proposed] Order filed concurrently
herewith]

Date: November 20, 2020
Time: 1:30 p.m.
Department: C-67

Complaint Filed: January 18, 2019
Trial Date: None Set

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

PLEASE TAKE NOTICE that on November 20, 2020 at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Eddie C. Sturgeon in Department C-67 of the Superior Court of California for the County of San Diego, located at Hall of Justice, 330 West Broadway, San Diego, California 92101, Plaintiff Yanet Garcia and Proposed Plaintiff Austin Wilder (together, “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting Plaintiff Yanet Garcia leave to file the [Proposed] First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) which is attached as “**EXHIBIT 2**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement (“Proposed Order”);
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Yanet Garcia and Proposed Plaintiff Austin Wilder as Class Representatives;
- Preliminarily appointing Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the Proposed Order;
- Directing the mailing of the Class Notice to the Class Members;

- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwanian) and Proposed Class Representatives (Yanet Garcia and Austin Wilder) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: November 13, 2020

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian

Attorneys for Plaintiff Yanet Garcia and Proposed Plaintiff Austin Wilder

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. SUMMARY OF MOTION.....1

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND2

III. SUMMARY OF THE SETTLEMENT TERMS.....4

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENTS.....7

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT8

 A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon
Extensive Investigation and Discovery.....9

 B. The Settlement Is Fair, Reasonable, and Adequate.11

 C. The Settlement Is of Significant Value.12

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.13

 A. The Class Is Ascertainable and Sufficiently Numerous.13

 B. The Class Members Share a Well-Defined Community of Interest.14

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’
FEES AND COSTS15

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.....18

IX. APPOINTMENT OF SIMPURLIS, INC. AS THE SETTLEMENT ADMINISTRATOR
.....19

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS20

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR
ENHANCEMENT PAYMENTS.....21

XII. CONCLUSION.....22

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	8
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	13
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	17
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 .	14
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	18
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	17
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	8
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	7
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7, 8
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	17
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	7, 8
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	13
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	12
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	17
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	16
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	12
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	16, 17
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	16
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	13
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	18
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	17
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	8
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	13
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	12, 13, 14

1	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	7
2	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	21
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	7, 8
4	Statutes	
5	Cal. Code Civ. Proc. § 1781.....	18
6	Cal. Code Civ. Proc. § 1781(f).....	7
7	Other Authorities	
8	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	8
9	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	20
10	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	12
11	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	17
12	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	18
13	Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	18
14	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	18
15	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	18
16	Rules	
17	Fed. R. Civ. P. 23(c)(2)	19
18	Fed. R. Civ. P. 23(e).....	18 .
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Yanet Garcia and Proposed Plaintiff Austin Wilder (together, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Johnson Matthey Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of two million nine hundred thousand dollars and no cents (\$2,900,000.00).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payments of ten thousand dollars (\$10,000.00) each to Plaintiffs (\$20,000 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or \$1,015,000.00, and reimbursement of litigation costs and expenses not to exceed eighteen thousand dollars (\$18,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed fifteen thousand dollars (\$15,000.00);⁵ and (5) the amount of one hundred thousand dollars (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 6.r.

² *Id.*, §§ 6.p, 6.s, & 14.

³ *Id.*, § 11.

⁴ *Id.*, § 10.

⁵ Settlement Agreement, § 12.

⁶ *Id.*, § 13.

all current and former non-exempt employees of Defendant in California at any time during the period from January 18, 2015 through Preliminary Approval (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately four hundred forty-four (444) individuals as of September 2020.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member worked for Defendant (and was paid regular wages) as a non-exempt employee in California during the period from January 18, 2015 through Preliminary Approval (“Workweeks”).⁹

The Settlement resolves the Released Claims of Plaintiffs and Settlement Class Members, against the Released Parties.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a multinational specialty chemicals and sustainable technologies company that operates locations in Aliso Viejo, San Diego, and San Jose. Plaintiffs Yanet Garcia and Austin Wilder are former employees of Defendant.

On January 18, 2019, Plaintiff Yanet Garcia filed a Class Action Complaint for Damages in the San Diego County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On April 22, 2019, Defendant filed an Answer to Complaint.

On April 22, 2019, Defendant propounded Requests for Production of Documents Set One onto Plaintiff Yanet Garcia and noticed the deposition of Plaintiff Yanet Garcia.

On April 29, 2019, Plaintiff Yanet Garcia propounded Form Interrogatories – General (Set One), Special Interrogatories (Set One), Special Interrogatories (Set Two), Special

⁷ Settlement Agreement, § 6.d. “Class Period” is defined as the period of time from January 18, 2015 through Preliminary Approval. *Id.*, § 6.f. “Preliminary Approval” means entry of the Court order granting preliminary approval of the Settlement Agreement. *Id.*, § 6.v.

⁸ Aiwasian Decl., ¶ 9.

⁹ Settlement Agreement, §§ 6.p, 6.dd, 6.ee, & 14.

¹⁰ *Id.*, § 30; see *id.*, § 6.x for the full scope of the “Released Claims,” and *id.* at § 6.y for the definition of the “Released Parties.”

1 Interrogatories (Set Three), Requests for Production of Documents (Set One), and Requests for
2 Production of Documents (Set Two) onto Defendant and noticed multiple depositions of
3 Defendant's Person Most Knowledgeable designees.

4 On May 28, 2019, Plaintiff Yanet Garcia served Objections and Responses to
5 Defendant's Notice of Deposition of Plaintiff Yanet Garcia onto Defendant. On June 6, 2019,
6 Defendant re-noticed the deposition of Plaintiff Yanet Garcia.

7 The Parties have actively litigated the Action since it was commenced on January 18,
8 2019. After conducting significant investigation into the facts of the case and conducting
9 discovery, the Parties participated in a formal, full-day mediation conducted by Paul Grossman,
10 esq., a well-regarded mediator experienced in mediating complex labor and employment
11 matters, on January 24, 2020. With the aid of the mediator's evaluation, the Parties ultimately
12 reached the Settlement described herein to resolve the Action in its entirety.

13 The Parties have agreed that Plaintiff Yanet Garcia will file a First Amended Class
14 Action Complaint for Damages & Enforcement Under the Private Attorneys General Act,
15 California Labor Code § 2698, Et Seq. ("Operative Complaint" or "First Amended Complaint"),
16 adding Proposed Plaintiff Austin Wilder as a named plaintiff and formally alleging a cause of
17 action under PAGA. Plaintiffs' core allegation is that Defendant has violated the California
18 Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and the
19 Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide
20 compliant meal and rest periods and associated premium pay, failing to timely pay wages during
21 employment and upon termination of employment, failing to provide compliant wage
22 statements, failing to maintain requisite payroll records, and failing to reimburse necessary
23 business expenses, and thereby engaged in unfair business practices in violation of California
24 Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties
25 pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter*
26 *alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and
27 attorneys' fees.

28 ///

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

III. REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff Garcia to file the First Amended Complaint in the Action in order to add Proposed Plaintiff Austin Wilder as a named plaintiff and a cause of action under PAGA. As such, Plaintiff Garcia respectfully requests leave to file the First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (i.e., the First Amended Complaint) and that the First Amended Complaint be deemed filed as of December 31, 2020 (i.e., 65 calendar days after Proposed Plaintiff Austin Wilder submitted his PAGA notice to the LWDA), so that the terms of the Settlement may be effectuated.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay the Maximum Settlement Amount to resolve the Released Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Member) with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees in an amount not to exceed one million fifteen thousand dollars (\$1,015,000.00) (i.e., up to 35% of the Maximum Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed eighteen thousand dollars (\$18,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed fifteen thousand dollars (\$15,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$75,000.00 out of \$100,000.00)

¹¹ Settlement Agreement, §§ 6.r, 9 & 29.

1 (“LWDA Payment”); and (4) payment in the amount of up to ten thousand dollars (\$10,000.00)
2 each to Plaintiffs Yanet Garcia and Austin Wilder (“Enhancement Payments”).¹² The Parties
3 have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the
4 notice and settlement administration process.¹³

5 The Parties have agreed that the Settlement Administrator will determine each
6 Settlement Class Member’s share of the available Net Settlement Amount (i.e., Individual
7 Settlement Share), in accordance with the Settlement Agreement, by dividing the Net Settlement
8 Amount by the Workweeks of all Settlement Class Members to yield the “Final Workweek
9 Value,” and multiplying each Settlement Class Member’s individual Workweeks by the Final
10 Workweek Value.¹⁴

11 Each Settlement Class Member’s Individual Settlement Share will be allocated as forty
12 percent (40%) wages, which will be reported on an IRS Form W-2; and sixty percent (60%)
13 penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 by the
14 Settlement Administrator.¹⁵ Settlement Class Members will be issued payment of their
15 Individual Settlement Share subject to reduction for the employee’s and employer’s share of
16 taxes and withholdings with respect to the wages portion of the Individual Settlement Shares
17 (the net payment is referred to as an “Individual Settlement Payment”).¹⁶

18 The Individual Settlement Payment checks issued to Settlement Class Members will be
19 valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and
20 will thereafter be cancelled.¹⁷ The funds associated with such cancelled checks will be
21 transmitted by the Settlement Administrator to a Legal Aid Society of San Diego.¹⁸

22 Class Members who wish to be excluded from the Settlement (i.e., opt out) must submit
23 a timely letter to the Settlement Administrator that indicates a request to be excluded from the
24

25 _____
26 ¹² Settlement Agreement, §§ 6.s, 10, 11, 12, 13.

27 ¹³ *Id.*, § 6.bb.

28 ¹⁴ *Id.*, § 14.b.

¹⁵ *Id.*, § 25.

¹⁶ Settlement Agreement, § 25.

¹⁷ *Id.*, § 19.

¹⁸ *Ibid.*

Settlement (“Request for Exclusion”).¹⁹ To be timely, the Class Member must mail or fax the Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice, unless the 45th day falls on a Sunday or a Federal holiday, in which case the time to respond will be extended to the next day on which the U.S. Postal Office is open (“Response Deadline”).²⁰ In the event that the Class Notice is re-mailed to a Class Member, the Response Deadline will be extended by fifteen (15) calendar days.²¹ A Request for Exclusion must: (a) contain the case name and number of the Action, (b) be signed by the Class Member, (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion, (d) clearly state that the Class Member does not wish to be included in the Settlement, and (e) be returned by fax or mail to the Settlement Administrator, postmarked or faxed on or before the Response Deadline.²² A Class Member who does not request to be excluded from the Settlement will be bound by all terms of the Settlement Agreement if the Court grants final approval of the Settlement.²³

Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) who wish to object to the Settlement must submit a valid and timely written objection (“Notice of Objection”) to the Settlement Administrator by mail or fax, postmarked or fax-stamped on or before the Response Deadline.²⁴ The Notice of Objection must contain: (a) the case name and number of the Action; (b) the objector’s full name, signature, address, and telephone number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based.²⁵

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before

¹⁹ Settlement Agreement, §§ 6.z & 20.

²⁰ *Id.*, § 6.aa.

²¹ *Ibid.*

²² *Id.*, § 6.z.

²³ Settlement Agreement, § 6.z.

²⁴ *Id.*, §§ 6.t & 22.

²⁵ *Id.*, § 6.t.

the Response Deadline.²⁶ The letter must: (a) contain the case name and number of the Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member; (d) clearly state that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (e) include information and/or attach documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct; and (f) be returned by fax or mail to the Settlement Administrator, postmarked or fax-stamped on or before the Response Deadline.²⁷

V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

²⁶ Settlement Agreement, § 18.

²⁷ *Ibid.*

1 safeguards and enables a court to fulfill its role as the guardian of the interest of the class.

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

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

15 **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

16 The trial court has broad powers to determine whether a proposed settlement is fair under
17 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
18 this fairness determination, courts must consider several relevant factors, including "the strength
19 of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the
20 risk of maintaining class action status through trial, the amount offered in settlement, the extent
21 of discovery completed and the stage of the proceedings, the experience and view of counsel,
22 the presence of a governmental participant, and the reaction of the class members to the
23 proposed settlement." *Dunk, supra*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive
24 and the court is free to engage in a balancing and weighing of the factors depending on the
25 circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
26 "proper deference to the private consensual decision of the parties." *Hanlon, supra*, 150 F.3d at
27 1027 (citation omitted).

28 ///

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.

The Parties actively litigated the Action since it was commenced on January 18, 2019. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.²⁸

Prior to engaging in mediation, Class Counsel conducted significant investigation and discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.²⁹ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiffs, a detailed sampling of Class Members’ time and pay data, company policy acknowledgements, agreements (such as a confidentiality agreement), forms, notices, training records, internal memoranda, job descriptions, and Defendant’s operations and employment practices, procedures, and policies (including, but not limited to, time and attendance policy and business integrity and ethics policy), among other information and documents.³⁰ Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.³¹ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, noticed the depositions of Defendant’s Person Most Knowledgeable designees regarding organizational structure, job duties, and affirmative

²⁸ Aiwazian Decl., ¶¶ 11-13.

²⁹ *Id.*, ¶ 12.

³⁰ *Ibid.*

³¹ *Ibid.*

1 defenses, and worked with Plaintiff Yanet Garcia to prepare responses and objections to
2 Defendant's requests for production of documents.³² Counsel for the Parties also met and
3 conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and
4 the production of documents and data prior to the mediation.³³ Class Counsel also drafted the
5 mediation brief and prepared for and attended court proceedings, settlement negotiations, and
6 the mediation, among other tasks.³⁴

7 The Parties engaged in extensive settlement negotiations and participated in a formal,
8 full-day mediation conducted by Paul Grossman, esq., a well-respected mediator experienced in
9 mediating complex labor and employment matters.³⁵ Prior to and during the mediation and
10 settlement discussions, the Parties exchanged class information and engaged in an intensive
11 discussion regarding their evaluations of the case and various aspects of the case, including but
12 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
13 with class certification and/or representative adjudication, the law relating to off-the-clock
14 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as
15 well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁶
16 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
17 adversarial position.³⁷ Arriving at a settlement that was acceptable to both Parties was not easy.
18 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
19 certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class
20 certification and prevail at trial.³⁸ After conducting investigations, significant discovery,
21 extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have
22 agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs'
23 principal claims, as well as the costs and risks to both sides that would attend further litigation.³⁹

24
25 ³² Aiwazian Decl., ¶ 12.

26 ³³ *Ibid.*

27 ³⁴ *Ibid.*

28 ³⁵ Aiwazian Decl., ¶ 11.

³⁶ *Id.*, ¶ 11.

³⁷ *Ibid.*

³⁸ *Id.*, ¶¶ 11, 16-18.

³⁹ Aiwazian Decl., ¶¶ 11, 16-18.

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁰ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴¹ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.⁴² The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴³

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

The Settlement, which provides for a Maximum Settlement Amount of two million nine hundred thousand dollars (\$2,900,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁴ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴⁵ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁶ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁷

Assuming that the Attorneys' Fees and Costs, Enhancement Payments, LWDA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be one million seven hundred fifty-seven thousand dollars (\$1,757,000).⁴⁸

⁴⁰ Aiwasian Decl., ¶¶ 11, 16-18.

⁴¹ *Ibid.*

⁴² *Id.*, ¶¶ 11-13 & 16-18.

⁴³ *Id.*, ¶¶ 6-7.

⁴⁴ Aiwasian Decl., ¶¶ 11, 13, 14 & 21.

⁴⁵ *Id.*, ¶¶ 11-13.

⁴⁶ *Id.*, ¶¶ 16-18.

⁴⁷ *Id.*, ¶¶ 11, 13, & 21.

⁴⁸ Aiwasian Decl., ¶ 14.

As discussed in Part III, *supra*, the entire Maximum Settlement Amount will be paid out, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks.⁴⁹ Based on the class consisting of approximately four hundred forty-four (444) individuals as of September 2020 and the Net Settlement Amount of \$1,757,000, the average Individual Settlement Share is approximately \$3,957.21.⁵⁰ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵¹ Although recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵² The documents and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵³ As outlined in the Declaration of Edwin Aiwazian,

⁴⁹ Settlement Agreement, § 14.

⁵⁰ Aiwazian Decl., ¶ 14.

⁵¹ *Id.*, ¶¶ 11, 13, & 21.

⁵² *Id.*, ¶¶ 11-13 & 18.

⁵³ *Id.*, ¶ 18.

Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁴

VII. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁵ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs’ claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be

⁵⁴ Aiwasian Decl., ¶¶ 11-13 & 16-18.

⁵⁵ Settlement Agreement, § 7.

1 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

2 This action involves a class of approximately four hundred forty-four (444)
3 individuals.⁵⁶ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
4 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
5 requirement as joinder is not practical at that point). Further, all Class Members can and will be
6 identified by Defendant to the Settlement Administrator through a review of Defendant's
7 employment records regarding non-exempt employees in California during the Class Period. As
8 such, the Class is ascertainable and sufficiently numerous.

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

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

19 The "common issues" requirement "involves analysis of whether the proponent's 'theory
20 of recovery' is likely to prove compatible with class treatment." *Capitol People, supra*, 155
21 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,
22 the commonality inquiry centers on the "reasonableness" of the defendant's labor policies as
23 applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

24 Here, common issues of fact and law predominate as to each of the claims alleged and
25 asserted in the Operative Complaint. Based on the documents and information obtained through
26 informal discovery and exchange of information in this case, Plaintiffs contend that Class
27 Members were subject to the same uniform operations and employment practices, policies, and
28

⁵⁶ Aiwazian Decl., ¶ 9.

procedures during the time period at issue.⁵⁷ Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁵⁸

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁵⁹ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁰

Plaintiffs maintain that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS

Class Counsel has litigated the matter since January 18, 2019 and was actively preparing the matter for class certification and trial.⁶¹ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted significant investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple sets of formal written discovery requests onto Defendant and noticing the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data⁶² and also

⁵⁷ Aiwazian Decl., ¶ 16.

⁵⁸ *Ibid.*

⁵⁹ *Id.*, ¶ 16.

⁶⁰ *Ibid.*

⁶¹ Aiwazian Decl., ¶¶ 11-13.

⁶² *Id.*, ¶ 12.

interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶³ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁴

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁵

The Settlement establishes a Maximum Settlement Amount of two million nine hundred thousand dollars (\$2,900,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$1,015,000.00) and an amount not to exceed eighteen thousand dollars (\$18,000.00) for reimbursement of litigation costs and expenses.⁶⁶ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁶⁷

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*

⁶³ Aiwazian Decl., ¶ 12.

⁶⁴ *Id.*, ¶ 11.

⁶⁵ *Id.*, ¶¶ 6-7.

⁶⁶ Settlement Agreement, § 10.

⁶⁷ *Id.*, Exh. A.

1 v. *Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should
2 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
3 incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82
4 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can
5 be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee
6 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
7 litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund and
8 the settlement agreement provides that the defendant agrees to paying the attorneys a percentage
9 of the same, use of that percentage method is appropriate. *Id.* at 32.

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

17 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
18 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
19 *Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the
20 \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y.
21 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees).
22 California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-
23 third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court
24 found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions);
25 *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No.
26 BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court
27 Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁸

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

IX. THE PROPOSED CLASS NOTICE IS ADEQUATE.

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

The proposed Class Notice⁶⁹ describes the Settlement, the deadlines and procedures to submit a Notice of Objection, Request for Exclusion, or Workweeks dispute to the Settlement Administrator, and the date and time set for the Final Approval Hearing.⁷⁰

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2007). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner and will contain a sentence in Spanish and Vietnamese that a version of the Class Notice translated in Spanish and/or Vietnamese is available to Class Members upon request.⁷¹ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷² The proposed Class Notice also apprises the Class Members of, *inter alia*,

⁶⁸ Aiwazian Decl., ¶ 19.

⁶⁹ Settlement Agreement, Exh. A.

⁷⁰ *Ibid.*

⁷¹ *Id.*, § 17.A, Exh.A.

⁷² *Id.*, Exh. A.

1 how their Individual Settlement Share is calculated and their number of Workweeks.⁷³

2 The proposed Class Notice satisfies all due process requirements and complies with the
3 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
4 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The
5 essentials of due process of law in class suits would appear to be afforded by fair representation
6 in the assertion of claims of class members against the opposing parties in any lawsuit, and
7 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

8 **X. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT**
9 **ADMINISTRATOR**

10 The Parties have selected Simpluris, Inc. to administer the Settlement.

11 Within ten (10) business days after the Settlement Administrator receives from
12 Defendant a complete list of all Class Members that includes their full names, last known
13 mailing addresses, last know telephone numbers (if available), Social Security Numbers, and
14 number of Workweeks (collectively referred to as “Class Data and List”) or the date on which
15 the Operative Complaint is deemed filed (whichever date is later), the Settlement Administrator
16 will perform a National Change of Address Database search and mail the Class Notice to all
17 Class Members by First-Class U.S. Mail.⁷⁴ With respect to any undeliverable Class Notices
18 returned as undeliverable on or before the Response Deadline, the Settlement Administrator will
19 search for an alternative address by way of skip-trace and re-mail the Class Notice within five
20 (5) calendar days to the Class Member.⁷⁵ The Settlement Administrator will receive and process
21 Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.⁷⁶

22 The Settlement Administrator will translate, print, distribute, and track Class Notices
23 and other documents for this Settlement, calculate and distribute the amounts of the Individual
24 Settlement Shares; deduct and transmit applicable state and/or federal taxes in connection with
25 the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment
26

27 ⁷³ Settlement Agreement, Exh. A.

28 ⁷⁴ *Id.*, §§ 6.c, 17.a.

⁷⁵ *Id.*, § 17.b.

⁷⁶ *Id.*, §§ 18, 20 & 22.

checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payments, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁷⁷ The Settlement Administration Costs are currently estimated not to exceed fifteen thousand dollars (\$15,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁷⁸

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

XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁷⁹

Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Settlement Administrator with the Class Data and List.⁸⁰

Within ten (10) business days of receipt of the Class Data and List from Defendant or the date upon which the Operative Complaint is deemed filed (whichever is later), the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes of Class Members, and will then mail the Class Notice in English, Spanish (if requested), and Vietnamese (if requested) to the Class Members via First-Class U.S. Mail.⁸¹ If a Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will perform a skip-trace search

⁷⁷ Settlement Agreement, §§ 18, 20 & 22; Aiwarzian Decl., ¶ 12.

⁷⁸ Settlement Agreement, § 12.

⁷⁹ *Id.*, §§ 6.c, 16 & 17.

⁸⁰ *Id.*, § 16.

⁸¹ *Id.*, § 17.a.

1 and re-mail the Class Notice within five (5) calendar days.⁸² Class Members will forty-five (45)
2 calendar days from the initial mailing of the Class Notice by the Settlement Administrator, or
3 in the case of a re-mailed Class Notice, an extended fifteen (15) calendar days to submit a
4 Request for Exclusion, Notice of Objection, and/or Workweeks dispute.⁸³

5 Within twenty-one (21) calendar days after the Effective Date, Defendant will make a
6 one-time deposit of the Maximum Settlement Amount into a settlement account to be established
7 by the Settlement Administrator.⁸⁴ Within seven (7) calendar days of the funding of Maximum
8 Settlement Amount, the Settlement Administrator will issue payments due under the Settlement
9 and approved by the Court, as follows: (1) Individual Settlement Payments to Settlement Class
10 Members; (2) the Court-approved Enhancement Payments to Plaintiffs; (3) the Court-approved
11 Attorneys' Fees and Costs to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the
12 Court-approved Settlement Administration Costs to itself.⁸⁵

13 Individual Settlement Payment checks will remain valid and negotiable for one hundred
14 and eighty (180) calendar days from the date of their issuance, and will thereafter be cancelled.⁸⁶
15 Funds associated with cancelled checks will be transmitted to Legal Aid Society of San Diego.⁸⁷

16 **XII. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR**
17 **ENHANCEMENT PAYMENTS**

18 Plaintiff Yanet Garcia and Proposed Plaintiff Austin Wilder respectfully request that the
19 Court appoint them as the Class Representatives and preliminarily approve the Enhancement
20 Payments in an amount up to ten thousand dollars (\$10,000.00) each to Plaintiff Yanet Garcia
21 and Proposed Plaintiff Austin Wilder (for a combined total of \$20,000).⁸⁸ It is within the Court's
22 discretion to award payment to a class representative for their efforts and work. *Vranken v.*
23 *Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation
24 award to a single class representative). The factors that courts may consider in determining

25 ⁸² Settlement Agreement, § 17.b.

26 ⁸³ *Id.*, §§ 6.aa, 18, 20 & 22.

27 ⁸⁴ *Id.*, § 9.

28 ⁸⁵ *Ibid.*

⁸⁶ Settlement Agreement, § 19.

⁸⁷ *Ibid.*

⁸⁸ *Id.*, §§ 6.l & 11.

whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payments are fair and appropriate. Plaintiffs 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.⁸⁹ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁰ Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Payment for their services on behalf of the Class, in addition to their Individual Settlement Payments.

XIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant leave to file the First Amended Complaint; grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiffs Yanet Garcia and Austin Wilder as Class Representatives; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payments, LWDA Payment, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately May 2021.

///

///

⁸⁹ Aiwazian Decl., ¶ 20; Declaration of Yanet Garcia in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Garcia Decl."), ¶ 4; Declaration of Austin Wilder in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Wilder Decl."), ¶ 4.

⁹⁰ Aiwazian Decl., ¶ 20; Garcia Decl., ¶¶ 3-6; Wilder Decl., ¶¶ 3-6.

Dated: November 12, 2020

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian

Attorneys for Plaintiff Yanet Garcia and Proposed
Plaintiff Austin Wilder