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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

EDUARDO LEE, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act

Plaintiff,

v.

DEL MONACO FOODS, INC., an unknown
business entity; DEL MONACO
SPECIALTY FOODS, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 19CV347471

Honorable Sunil R. Kulkarni
Department 1

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declaration of
Proposed Class Representative (Eduardo
Lee); and [Proposed] Order filed
concurrently herewith]

Date: March 10, 2022
Time: 1:30 p.m.
Department: 1

Complaint Filed: May 3, 2019
FAC Filed: November 12, 2019
SAC Filed: March 1, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on March 10, 2022 at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Sunil R. Kulkarni in Department 1 of the Superior Court of California for the County of Santa Clara, located at Downtown Superior Courthouse, 191 North First Street, San Jose, California 95113, Plaintiff Edwardo Lee (“Plaintiff” or “Class Representative”) will, and hereby does, move for an 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 Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwazian, 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, Class Counsel Award to Class Counsel, Service Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Edwardo Lee as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement (“Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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- 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 Class Counsel Award to Class Counsel, Service Award for Plaintiff, and Settlement Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) 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, and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and Proposed Class Representative (Edwardo Lee) 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: February 15, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Edwardo Lee (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Del Monaco Foods, Inc. and Del Monaco Specialty Foods, Inc. (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of seven hundred thousand dollars and no cents (\$700,000.00).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Service Award of ten thousand dollars and no cents (\$10,000.00) to Plaintiff³; (3) the Class Counsel Award to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or \$245,000.00, and reimbursement of litigation costs and expenses not to exceed twenty five thousand dollars and no cents (\$25,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed fifteen thousand dollars and no cents (\$15,000.00);⁵ and (5) the PAGA Penalties of fifty thousand dollars and no cents (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$37,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”)(“LWDA Payment”) and 25% (i.e., \$12,500.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.⁶

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¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § I.17.

² § I.16.

³ § III.53.c.

⁴ § III.53.d.i.

⁵ § III.53.f.

⁶ § III.53.e.

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendants do not oppose:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately four hundred fifty (450) individuals.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 Payment”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendants in California in a non-exempt or hourly-paid position during the period from May 3, 2015 until the Preliminary Approval Date (“Workweeks”).⁹

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Claims of Plaintiff and Settlement Class Members, against the Released Parties.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are a custom food manufacturing company based in Morgan Hill, California. Plaintiff Edwardo Lee is a former employee of Defendants.

On May 3, 2019, Plaintiff filed a Class Action Complaint for Damages in the Santa Clara County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On November 12, 2019, Plaintiff filed a First Amended Class Action Complaint for Damages.

On December 16, 2019, Defendants filed an Answer to Plaintiff’s First Amended Class Action Complaint.

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⁷ Settlement Agreement, § I.2. “Class Period” is defined as the period of time from May 3, 2015 until the Preliminary Approval Date. *See id.*, § I.7.

⁸ Aiwazian Decl., ¶ 9; *see also*, Settlement Agreement § I.2.

⁹ Settlement Agreement, §§ I. 35, 16 and 36.

¹⁰ *See id.* at § I.28, for the full scope of the “Released Claims,” and *id.* at § I.29 for the definition of the “Released Parties.”

On July 28, 2020, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.

On March 1, 2021, Plaintiff filed a Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Operative Complaint”).

Plaintiff’s core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, 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 maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

On March 5, 2021, Defendants filed an Answer to Plaintiff’s Second Amended Class Action Complaint.

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

The Parties have actively litigated the Action since it was commenced on May 3, 2019. With the aid of the mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Maximum Settlement Amount to resolve the Released Claims of Plaintiff 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 up to 35% of the Maximum Settlement Amount (i.e., \$245,000.00) and reimbursement of costs and expenses in an amount not to exceed twenty-five thousand dollars and no cents (\$25,000.00) to Class Counsel (collectively referred to as the “Class Counsel Award ”); (2) settlement administration costs, which are currently estimated not to exceed fifteen thousand dollars and no cents (\$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., \$37,500.00 out of \$50,000.00) (“LWDA Payment”); and (4) payment in the amount of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Edwardo Lee (“Service Award”).¹² The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member’s share of the available Net Settlement Amount (“Individual Settlement Payment”), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will calculate each Settlement Class Member’s number of Workweeks and the total aggregate number of total Workweeks of all Settlement Class Member.¹³
- b. The Settlement Administrator will divide the respective Workweeks for each Settlement Class Member by the total Workweeks, resulting in the “Payment Ratio” for each individual Settlement Class Member. Each Settlement Class Member’s Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each individual Settlement Class Member’s estimated Individual Settlement Payment.¹⁴

Each Settlement Class Member’s Individual Settlement Payment will be allocated as follows: twenty-five percent (25%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining seventy-five percent (75%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁵ Settlement Class Members

¹¹ Settlement Agreement, § I.17.

¹² *Id.*, §§ I.17 and 18; see also, §§ III.53.d.i., 53.f., 53.e, and 53.c.

¹³ *Id.*, § III.53.b.i.

¹⁴ *Ibid.*

¹⁵ *Id.*, § III.53.b.ii.

will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.¹⁶ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares in addition to the Maximum Settlement Amount.¹⁷

The Individual Settlement Payment checks issued to Settlement Class Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁸ The Settlement Administrator will mail a reminder notice to those Settlement Class Members who have not cashed their checks after one hundred twenty (120) calendar days and will also send a reminder via any available email address or social media for these Settlement Class Members and Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.¹⁹ The funds from associated with such cancelled checks, plus any accrued interest, will be transmitted by the Settlement Administrator to the State Controller's Office Unclaimed Property Fund, in the name of the Settlement Class Member whose check is cancelled and in the respective amount of the cancelled check.²⁰

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing ("Request for Exclusion").²¹ To be timely, the Class Member must mail a written 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 Notice ("Response Deadline").²² A Request for Exclusion must: (1) state the case name and number of the Action (*Edwardo Lee v. Del Monaco Foods, Inc., et al.*, Case No. 19CV34747); (2) clearly state that the Class Member requests to be excluded from the Settlement; (3) contain the name, address, and the last four (4) digits of the Social Security number and/or Employee ID number of the person requesting exclusion (4) be signed by the Class Member; and (5) be mailed to the

¹⁶ Settlement Agreement, § III.53.b.ii.

¹⁷ *Id.*, § I.17.

¹⁸ *Id.*, § III.53.b.iv.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Id.*, § III.52.g.i.

²² *Id.*, § I.31.

Settlement Administrator, postmarked by the Response Deadline at the address specified in the Notice.²³ Class Members who submit a valid and timely request for exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment.²⁴

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.²⁵ Settlement Class Members who wish to object to the Settlement must serve the Settlement Administrator with a written statement of objection (“Notice of Objection”) on or before the Response Deadline.²⁶ The Notice of Objection must: (1) be signed by the Settlement Class Member; (2) state the case name and number of the Action, the name and address of the Settlement Class Member, and the last four (4) digits of the Settlement Class Member’s Social Security number and/or Employee ID number; (3) contain the basis and/or grounds for the objection; and (4) state whether the Settlement Class Member intends to appear at the Final Approval Hearing.²⁷

Class Members who wish to dispute the number of Workweeks credited to them in their Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.²⁸ The letter must contain: (1) the case name and number of the Action; (2) your name, address, and the last four (4) digits of your Social Security number and/or Employee ID number; (3) the number of Workweeks you contend is the correct number to be credited to you; and (4) any documentation you have supporting your challenge of the calculation, and supporting your calculation.²⁹

IV. 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

²³ Settlement Agreement, § III.52.g.i.

²⁴ *Id.* § III.52.g.iii.

²⁵ *Id.*, § III.52.h.iv.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Id.*, §§ I.31., III.52.e.; Exh. 1 § 8.

²⁹ *Id.*, Exh. 1 § 8.

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

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

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

V. **THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, 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, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

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 May 3, 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.³⁰

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange,

³⁰ Aiwazian Decl., ¶¶ 11-13.

review, and analysis of thousands of pages of documents and data produced by Defendants.³¹ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff and other Class Members' employment records, a detailed sampling of Class Members' time and pay data, multiple iterations of Defendants' Team Member Guidebook, company policy acknowledgements (e.g., Meal Break Coaching Acknowledgement, Final Paycheck Acknowledgement, New Hire Receipt Acknowledgement, Harassment Training Acknowledgement), internal memoranda, new hire orientation checklists, Defendants' operations and employment practices, procedures (including but not limited to, Wage and Hour Rules form, Expense Report, and Meal Break Waiver form), and policies (including but not limited to Meal and Rest Period Policy and Business Expense Reimbursement Policy) among other information and documents.³² Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³³ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁴ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁵

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation on July 28, 2020, conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁶ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, federal and state wage-and-hour law and

³¹ Aiwazian Decl., ¶ 12.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Id.*, ¶ 11.

enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁷ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁸ Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.³⁹ After conducting investigations, significant informal discovery and exchange of information, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁰

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.⁴¹ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴² Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, federal and state wage-and-hour law and enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁴³ 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.⁴⁴

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

³⁷ Aiwazian Decl., ¶ 11.

³⁸ *Ibid.*

³⁹ *Id.*, ¶¶ 11, 16-18.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁴ Aiwazian Decl., ¶¶ 6-7.

1 The Settlement, which provides for a Maximum Settlement Amount of seven hundred
2 thousand dollars and no cents (\$700,000.00), represents a fair, adequate, and reasonable
3 resolution of the matter.⁴⁵ The Settlement was calculated using the information and data
4 uncovered during litigation, case investigation, as well as the informal exchange of
5 information.⁴⁶ The Settlement takes into account the potential risks and rewards inherent in any
6 case and, in particular, in the case at issue.⁴⁷ Moreover, considering all of the facts and
7 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
8 for the Class.⁴⁸

9 Assuming that the Class Counsel Award, Service Award, LWDA Payment, and
10 Settlement Administration Costs are approved by the Court and paid in the full amounts
11 provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is
12 currently estimated to be three hundred sixty seven thousand five hundred dollars and no cents
13 (\$367,500.00).⁴⁹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully
14 paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The
15 amount of each Settlement Class Member's Individual Settlement Payment will be calculated
16 based on his or her Workweeks.⁵⁰ There is no reason to doubt the fairness of the proposed plan
17 of allocation of the settlement funds for purposes of preliminary approval. Even at the final
18 approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant
19 approval], particularly if recommended by experienced and competent class counsel." *In re*
20 *American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d
21 418, 429-30.

22 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
23 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵¹
24 Although the recommendations of Class Counsel are not conclusive, the Court can properly take

25 ⁴⁵ Aiwazian Decl., ¶¶ 11, 13, 14 & 21.

26 ⁴⁶ *Id.*, ¶¶ 11-13.

27 ⁴⁷ *Id.*, ¶¶ 16-18.

28 ⁴⁸ *Id.*, ¶¶ 11, 13, & 21.

⁴⁹ *Id.*, ¶ 14.

⁵⁰ Settlement Agreement, § III.53.b.

⁵¹ Aiwazian Decl., ¶¶ 11, 13, & 21.

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 discovery and information that Class Counsel obtained from Defendants 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 Defendants' defenses thereto.⁵³ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁴

VI. 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, Plaintiff's claims are typical of the claims of

⁵² *Id.*, ¶¶ 11-13 & 18.

⁵³ *Id.*, ¶ 18.

⁵⁴ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁵ Settlement Agreement, § II.37.

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

This action involves a class of approximately four hundred fifty (450) individuals.⁵⁶ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants’ employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

The community of interest requirement “embodies three factors: (1) predominant common questions of law or fact; (2) class representative with claims or defenses typical of the class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts

⁵⁶ Aiwazian Decl., ¶ 9.

1 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether
2 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
3 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

4 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
5 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155
6 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,
7 the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as
8 applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

9 Here, common issues of fact and law predominate as to each of the claims alleged and
10 asserted in the Operative Complaint. Based on the documents and information obtained through
11 informal discovery and exchange of information in this case, Plaintiff contends that Class
12 Members were subject to the same or similar job duties and uniform operations and employment
13 practices, policies, and procedures during the time period at issue.⁵⁷ Plaintiff’s claims arise from
14 Defendants’ alleged uniform policy and systematic scheme, with respect to Plaintiff and the
15 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
16 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
17 to timely pay wages during employment and upon termination of employment, failing to provide
18 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
19 necessary business-related expenses.⁵⁸

20 Plaintiff also contends that Defendants’ payroll and recordkeeping practices with respect
21 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁵⁹
22 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
23 compensation due to them from Defendants during the time period at issue.⁶⁰

24 Plaintiff maintains that the outcome of this litigation would be determined by
25 Defendants’ alleged uniform operations and employment policies and procedures that applied
26

27 ⁵⁷ Aiwazian Decl., ¶ 16.

28 ⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

across their hourly-paid or non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL AWARD

Class Counsel has litigated the matter for over two years, 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 extensive investigations into the facts of the case and informal discovery, including, and not limited to, the exchange, review, and analysis of thousands of pages of documents and data obtained from Defendants and other sources,⁶² interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' 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 seven hundred thousand dollars and no cents (\$700,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Award, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$245,000.00) and an amount not to exceed twenty five thousand dollars and no cents (\$25,000.00) for 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

⁶¹ Aiwazian Decl., ¶¶ 11-13.

⁶² *Id.*, ¶ 12.

⁶³ *Ibid.*

⁶⁴ *Id.*, ¶ 11.

⁶⁵ *Id.*, ¶¶ 6-7.

⁶⁶ Settlement Agreement, §§I.17 and III.d.i.

1 Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has
2 shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of
3 the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases
4 that Class Counsel had to turn down in order to devote its time and efforts to this matter. The
5 proposed Notice provides Class Members with information about the amount allocated toward
6 the Class Counsel Award, and that an award of the Class Counsel Award will be sought, as
7 provided for by the Settlement.⁶⁷

8 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
9 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
10 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
11 “experienced trial judge is the best judge of the value of professional services rendered in his
12 court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
13 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
14 achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
15 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
16 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
17 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
18 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
19 settlement fund and the settlement agreement provides that the defendant agrees to paying the
20 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

28

⁶⁷ *Id.*, Exh. 1.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court 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 in the Action.⁶⁸

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Class Counsel Award 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.

VIII. THE PROPOSED 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 Notice⁶⁹ describes the Settlement, the deadlines and procedures to serve an objection to the Settlement, mail a request for exclusion from the Settlement, and/or mail a

⁶⁸ Aiwasian Decl., ¶ 19.

⁶⁹ Settlement Agreement, Exh. 1.

dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁰

The proposed 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. 2004). The proposed Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷¹ The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.⁷² The proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment is calculated and the number of Workweeks credited to them.⁷³

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

**IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT
ADMINISTRATOR**

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Notice to each Class Member by First-Class U.S. mail.⁷⁴ Any undeliverable Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.⁷⁵ With respect to any undeliverable Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of standard search techniques (e.g., skip trace search),

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ Settlement Agreement, § III.52.c.

⁷⁵ *Id.*, § III.52.d.

1 and shall then perform a re-mailing if another mailing address is identified.⁷⁶ The Response
2 Deadline to submit a request for exclusion, objection, or dispute regarding Workweeks for Class
3 Members to whom a Notice is re-sent, after having been returned as undeliverable to the
4 Settlement Administrator, will be fifteen (15) calendar days from the Response Deadline.⁷⁷ The
5 Settlement Administrator will receive and process requests for exclusion, objections, and any
6 disputes regarding Workweeks.⁷⁸

7 The Settlement Administrator will calculate the amounts of the Individual Settlement
8 Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage
9 portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to
10 Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Class Counsel
11 Award, Service Award, and LWDA Payment; and perform such other tasks necessary to
12 effectuate the terms of the Settlement Agreement.⁷⁹ The Settlement Administration Costs are
13 currently estimated to be fifteen thousand dollars and no cents (\$15,000.00) and will be paid out
14 of the Maximum Settlement Amount, subject to approval by the Court.⁸⁰

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

19 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

20 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
21 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
22 entails mailing of the Notice, in the form approved by the Court, to all known and reasonably
23 ascertainable Class Members based on Defendants' records.⁸¹

24 Within twenty (20) calendar days after the Preliminary Approval Date, Defendants will
25

26 ⁷⁶ *Ibid.*

27 ⁷⁷ *Ibid.*

28 ⁷⁸ *Id.*, §§ III.52.g., III.52.h., and III.52.e.; Exh. 1 § 8.

⁷⁹ *Ibid.*; Aiwazian Decl., ¶ 15.

⁸⁰ Settlement Agreement, § III.53.f.

⁸¹ Settlement Agreement, § III.52.

1 provide the Settlement Administrator with the following information for each Class Member's
2 full name, last known address, telephone number, Social Security number, and information
3 sufficient to allow the Settlement Administrator to calculate the number of Workweeks for all
4 Class Members during the Class Period (collectively, "Class Data").⁸²

5 Within twenty (20) calendar days after the Preliminary Approval Date, the Settlement
6 Administrator will mail the Notice to the Class Members via First-Class U.S. Mail.⁸³ If a Notice
7 is returned to the Settlement Administrator with a forwarding address, the Settlement
8 Administrator will re-send the Notice to the forwarding address.⁸⁴ If no forwarding address is
9 provided, then the Settlement Administrator shall promptly attempt to determine a correct
10 address by lawful use of standard search techniques (e.g., skip trace search), and shall then
11 perform a re-mailing if another mailing address is identified.⁸⁵ Class Members will have until
12 the applicable Response Deadline to mail a request for exclusion, mail a dispute regarding
13 Workweeks, and/or to file and serve an objection.⁸⁶

14 Defendants will make a one-time deposit of the Maximum Settlement Amount, together
15 with an amount sufficient to pay the employer's share of payroll taxes and contributions with
16 respect to the wage portion of Individual Settlement Shares, into a Qualified Settlement Account
17 to be established by the Settlement Administrator, within twenty (20) calendar days after the
18 Effective Date.⁸⁷ Within fourteen (14) calendar days after Defendants provide funds to the
19 Settlement Administrator, the Settlement Administrator will distribute: (1) the Individual
20 Settlement Payments to Settlement Class Members; (2) the Court-approved Service Award to
21 Plaintiff; (3) the Court-approved Class Counsel Award to Class Counsel; (4) the LWDA
22 Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁸⁸

23 The Individual Settlement Payment checks will remain negotiable for one hundred and
24

25 _____
⁸² *Id.*, §§ I.5. and III.52.a.

26 ⁸³ *Id.*

27 ⁸⁴ *Id.*, § III.52.d.

⁸⁵ *Ibid.*

⁸⁶ *Id.*, §§ III.52.g., III.52.h., and III.52.e.

⁸⁷ Settlement Agreement, §§ III.53.a. and I.17

⁸⁸ *Id.*, §§ III.53.b.iii., III.53.c.i., III.53.d.iv., III.53.e., and III.53.f.

eighty (180) calendar days from the date of their issuance.⁸⁹ Checks that are not negotiated within the 180-day period will be cancelled.⁹⁰ The funds associated with such cancelled checks, plus any accrued interest, will be tendered by the Settlement Administrator to the State Controller's Office Unclaimed Property Fund in the name of the Settlement Class Members who did not cash their settlement checks.⁹¹

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR SERVICE AWARD

Plaintiff Edwardo Lee respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Service Award in an amount up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Edwardo Lee.⁹² It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining 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 Service Award is fair and appropriate. Plaintiff 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.⁹³ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁹⁴ Accordingly, it is appropriate and just for Plaintiff to receive a Service Award for his services on behalf of the Class, in addition to his Individual Settlement Payment.

⁸⁹ *Id.*, § III.53.b.iv.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Id.*, § III.53.c.

⁹³ Aiwazian Decl., ¶ 20; Declaration of Edwardo Lee in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Lee Decl."), ¶ 4.

⁹⁴ Aiwazian Decl., ¶ 20; Lee Decl., ¶¶ 3-6.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Edwardo Lee as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Class Counsel Award, Service Award, LWDA Payment, and Settlement Administration Costs; approve the proposed 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 six (6) months.

Dated: February 15, 2022

LAWYERS *for* JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiff