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

JESUS DIAZ SANCHEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

GALLEHER LLC, a California limited
liability company; GALLEHER
CORPORATION, an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: CGC-19-579749

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Declarations of Counsel (Edwin Aiwazian and
Graham B. LippSmith); Declaration of
Proposed Class Representative (Jesus Diaz
Sanchez); Declaration of Proposed Settlement
Administrator (Kimberly Sutherland); and
[Proposed] Order filed concurrently herewith]

Date: April 28, 2021

Time: 9:30 a.m.

Dept.: 302

Calendar: Law and Motion

Honorable Ethan P. Schulman

Action Filed: October 3, 2019

Trial Date: None Set

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

3 **PLEASE TAKE NOTICE** that on April 28, 2021 at 9:30 a.m., or as soon thereafter as the matter
4 may be heard before the Honorable Ethan P. Schulman in Department 302 of the Superior Court of
5 California for the County of San Francisco, located at 400 McAllister Street, San Francisco, California
6 94102, Plaintiff Jesus Diaz Sanchez (“Plaintiff” or “Class Representative”) hereby moves for an order:

- 7 1. Granting preliminary approval of the April 2, 2021 Stipulation of Class Action and
8 PAGA Settlement and Release of Claims (“Settlement¹”) between Plaintiff and
9 Defendants Galleher, LLC and Galleher Corporation (“Defendants”);
- 10 2. Granting provisional certification of the Class for settlement purposes;
- 11 3. Provisionally appointing Plaintiff Jesus Diaz Sanchez as Class Representative;
- 12 4. Provisionally appointing Lawyers *for* Justice, PC and LippSmith LLP as Class
13 Counsel;
- 14 5. Appointing Simpluris, Inc. (“Simpluris”) to serve as the Settlement Administrator and
15 approving the Notice Plan Simpluris has provided;
- 16 6. Approving the Notice, attached as Exhibit 1 to the Settlement;
- 17 7. Directing Simpluris to effectuate the Notice Process, including mailing Notice to
18 Class Members;
- 19 8. Scheduling a Final Approval Hearing, at which time the Court will also consider
20 whether to grant final approval of Plaintiff’s requests for Attorney Fees and Costs, an
21 Enhancement Award for Plaintiff, and Settlement Administration Costs.

22 Plaintiff brings this motion pursuant to California Civil Code section 1781, subdivision (f), which
23 governs court approval of class actions; California Rules of Court, rule 3.769, subdivision (c), which
24 contemplates preliminary approval of a class action settlement; California Rules of Court, rule 3.769,
25 subdivision (d), which allows for certification of a provisional class for settlement purposes; and Labor
26

27 ¹ To the extent they are not specifically defined herein, all capitalized terms have the same meaning as
28 in the April 2, 2021 Settlement, attached as Exhibit 1, to the Declaration of Graham B. LippSmith in
Support of this Motion.

1 Code section 2699, which sets forth PAGA provisions.

2 All Parties have signed the Settlement. Defendants do not oppose and join in this Motion.

3 Plaintiff has submitted the Settlement to the California Labor and Workforce Development Agency
4 (“LWDA”) concurrently with this Motion pursuant to Labor Code section 2699(1)(2).

5 Based on (1) the following memorandum of points and authorities, (2) the Declaration of Edwin
6 Aiwasian; (3) the Declaration of Graham B. LippSmith, with Settlement attached as Exhibit 1; (4) the
7 Declaration of Jesus Diaz Sanchez; (5) the Declaration of Kimberly Sutherland; and (6) the [Proposed]
8 Order Granting Preliminary Approval of Class Action and PAGA Settlement filed concurrently herewith,
9 the pleadings and other records on file with the Court in this matter, and the evidence and oral argument
10 that may be presented at the hearing on this motion, Plaintiff respectfully requests that the Court grant
11 preliminary approval of the Settlement.

12 Dated: April 2, 2021

LIPPSMITH LLP

13
14 By: 

Graham B. LippSmith
Celene Chan Andrews

LAWYERS for JUSTICE, PC
Edwin Aiwasian

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jesus Diaz Sanchez (“Plaintiff”) respectfully requests preliminary approval of the April 2, 2021 Settlement Agreement (“Settlement”) between Plaintiff and Defendants Galleher, LLC and Galleher Corporation (“Defendants”). Declaration of Graham B. LippSmith (“LippSmith Dec.”), Ex. 1 (“Settlement”). Plaintiff and Defendants (the “Parties”) have agreed to settle this matter for a Gross Settlement Fund in the amount of \$1,912,750. *Id.* at ¶ 11.

The Gross Settlement Fund will be distributed as follows: (1) individual settlement payments to claimants; (2) \$100,000 in penalties pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA Penalties”); (3) Claims Administration Costs (“Administration Costs”); (4) an Enhancement Award to Plaintiff; and (5) attorney fees and reimbursement of litigation costs and expenses to Class Counsel (“Attorney Fees and Costs”). Settlement, ¶ 11. The Net Settlement Fund is the Gross Settlement Fund less the PAGA Penalties, Administration Costs, Enhancement Award, and Attorney Fees and Costs. *Id.* at ¶ 12. Plaintiff also seeks provisional certification of the following Class solely for settlement purposes: All current and former non-exempt employees who worked for Defendants within California at any time during the period between October 3, 2015 and August 16, 2020 (“Class” or “Class Members”). *Id.* at ¶ 7.

The Class is comprised of approximately 388 individuals. LippSmith Dec., ¶ 25. Each Class Member who does not opt out of the Settlement will receive a pro rata share of the Net Settlement Fund based upon the number of weeks worked, per the Class definition (“Individual Settlement Share”). Settlement, ¶ 13. Each Class Member who worked for Defendants during the PAGA Period (“PAGA Recipients”), will receive a pro rata share of 25% of the PAGA Payment (\$25,000), based on the number of PAGA Workweeks credited to each of them. *Id.* at ¶ 18. The remaining 75% of the PAGA Payment (\$75,000) will be paid to the California Labor and Workforce Development Agency (“LWDA”). *Id.*

The Settlement resolves all of the Released Claims of Plaintiff and all Class Members who do not opt out (“Settlement Class Members”) against the Released Parties. Settlement, ¶¶ 30–32.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant Galleher Corporation manufactures flooring; Defendant Galleher LLC is a distributor for

1 Galleher Corporation. Defendants formerly employed Plaintiff.

2 Plaintiff filed a Class Action Complaint for Damages against Defendants in San Francisco County
3 Superior Court on October 3, 2019. Plaintiff's Counsel have litigated this matter actively since its
4 inception and engaged in substantial review of records and data, met and conferred several times
5 regarding motion practice and discovery, filed an application for complex designation, propounded written
6 discovery, and noticed depositions. Declaration of Edwin Aiwazian ("Aiwazian Dec."), ¶ 20.

7 Plaintiff alleges that Defendants engaged in uniform practices and procedures that violate the Labor
8 Code: failure to pay regular, minimum, and overtime wages properly, including their rounding policy;
9 failure to pay all compensation due for all work performed, including pre-shift, post-shift, and meal and
10 rest periods wages; failure to accurately calculate the regular rate for meal, rest, and overtime premiums;
11 failure to provide compliant meal periods, rest periods, and associated premium pay; failure to pay timely
12 wages during employment and upon termination; failure to provide compliant wage statements; failure to
13 maintain requisite payroll records; and failure to reimburse necessary business expenses. Settlement, ¶ 3.
14 Plaintiff also alleges Defendants' conduct gives rise to PAGA penalties. *Id.* Plaintiff contends the putative
15 class is entitled to unpaid wages; penalties, including PAGA penalties; and attorney fees and costs.

16 Defendants deny any liability or wrongdoing associated with Plaintiff's allegations. *Id.* ¶ 4. They
17 also deny this case is appropriate for class treatment for any purpose other than settlement. *Id.*

18 They have conducted formal and informal discovery, investigation of the claims, and extensive
19 discussions about the strengths and weaknesses of the claims and defenses. Aiwazian Dec., ¶ 20. The
20 Parties ultimately agreed to the Settlement.

21 **III. SUMMARY OF SETTLEMENT TERMS**

22 The Settlement provides that Defendants will pay \$1,912,750 into a Gross Settlement Fund.
23 Settlement, ¶ 11. The Gross Settlement Fund will cover (1) individual settlement payments to Class
24 Members, calculated as set forth below; (2) \$100,000 in PAGA Penalties; (3) Administration Costs; (4) an
25 Enhancement Award to Plaintiff; and (5) Attorney Fees and Costs. *Id.* The Parties also agree to
26 provisional Class certification, strictly and solely for the purposes of Settlement. *Id.* at ¶ 4.

27 The Net Settlement Fund is the Gross Settlement Fund less the PAGA Payment, Administration
28 Costs, Enhancement Award, and Attorney Fees and Costs. Settlement, ¶ 12. The Settlement provides for a

\$100,000 PAGA Payment. *Id.* at ¶ 18. In addition, the Parties agreed to retain Simpluris, Inc. to handle the notice and settlement administration process. *Id.* at ¶ 21. The Settlement provides for \$8,200 to cover Administration Costs. *Id.* at ¶ 17. Plaintiff's Counsel also will apply for an Enhancement Award of \$8,500 for Plaintiff for his service as Class Representative. *Id.* at ¶ 16. Finally, Plaintiff's Counsel will apply for attorney fees in the amount of \$669,462.50, or 35% of the Gross Settlement Fund, as well as for reimbursement of reasonable litigation costs and expenses not to exceed \$40,000. *Id.* at ¶¶ 14, 15.

The Net Settlement Fund will be distributed pro rata to Settlement Class Members. Settlement, ¶¶ 12, 13. The Settlement Administrator will facilitate the calculation of each Settlement Class Member's pro rata share of the Net Settlement Fund ("Individual Settlement Share") as follows:

- Defendants will use time records to calculate Workweeks. Settlement, ¶ 13. Workweeks reflect the total number of weeks all Settlement Class Members worked as non-exempt employees in California during the Class Period. *Id.* Any calendar week in which a Class Member worked at least one day will be considered a Workweek. *Id.* The parties estimate that the Class Period includes 51,000 Workweeks. *Id.* at ¶ 35.
- Within 14 days of preliminary approval, Defendants will provide the Settlement Administrator with the total number of Workweeks all Class Members worked, as well as the number of Workweeks each Class Member worked *Id.* at ¶¶ 13, 23.
- The Settlement Administrator will calculate each Settlement Class Member's share of the Net Settlement Fund. To calculate each share, the Settlement Administrator will divide the Net Settlement Fund by the total number of Class Workweeks, then multiply by the number of weeks each Settlement Class Member worked. *Id.* at ¶ 13.

The Settlement allocates \$100,000 to PAGA Penalties. Settlement, ¶ 18. Of this, 75% (or \$75,000) will be paid to the LWDA. The remaining 25% (or \$25,000) will be paid on a pro rata basis to Class Members who worked for Defendants during the PAGA Period. *Id.* The Settlement Administrator will calculate each PAGA Payment by dividing \$25,000 by the total number of PAGA Workweeks, then multiplying by the number of weeks each Class Member worked. *Id.*

The Settlement provides for tax treatment, allocating 20% of Individual Settlement Shares to wages reported on an IRS Form W-2, 80% to non-wages and interest reported on an IRS Form 1099, and 100% of PAGA Payments as penalties on IRS Form 1099. Settlement, ¶ 19. The Settlement Administrator will will withhold deductions for employees' share of payroll taxes and withholdings from Individual Settlement Shares but not PAGA Payments. *Id.* The Settlement Administrator will issue each Settlement Class Member an individual settlement payment, reduced by the applicable withholdings. *Id.* Defendants

1 will cover their portion of payroll taxes, in addition to the Gross Settlement Fund. *Id.*

2 Class Members may opt out of the Settlement by mailing a completed request to be excluded
3 (“Request for Exclusion”) to the Settlement Administrator within 30 calendar days of the mailing of the
4 Notice (“Response Deadline”). Settlement, ¶¶ 24, 25. The signed Request for Exclusion must include the
5 Class Member’s full name, address, and telephone number; the name and case number of this matter; a
6 wish to be excluded from the Settlement; and that the Class Member understands they will not receive any
7 money from the Settlement. *Id.* at 25. A Class Member who opts out will not be entitled to an Individual
8 Settlement Share but can still receive a pro rata PAGA Payment, if eligible. *Id.* A Class Member who opts
9 out will not be bound by the terms of the Settlement, except for the release of Released Claims that arise
10 under PAGA, if eligible for a PAGA Payment. *Id.* Any Class Member who opts out cannot object, appeal,
11 or comment on the Settlement. *Id.* Failure to submit a valid and timely Request for Exclusion means the
12 Class Member is bound by all terms of the Settlement and any final judgment entered in this case. *Id.*

13 The Notice shall inform Class Members of the number of workweeks they worked during the Class
14 Period and PAGA Period based on Defendants’ records. Settlement, ¶ 23. Class Members may dispute this
15 information by providing the Settlement Administrator with additional information and documentation
16 (“Dispute”) postmarked on or before the Response Deadline. *Id.* at ¶ 27. A Class Member must submit a
17 signed Dispute, with the Class Member’s full name, the case name and number, number of workweeks the
18 Class Member claims they worked, and supporting documentation. *Id.* The Settlement Administrator will
19 consult with the Parties to determine whether to make an adjustment to the Individual Settlement Share or
20 PAGA Payment. *Id.* As a last resort, the Parties will bring any unresolved Disputes to the Court. *Id.*

21 Within five calendar days, the Settlement Administrator shall remail to the forwarding address any
22 Notice returned as non-delivered on or before the Response Deadline. Settlement, ¶ 28. If no forwarding
23 address is provided, the Settlement Administrator shall attempt to find a correct address promptly, using
24 skip-tracing or other methods for searching the name, address and/or Social Security number of the Class
25 Member involved. *Id.* Upon locating another address, the Settlement Administrator shall then remail the
26 Notice. *Id.* Class Members who receive a remailed Notice shall have 14 calendar days from the postmark
27 date of the remailed Notice to object or opt-out. *Id.*

28 Settlement Class Members who object to the Settlement must submit either a written statement

1 objecting or a written notice of intention to appear at the Final Approval Hearing and object (“Objection”)
2 to the Settlement Administrator. Settlement, ¶ 26. The Objection must be postmarked on or before the
3 Response Deadline. *Id.* The Settlement Administrator will notify all Parties of any Objection within five
4 business days of receipt, and Plaintiff will file any such Objection(s) with the Court before the Final
5 Approval Hearing. *Id.* The Settlement Class Member must sign the Objection; reference the case name
6 and number; and include the Class Member’s name, dates of employment, grounds for objection, intention
7 to appear at the Final Approval Hearing, and any legal briefs, papers, or memoranda the Settlement Class
8 Member proposes to submit to the Court. *Id.* Settlement Class Members who fail to take these steps may
9 still appear in Court at the Final Approval Hearing to state their objection. *Id.* Any Settlement Class
10 Member who does not submit an Objection or appear in Court to object at the Final Approval Hearing
11 waives their right to object and cannot object to the Settlement, whether by appeal or otherwise. *Id.*
12 Neither the parties nor their counsel shall solicit or encourage Objections. *Id.* The Settlement
13 Administrator shall provide the Parties with weekly updates regarding the status of any Objections. *Id.*

14 Settlement checks uncashed after 120 days of issuance shall be tendered to the State Controller’s
15 Office, Unclaimed Property Division in the name of the Settlement Class Member and shall indicate the
16 amount of the cancelled check. Settlement, ¶ 29.

17 The Settlement will resolve the Released Claims of Plaintiff and all Class Members who do not opt
18 out of the Settlement (“Settlement Class Members”). Settlement, ¶ 30.

19 **IV. LEGAL STANDARD**

20 Settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App.
21 4th 1794, 1800; Cal. Civ. Code § 1781(f); Cal. Rules of Court, rule 3.769 (c) & (e). “The court must
22 determine [whether] the settlement is fair, adequate, and reasonable.” *Dunk*, 48 Cal. App. 4th at 1801.
23 This Court has “broad discretion” in deciding whether a settlement is “fair and reasonable.” *Wershba v.*
24 *Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 234, 235. In the absence of state law, California courts
25 look to federal law on class actions. *Dunk*, 48 Cal. App. 4th at 1801, fn.7.

26 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

27 In evaluating fairness, this Court considers “the strength of plaintiffs’ case[;] the risk, expense,
28 complexity and likely duration of further litigation[;] the risk of maintaining class action status through

trial[;] the amount offered in settlement[;] the extent of discovery completed[;] and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk*, 48 Cal. App. 4th at 1801. “[T]he court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245. Courts give “deference to the private[,] consensual decision of the parties.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F. 3d 1011, 1027.

“[T]he proponent of the settlement” bears the burden of showing “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.* (internal quotation marks and citation omitted).

A. The Settlement Takes into Account the Strength of Plaintiff’s Case, the Risk of Further Litigation, and the Significant Amount Offered in Settlement

The Settlement accounts for the strengths and weaknesses of each Party’s position and the uncertainty about class certification and/or trial. *Aiwazian Dec.*, ¶¶ 26–28; *LippSmith Dec.*, ¶¶ 25–26. The Parties have interviewed and obtained information from witnesses. *Aiwazian Dec.*, ¶ 20. The Parties’ Counsel have reviewed documents and information relating to Plaintiff’s and the Class Members’ employment with Defendants and performed significant legal research concerning PAGA representative actions, class certification, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, the Parties’ claims and defenses, and the facts. *Aiwazian Dec.*, ¶¶ 19–21; *LippSmith Dec.*, ¶¶ 24–25.

The Parties spent considerable time evaluating the procedural challenges that continued litigation may pose. Although wage-and-hour actions are often amenable to resolution for groups of employees, courts sometimes decide otherwise. Some courts have required “manageability” for adjudicating PAGA claims. *See, e.g., Litty v. Merrill Lynch & Co.* (C.D. Cal. Apr. 27, 2015) No. cv 14-0425 PA (PJWx), 2015 WL 4698475 at *3–4 (dismissing PAGA claim that would require a multitude of individualized assessments). Other courts have required plaintiffs to establish standing and have bifurcated discovery, trial, or both on PAGA claims. *Amalgamated Transit Union v. Superior Court* (2009) 46 Cal. 4th 993, 1001 noting PAGA “require[s] a plaintiff to have suffered an injury resulting from an unlawful action”);

1 *Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 21, 2014) No. 2:13-cv-1187 KJM CKD, 2014 WL
2 6633396 at *4 (finding judicial economy supported bifurcation because of the difficulties and inherent
3 uncertainties in establishing liability with respect to a large number of potentially aggrieved employees);
4 *Horton v. Jones* (1972) 26 Cal. App. 3d 952, 955 (holding bifurcation avoids wasting time and money on
5 trial when litigation may render an issue moot). These issues add uncertainty to continued litigation.

6 The parties also spent considerable time evaluating the substance of their claims and defenses in
7 deciding to settle. To prevail on their claims, Plaintiffs must prove that Labor Code violations demonstrate
8 both that Aggrieved Employees suffered losses and that Defendants' conduct gives rise to penalties. *See*,
9 *e.g.*, *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F. Supp. 2d 1169, 1181–82. Even if Plaintiff
10 established violations, Defendants likely would characterize them as “initial violations,” and heightened
11 “subsequent violation” penalties would be unwarranted. *See* Lab. Code § 2699(f)(2); *Amaral v. Cintas*
12 *Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1209 (“Until the employer has been notified that it is violating
13 a Labor Code provision [. . .], the employer cannot be presumed to be aware that its continuing
14 underpayment of employees is a ‘violation’ subject to penalties.”). Plaintiff’s success is uncertain.

15 Finally, the Parties spent considerable time evaluating the potential litigation of remedies. Although
16 PAGA clearly sets forth penalties, courts have discretion to set penalties so they are not “unjust, arbitrary
17 and oppressive, or confiscatory.” *See* Lab. Code § 2699(e)(2).

18 Despite these and other challenges, Plaintiff’s Counsel negotiated a Gross Settlement Fund of
19 \$1,912,750. Aiwazian Dec., ¶ 9; LippSmith Dec., ¶ 29. The Parties calculated the Settlement using the
20 information and data uncovered during case investigation, litigation, and exchange of information for
21 mediation. Aiwazian Dec., ¶ 20; LippSmith Dec., ¶ 28. Assuming that the Court approves the PAGA
22 Payment, Administration Costs, Enhancement Award, and Attorney Fees and Costs in the Settlement, the
23 Net Settlement Fund is estimated to be \$1,086,587.50. Aiwazian Dec., ¶ 9; LippSmith Dec., ¶ 29. The
24 amount of each Claimant’s Individual Settlement Share, and each PAGA Recipient’s Settlement Share,
25 will be calculated based on his or her respective Workweeks. Settlement, ¶ 13. The information that
26 Plaintiff’s Counsel obtained from Defendants and other sources allowed counsel to estimate the potential
27 claims on behalf of the Class and State of California and to “conclude[e] that the consideration being paid
28 for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail* (2008)

1 168 Cal. App. 4th 116, 133; Aiwazian Dec., ¶ 26; LippSmith Dec., ¶ 28. Considering all of the facts and
2 circumstances of the Action, the Settlement represents a fair, reasonable, and adequate recovery for the
3 Class. Aiwazian Dec., ¶ 28, 29; LippSmith Dec., ¶ 28.

4 **B. The Settlement Resulted from Arm’s-Length Bargaining**

5 The Parties engaged in significant settlement negotiations and participated in a formal mediation
6 session. Aiwazian Dec., ¶¶ 7–8, 19, 27; LippSmith Dec., ¶¶ 26–28. Mark Rudy, Esq., a well-regarded
7 mediator experienced in mediating complex labor and employment matters, conducted the mediation.
8 Aiwazian Dec., ¶¶ 7, 19, 27; LippSmith Dec., ¶¶ 26–27. Prior to and during settlement discussions, the
9 Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of
10 this matter and various aspects of this case, including, among other things, the risks and delays of further
11 litigation; whether some claims were subject to arbitration; the risks of proceeding with representative
12 adjudication and class certification; the law relating to off-the-clock theory, meal and rest periods, wage-
13 and-hour enforcement, and PAGA representative claims; and the evidence the Parties produced and
14 analyzed. Aiwazian Dec., ¶ 19; LippSmith Dec., ¶ 25.

15 During all settlement discussions, the Parties conducted their negotiations at arm’s length, in an
16 adversarial position. Aiwazian Dec., ¶ 19; LippSmith Dec., ¶ 26. The Parties each believed in the merits of
17 their claims and defenses. Aiwazian Dec., ¶ 19; LippSmith Dec., ¶ 27. Defendants and their counsel
18 believed they would prevail at certification and on the merits. Plaintiff and his Counsel felt strongly they
19 would obtain class certification and win at trial. After conducting investigations, propounding formal
20 discovery, exchanging informal discovery, and participating in settlement negotiations, the Parties agreed
21 this case is well-suited for settlement, given the claims, defenses, legal landscape, and costs and risks of
22 continued litigation. Aiwazian Dec., ¶ 27; LippSmith Dec., ¶ 28.

23 **C. The Settlement Resulted from Extensive Investigation and Discovery, Allowing the**
24 **Court and Counsel to Act Intelligently**

25 The Parties have actively litigated this matter since it commenced on October 3, 2019. Prior to
26 reaching the Settlement, the Parties extensively investigated the veracity, strength, and scope of the
27 claims. Aiwazian Dec., ¶ 12; LippSmith Dec., ¶¶ 24, 25. The Parties have reached the Settlement based on
28 this large volume of facts, evidence, and investigation. Aiwazian Dec., ¶ 20.

1 Plaintiff's Counsel conducted significant investigation into this case, engaged in formal and informal
2 discovery, and reviewed and analyzed thousands of pages of documents and data Defendants produced.
3 Aiwazian Dec., ¶ 20; LippSmith Dec., ¶¶ 21, 25, 28. The volume of data and documents Plaintiff's
4 Counsel reviewed and analyzed included the following, among others: Plaintiff's and other Class
5 Members' employment records; a detailed sampling of Class Members' time and pay data, including, but
6 not limited to, spreadsheets of timecard and wage statement statistics; Defendants' Employee Handbooks
7 and California Handbook, agreements (*e.g.*, Defendants' Agreement for Waiver of Meal Period,
8 Defendants' Meal and Rest Period Obligation Acknowledgment, and Defendants' Agreement for On-Duty
9 Meal Period for Employee Working Over 10 Hours); forms; procedures; and policies.

10 Plaintiff's Counsel interviewed Plaintiff and other witnesses to gather facts and to identify potential
11 witnesses. Aiwazian Dec., ¶ 20. Plaintiff's Counsel served multiple sets of formal written discovery
12 requests propounded on Defendants and noticed the depositions of Defendants' person-most-
13 knowledgeable designees. *Id.* at ¶¶ 7, 19–20; LippSmith Dec., ¶ 25. Counsel for the Parties also met and
14 conferred to discuss issues relating to the pleadings, discovery, motion practice, and the production of
15 documents and data. Aiwazian Dec., ¶ 20. Prior to agreeing to mediate this matter, Plaintiff's Counsel met
16 and conferred in writing and telephonically with Defendants' counsel regarding Plaintiff's anticipated
17 demurrer to Defendants' Answer. *Id.* Following the agreement to mediate, Plaintiff's Counsel also filed an
18 Application for Approval of Complex Case Designation and agreed to stay formal discovery pending
19 mediation. *Id.* Plaintiff's Counsel also prepared for court proceedings and settlement negotiations,
20 including attending mediation. *Id.*; LippSmith Dec., ¶ 21.

21 The Parties' active litigation of this matter has allowed Counsel to act intelligently in assessing the
22 fairness and reasonableness of the Settlement.

23 **D. Counsel is Experienced in Similar Litigation**

24 Plaintiff's Counsel have extensive experience in employment class actions, including significant
25 wage-and-hour litigation. Aiwazian Dec., ¶ 6; LippSmith Dec., ¶¶ 10–12. Based on that experience,
26 Plaintiff's Counsel believe the Settlement is fair, reasonable, adequate, and is in the best interest of the
27 Class Members. Aiwazian Dec., ¶¶ 20, 25–26; LippSmith Dec., ¶¶ 28, 38. While counsel's
28 recommendations are not conclusive, the Court can properly consider them, particularly where, as here,

1 Plaintiff's Counsel appear competent, have experience with this type of litigation, and have completed
2 significant discovery and investigation. Newberg Conte, *Newberg on Class Actions* § 11.47.

3 **E. The Percentage of Objectors**

4 A small percentage of objectors supports a presumption of fairness. *Wershba, supra*, 91 Cal. App.
5 4th at 245. The Parties will know the percentage of objectors before the Final Approval Hearing.

6 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE**

7 The Parties have agreed to provisional certification of the Class for settlement purposes only.
8 Settlement, ¶¶ 4, 7. California Code of Civil Procedure section 382 "authorizes class actions when the
9 question is one of a common or general interest, of many persons, or when the parties are numerous, and it
10 is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.
11 4th 319, 326 (internal quotation marks and citations omitted). California courts certify class actions where
12 the plaintiff identifies "both an ascertainable class and a well-defined community of interest among class
13 members." *Id.* (internal quotation marks and citations omitted).

14 **A. The Class Is Sufficiently Numerous and Ascertainable**

15 The proposed class must be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429,
16 435. Here, the Class of approximately 388 people is so numerous that its joinder is impracticable.
17 LippSmith Dec., ¶ 25. Thus, the Class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
18 Cal. App. 3d 926, 934–35 (holding a class of 30 to 40 satisfies numerosity).

19 Further, the Class is ascertainable. "A class is ascertainable if it identifies a group of unnamed
20 plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to
21 identify him or herself as having a right to recover based on the description." *Bartold v. Glendale Fed.*
22 *Bank* (2000) 81 Cal. App. 4th 816, 828, *overturned on other grounds due to Legislative Action* in 2001
23 Cal. Legis. Serv. Ch. 560. Defendants will identify all Class Members using employment records.
24 Settlement, ¶ 23. The Class is ascertainable.

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

26 The "community of interest" requirement "embodies three factors: (1) predominant common
27 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
28 representatives who can adequately represent the class." *Sav-On, supra*, 34 Cal. 4th at 326. Class

1 Members need not “*have uniform or identical claims.*” *Capitol People First v. Dep’t of Dev. Serv.* (2007)
2 155 Cal. App. 4th 676, 692. Courts focus on a “pattern and practice . . . of a defendant’s classwide
3 behavior . . . in order to evaluate whether that common behavior toward similarly situated plaintiff renders
4 class certification appropriate.” *Id.* at 692–93.

5 Here, common issues of fact and law predominate. Based on the documents and information
6 obtained through formal and informal discovery and exchange of information for mediation, Plaintiff
7 contends that all of the Class Members were subject to the same or similar job duties and uniform
8 operations and employment practices, policies, and procedures during the Class Period. Plaintiff’s claims
9 arise from Defendants’ uniform policy and systematic scheme, with respect to Plaintiff and the Class
10 Members, of failing to properly pay regular, minimum, and overtime wages; failing to pay all
11 compensation due for all work performed; failing to provide compliant meal and rest periods and
12 associated premium pay; and failing to reimburse Plaintiff and the Class Members for necessary business-
13 related expenses, among other things. Aiwazian Dec., ¶ 15; LippSmith Dec., ¶ 24. Plaintiff also contends
14 that Defendants’ payroll and recordkeeping practices as to the Class were substantially the same during
15 Class Period. Thus, Plaintiff claims that Defendants uniformly failed to pay all Class Members all of the
16 compensation due to them from during the Class Period.

17 These claims involve the same allegations, same underlying facts, same supporting evidence, and
18 same applicable law. Plaintiff argues the outcome of this litigation hinges on Defendants’ uniform
19 operations and employment policies and procedures, which applied across its hourly-paid employees,
20 during the Class Period. The claims will rise and fall together, and common issues predominate.

21 As discussed, *infra*, in Part XI, Plaintiff’s claims are typical of the Class because Defendants
22 employed him during the Class Period, and he suffered wage-and-hour problems of typical of the entire
23 Class. Aiwazian Dec., ¶ 15; LippSmith Dec., ¶ 24. Also as discussed, *infra*, in Part XI, Plaintiff is an
24 adequate class representative. Moreover, as discussed, *infra*, in Part VI, Plaintiff’s Counsel will fairly,
25 adequately, and zealously continue to protect the interests of the Class. Finally, prosecution of separate
26 actions by individual Class Members would create the risk of inconsistent or varying adjudications. Thus,
27 a class action is superior means for the fair and efficient adjudication of the case.

28 Accordingly, the Court should certify the Class for settlement purposes only.

1 **VII. THE COURT SHOULD PROVISIONALLY APPOINT CLASS REPRESENTATIVE**

2 Plaintiff respectfully requests that this Court provisionally appoint him Class Representative.

3 Plaintiff's claims and defenses are typical of the class, and he is adequate to represent the Class's
4 interests. *Sav-On*, *supra*, 34 Cal. 4th at 326.

5 A review of Sanchez's employment file shows that his claims are typical of the Class. Aiwaizian
6 Dec., ¶ 15. Plaintiff alleges Defendants engaged in uniform unlawful practices and procedures, including
7 failure to pay him regular, minimum, and overtime wages properly; failure to pay all compensation due
8 him for all of the work he performed; failure to provide compliant meal periods, rest periods, and
9 associated premium pay; failure to pay timely wages during employment and upon termination; failure to
10 provide compliant wage statements; failure to maintain requisite payroll records; and failure to reimburse
11 necessary business expenses. *Id.* Plaintiff's individual claims align with those of the Class; his claims and
12 defenses are, therefore, typical of the Class. Moreover, Plaintiff does not have any individual claims or
13 defenses, so he has no conflict with the Class.

14 Plaintiff has zealously pursued this action on the Class's behalf. He understands and has taken
15 seriously his role as a potential class representative and as a California Private Attorney General, stepping
16 up to pursue claims on behalf of other Aggrieved Employees. Declaration of Jesus Diaz Sanchez
17 ("Sanchez Dec."), ¶ 3. Plaintiff has been available whenever his attorneys need him and spent a substantial
18 amount of time and effort producing relevant documents and providing facts and evidence necessary to
19 help prove the allegations. Aiwaizian Dec. ¶ 12; LippSmith Dec., ¶ 33; Sanchez Dec., ¶ 5. Plaintiff also
20 has considered what is fair for Class Members and Aggrieved Employees through the pendency of this
21 matter. Sanchez Dec., at ¶ 7. If the Court appoints Plaintiff as a Class Representative, he will continue to
22 use his independent judgment on what is fair and reasonable for all Class Members and for the LWDA. *Id.*
23 at ¶ 9. Plaintiff also agreed to a broader release of his own individual claims that would not apply to the
24 other Class Members. *Id.* at ¶ 7. This Court should provisionally appoint Plaintiff as Class Representative.

25 **VIII. THE COURT SHOULD PROVISIONALLY APPOINT CLASS COUNSEL**

26 Plaintiff's Counsel have litigated this matter for a year and a half and were actively preparing a
27 demurrer to Defendant's Answer when the case went to mediation. Aiwaizian Dec., ¶ 20. As discussed in
28 Part V.C, *supra*, the work in this matter has been extensive, demanding, and ultimately successful in

1 achieving a substantial settlement. Plaintiff's Counsel are well-experienced in wage-and-hour class action
2 litigation and used that experience to obtain a significant Settlement that includes both a common fund
3 and PAGA Penalties. Aiwazian Dec., ¶ 6; LippSmith Dec., ¶¶ 10–12, 17.

4 The Settlement allows Plaintiff's Counsel to apply for an attorney fee award in an amount of
5 \$669,462.50, or 35% of the Gross Settlement Fund. Settlement, ¶ 15. The Settlement also allows
6 Plaintiff's Counsel to apply for up to \$40,000 in litigation costs and expenses. *Id.* at ¶ 14. The Attorney
7 Fees and Costs provided for in the Settlement are commensurate with: (1) the risk Plaintiff's Counsel took
8 in bringing and litigating this case, (2) the extensive time, effort and expense Plaintiff's Counsel have
9 dedicated and will dedicate to the case, (3) the skill and determination Plaintiff's Counsel have shown,
10 (4) the results Plaintiff's Counsel have achieved throughout the litigation, (5) the value of the Settlement
11 Plaintiff's Counsel have achieved for the Class Members and the LDWA, and (6) the other cases
12 Plaintiff's Counsel turned down in order to devote their time and efforts to this matter. Aiwazian Dec., ¶
13 13. The proposed Notice provides Class Members with information about the amount allocated toward,
14 and to be sought for, Attorney Fees and Costs, per the Settlement. Settlement, Ex. 1.

15 Plaintiff's Counsel have borne all the risks and costs of litigation and will not receive any
16 compensation until recovery is obtained. Aiwazian Dec., ¶ 14; LippSmith Dec., ¶ 36. Plaintiff's Counsel
17 will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time
18 of filing Plaintiff's Motion for Final Approval and application for Attorney Fees and Costs and at the Final
19 Approval Hearing. Considering the work performed and the risks incurred, the Attorney Fees and Costs
20 set forth in the Settlement are well within the range of reasonableness.

21 **IX. THE COURT SHOULD APPOINT SIMPLURIS AS SETTLEMENT ADMINISTRATOR**

22 The Parties agree to the appointment of Simpluris, Inc. as Settlement Administrator. Settlement,
23 ¶ 21. Simpluris has extensive experience in class action matters. Declaration of Kimberly Sutherland
24 ("Sutherland Dec."), ¶ 2. Simpluris has provided notification, claims administration services, or both in
25 more than 6,000 cases, of which 4,000 were labor and employment cases. *Id.* at ¶ 3. Simpluris has handled
26 approximately \$6 billion in settlements during the past 12 years. *Id.*

27 Per the Settlement, Simpluris will mail the Notice to each Class Member by First Class U.S. mail.
28 Settlement, ¶ 23. The Claims Administrator will calculate the amounts of the Individual Settlement Shares

1 and PAGA Settlement Shares; deduct and transmit applicable state, and/or federal taxes thereon; mail the
2 payment checks to Claimants and PAGA Recipients; issue W-2 and 1099 forms; calculate and disburse
3 the Attorney Fees and Costs and Enhancement Award; and perform such other tasks necessary to
4 effectuate the Notice Plan and terms of the Settlement. *Id.* at ¶¶ 13, 18–19, 23, 25–28. The Claims
5 Administration Costs are estimated to be \$8,200. Sutherland Dec., ¶ 6 & Ex. A. Administration Costs will
6 be paid out of the Gross Settlement Fund. Settlement, ¶ 11.

7 Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris as the Claims
8 Administrator and direct Simpluris to effectuate the Notice Plan, including mailing the Notice.

9 **X. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE**

10 California courts have broad discretion to fashion appropriate class notice. *See* Cal. Civ. Code §
11 1781; *Cartt v. Sup. Ct.* (1975) 50 Cal. App. 3d 960, 973–74. “[T]he notice given to the class must fairly
12 apprise the class members of the terms of the proposed compromise and of the options open to dissenting
13 class members.” *Wershba*, 91 Cal. App. 4th at 252 (internal quotation marks and citations omitted). Here,
14 the proposed Notice satisfies these requirements and is fair and adequate.

15 The proposed Notice describes the terms and conditions of the Settlement; the monetary relief the
16 Settlement will provide to Claimants and PAGA Recipients; the deadlines and procedures to submit a
17 Request for Exclusion, Objection, or Dispute; and the date and time set for the Final Approval Hearing.
18 Settlement, Ex. 1. The proposed Notice also lists the number of Workweeks credited to each Class
19 Member, states the estimated gross amount of the Class Member’s Individual Settlement Share and, if
20 applicable, an estimate of each PAGA Recipient’s PAGA Payment. *Id.*

21 The proposed Notice also satisfies all due process requirements and complies with the standards of
22 fairness, completeness, and neutrality. *Newberg*, §§ 8.21, 8.39; *Wershba*, 91 Cal. App. 4th at 252.
23 Accordingly, the Court should approve the proposed Notice.

24 **XI. THE COURT SHOULD APPROVE THE PROPOSED NOTICE PLAN DEADLINES**

25 Plaintiff seeks approval of the proposed Notice Plan and accompanying deadlines. *Newberg*, at
26 § 11.26; Sutherland Dec., ¶¶ 5–15. Within 14 days of the order granting preliminary approval, Defendants
27 must provide Simpluris with information necessary to compile the Class List and Information. Settlement,
28 ¶ 23; Sutherland Dec., ¶ 7. Within 10 days of receiving the Class List and Information, Simpluris must

1 mail the notice to the Class, after searching for updated address information. Settlement, ¶ 23; Sutherland
2 Dec., ¶ 7. Class Members have 30 days from the Notice mailing to opt out, by mailing a signed Request
3 for Exclusion. Settlement, ¶ 24; Sutherland Dec., ¶ 11. Class Members who object to the Settlement must
4 do so within the same timeframe. Settlement, ¶¶ 24, 26; Sutherland Dec., ¶ 11. The Settlement also
5 provides a process for Class Members to submit a Dispute related to the number of Workweeks during the
6 Class or PAGA Period, as indicated in their Notice. Settlement, ¶ 27; Sutherland Dec., ¶ 12. The
7 Settlement also describes the process for addressing undelivered Notices, including remailing those
8 Notices to a forwarding address within five days or skip-tracing or using other methods to locate a
9 forwarding address. Settlement, ¶ 28; Sutherland Dec., ¶ 10. The Settlement also adjusts the deadline to
10 object or opt out of the Settlement in the event of a returned or undeliverable Notice. Settlement, ¶ 28.

11 Plaintiff requests that this Court sets the due date for the Motion for final approval for two weeks
12 before Final Approval Hearing. Plaintiff also requests that this Court set the Final Approval Hearing for as
13 soon as is practicable following the Response Deadline.

14 The proposed Notice Plan deadlines are fair and reasonable. The Court should approve them.

15 **XII. CONCLUSION**

16 For the foregoing reasons, Plaintiff respectfully requests that this Court grant preliminary approval
17 of the Settlement; grant provisional class certification for settlement only; provisionally appoint Plaintiff
18 as Class Representative; provisionally appoint Lawyers *for* Justice, PC and LippSmith LLP as Class
19 Counsel; appoint Simpluris as Claims Administrator; approval of the Notice Plan; approve the Notice;
20 direct Simpluris to effectuate the Notice Plan; scheduling of the Final Approval Hearing; and setting the
21 due date for the Motion for Final Approval for two weeks before the Final Approval Hearing.

22 Dated: April 2, 2021

LIPPSMITH LLP

23 By: _____

24 Graham B. LippSmith
25 Celene Chan Andrews

LAWYERS *for* JUSTICE, PC

26 Edwin Aiwazian

27 *Attorneys for Plaintiff*
28

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. I am an employee of or agent for LippSmith LLP, whose business address is 555 S. Flower Street, Suite 4400, Los Angeles, CA 90071.

On April 2, 2021, I served the foregoing document(s) **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** to the following parties in this action as follows:

☒ (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at their electronic notification addresses. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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15760 Ventura Boulevard, Eighteenth Floor

Encino, CA 91436

Attorneys for Defendants Galleher LLC and Galleher Corporation

Executed on April 2, 2021 in Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



NIKI SMITH [nbs@lippsmith.com]