

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

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

MARCO RODRIGUEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

NEW PENN FINANCIAL, LLC, a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No.: 34-2018-00233729

Honorable Shama H. Mesiwala
Department 53

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 (Marco
Rodriguez); and [Proposed] Order filed
concurrently herewith]

Reservation No.: 2550625
Date: March 8, 2021
Time: 1:30 p.m.
Department: 53

Complaint Filed: May 25, 2018
FAC Filed: September 26, 2018
Trial Date: None Set

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

PLEASE TAKE NOTICE that on date and time to be determined by the Court for the matter to be heard before the Honorable Shama H. Mesiwala in Department 53 of the Superior Court of California for the County of Sacramento, located at Gordon D. Schabor Courthouse, 720 9th Street, Sacramento, California 95814, Plaintiff Marco Rodriguez (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting Plaintiff leave to file the [Proposed] Second Amended Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698 Et Seq. (“Second Amended Complaint”) which is attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Stipulation of Class Action and PAGA Settlement and Release (“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, Attorneys’ Fees and Costs Payment to Class Counsel, Service Payment to Plaintiff, and Administration Costs to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Marco Rodriguez as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of *Lawyers for Justice, PC* as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Notice Packet”), attached as “**EXHIBIT 2**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice Packet to the Class Members;

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

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement, allow the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

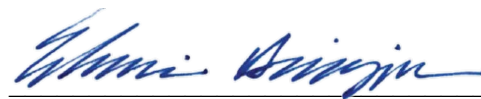
Pursuant to Local Rule 1.06(A), the Court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If a party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If the parties do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

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 (Marco Rodriguez) 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 11, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Marco Rodriguez (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, on the one hand, and Defendant NewRez LLC (formerly known as “New Penn Financial, LLC”) (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Fund of three million dollars (\$3,000,000.00).¹ The Gross Settlement Fund includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Fund²; (2) the Service Payment in an amount not to exceed fifteen thousand dollars (\$15,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs Payment to Class Counsel, consisting of attorneys’ fees in the amount of thirty-eight percent (38%) of the Gross Settlement Fund, or \$1,140,000.00, and reimbursement of litigation costs and expenses up to eighty-five thousand dollars (\$85,000.00)⁴; (4) the Administration Costs to the Administrator in an amount estimated not to exceed ten thousand dollars (\$10,000.00);⁵ and (5) the payment of two hundred fifty thousand dollars (\$250,000.00) for resolution of the Private Attorneys General Act (“PAGA”) claims, of which 75% (i.e., \$187,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$62,500.00) will be distributed to Participating Class Members as a part of the Net Settlement Fund.⁶

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

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///

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 2.15.

² *Id.*, §§ 2.16, 2.18, & 2.22.

³ *Id.*, § 2.29.

⁴ *Id.*, §§ 2.4 & 3.2.

⁵ *Id.*, § 2.3.

⁶ *Id.*, §§ 2.17 and 2.21.

1 All current and former hourly-paid or non-exempt employees who worked for
2 Defendant within the State of California at any time during the period from May
3 25, 2014 to the date of Preliminary Approval of the Agreement. (“Class” or “Class
4 Members”).⁷

5 The Class is estimated to consist of approximately three hundred twenty-nine (329)
6 individuals.⁸

7 Class Members who have not, by the Notice Response Deadline, postmarked a Request
8 for Exclusion (“Participating Class Member”) will receive a share of the Net Settlement Fund
9 (“Individual Settlement Share”) on a *pro rata* basis based upon the number of actual weeks
10 worked during the Class Member by each Participating Class Member. (“Qualified
11 Workweeks”).⁹

12 The Settlement resolves the Released Claims of Plaintiff and Participating Class
13 Members against the Released Parties.¹⁰

14 In order to efficiently present the Court with adequate information to determine whether
15 to grant preliminary approval of the Settlement and provisional certification of the Settlement
16 Class for settlement purposes, Plaintiff also moves for an order permitting the filing of this
17 memorandum, although it exceeds the page limit established by California Rules of Court, Rule
18 3.1113(d).

19 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

20 Defendant was founded in 2008 and is a leading nationwide lender that operates multiple
21 lending channels, including Wholesale, Correspondent Lending, Direct-to-Consumer, Retail,
22 and a network of Joint Venture partners. Within California, Defendant operates two locations in
23 Concord and Pasadena. Plaintiff Marco Rodriguez is a former employee of Defendant.

24 ///

25 ///

26 ⁷ Settlement Agreement, § 2.8. The period beginning May 25, 2014 and ending on the date that Preliminary
27 Approval of the Settlement is granted is defined as “Class Period.” See *Id.*, § 2.9. For the definition of “Preliminary
28 Approval,” see *id.*, § 2.24.

⁸ Aiwasian Decl., ¶ 9.

⁹ Settlement Agreement, §§ 2.9, 2.22, 2.25, 4.16, & 4.16.2

¹⁰ *Id.*, §§ 2.26, 2.27, 4.23, 5.3, 5.4, and 5.5. See *Id.* at § 2.26, for the full scope of the “Released Claims,” and *Id.*
at § 2.27 for the definition of the “Released Parties.”

1 On May 25, 2018, Plaintiff filed a Class Action Complaint for Damages (“Original
2 Complaint”) against Defendant in the Sacramento County Superior Court (“Court”), thereby
3 commencing the above-captioned lawsuit (“Action”).

4 On September 26, 2018, Plaintiff filed a First Amended Class Action Complaint for
5 Damages (“First Amended Complaint”). On November 30, 2018, Defendant filed an Answer
6 to Plaintiff’s First Amended Complaint.

7 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
8 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
9 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
10 and rest periods and associated premium pay, failing to timely pay wages during employment
11 and upon termination of employment, failing to provide compliant wage statements, failing to
12 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
13 thereby engaged in unfair business practices in violation of California Business and Professions
14 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff
15 contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
16 (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

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

21 On November 27, 2018, Plaintiff propounded multiple sets of written discovery requests
22 onto Defendant, including, but not limited to, Requests for Production of Documents, (Set One);
23 Special Interrogatories, (Sets One & Two); Form Interrogatories, (Set One); and noticed the
24 depositions of Defendant’s Person Most Knowledgeable designee regarding job duties and
25 organizational structure of Defendant. On December 18, 2018, Defendant propounded onto
26 Plaintiff Requests for Production of Documents, (Set One); Special Interrogatories, (Set One);
27 and Form Interrogatories, (Set One); and also noticed the deposition of Plaintiff, to which
28

1 Plaintiff objected. On February 11, 2019, Plaintiff propounded additional sets of discovery
2 requests onto Defendant.

3 On November 12, 2020, Plaintiff provided written notice to the Labor and Workforce
4 Development Agency (“LWDA”) giving notice of his intent to pursue a representative action
5 pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), on behalf of
6 himself and the State of California, as well as on behalf of a proposed group of aggrieved
7 employees.

8 The Parties have actively litigated the Action since it was commenced on May 25, 2018.
9 Both sides have propounded and responded to multiple sets of formal written discovery requests
10 in various forms. Class Counsel also prepared for and took the deposition of Defendant’s Person
11 Most Knowledgeable designee and prepared for and defended the deposition of Plaintiff. The
12 Parties participated in a formal, full-day mediation session on March 17, 2020, and two half-day
13 follow-up sessions on June 30, 2020 and August 10, 2020, all conducted by David Rotman,
14 Esq., a well-respected mediator experienced in mediating complex labor and employment
15 matters. With the aid of the mediator’s evaluations, the Parties ultimately reached the Settlement
16 described herein to resolve the Action in its entirety.

17 **III. REQUEST FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

18 To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties
19 agree that leave should be granted for Plaintiff to file an amended complaint in order to, *inter*
20 *alia*, adding a cause of action for violation of PAGA (Labor Code section 2698 *et seq.*) on behalf
21 of Plaintiff and aggrieved employees, for the purposes of resolution of the Action.¹¹ As such,
22 Plaintiff respectfully requests leave to file the Second Amended Class Action Complaint for
23 Damages and Enforcement under the Private Attorneys General Act, Cal. Labor Code § 2698,
24 Et Seq. (“Second Amended Complaint” or “Operative Complaint”) so that the operative
25 complaint in this Action formally asserts the causes of action and allegations that have been
26
27
28

¹¹ Aiwazian Decl., ¶ 8.

investigated, litigated, mediated, and ultimately settled, by the Parties, and so that the terms of the Settlement may be effectuated.¹²

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Fund to resolve the Released Claims of Plaintiff and the Class Members who do who have not timely postmarked a Request for Exclusion (i.e., Participating Class Members) with respect to the Released Parties.¹³ Subject to approval by the Court, the Net Settlement Fund will be calculated by deducting the following amounts from the Gross Settlement Fund: (1) attorneys' fees in the amount of one million one hundred forty thousand dollars (\$1,140,000.00) (i.e., 38% of the Gross Settlement Fund) and reimbursement of litigation costs and expenses in an amount up to eighty-five thousand dollars (\$85,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs Payment"); (2) settlement administration costs, which are currently estimated to not exceed ten thousand dollars (\$10,000.00), to the Administrator ("Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Payment (i.e., \$187,500.00 out of \$250,000.00) ("LWDA Payment"); and (4) payment in an amount not to exceed fifteen thousand dollars (\$15,000.00) to Plaintiff Marco Rodriguez ("Service Payment").¹⁴ The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Administrator will determine each Participating Class Member's *pro rata* share of the available Net Settlement Fund (i.e., Individual Settlement Share), in accordance with the Settlement Agreement and as follows:

- a. The Administrator will determine the amount of the Net Settlement Fund.¹⁵
- b. The Administrator will calculate the total number of Qualifying Workweeks worked by the Class Members during the Class Period.¹⁶
- c. The Administrator will then divide the Net Settlement Fund by the total Qualifying Workweeks worked by the entire Class during the Class Period to arrive at a "Workweek Value."¹⁷

¹² Settlement Agreement, § 1.4.

¹³ *Id.*, §§ 2.15, 2.26, 2.27, and 3.1.

¹⁴ *Id.*, § 2.18; see also, §§ 2.3, 2.17, 2.18, 3.1, 3.2, 3.8, and 3.9.

¹⁵ *Id.*, § 4.16.1.

¹⁶ *Id.*, § 4.16.2.

¹⁷ *Ibid.*

d. The Administrator will then take that Workweek Value and multiply it by the number of Qualifying Workweeks worked by each Class Member to yield his or her Individual Settlement Share.¹⁸

To calculate final Individual Settlement Shares of Participating Class Members, the Administrator will perform the same calculation based on the Qualifying Workweeks of the Participating Class Members.¹⁹

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) to wages subject to withholdings, and eighty percent (80%) to interest, penalties, and non-wage damages.²⁰ The portion allocated to wages shall be reported on an IRS Form W-2 and the portions allocated to interest and penalties shall be reported on an IRS Form-1099 (if applicable).²¹ Participating Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee's and employer's share of taxes and withholdings for the wages portion of the Individual Settlement Shares ("Withholding and Taxes") (the net payment is referred to as their "Individual Settlement Payment").²² Administrator will pay the employees' and employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares from the Gross Settlement Fund.²³

The Individual Settlement Payment checks issued to Participating Class Members will be negotiable for one hundred eighty (180) calendar days from the date of their mailing.²⁴ Checks that are not cashed or otherwise negotiated within the 180-day period will be cancelled, and the funds from such cancelled checks will be transmitted by the Administrator to the Unclaimed Property Division of the California State Controller's office with an identification of each Participating Class Member and the amount attributable to each Participating Class Member to be held and distributed in accordance with California Unclaimed Property Law,

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Settlement Agreement, § 4.19.

²¹ *Ibid.*

²² *Id.*, §§ 2.30 & 4.16.3.

²³ *Id.*, §§ 2.15 and 4.19

²⁴ *Id.*, § 4.28.

California Code of Civil Procedure § 1500 *et seq.*²⁵ If a Participating Class Member has not cashed his or her check by the 30th day from the date of the check’s issuance, the Administrator will send a postcard reminding him or her to cash their check before the void date.²⁶

Class Members who wish to be excluded from, or opt out of, the Settlement must submit to the Administrator a written, signed request to be excluded from the Settlement (“Request for Exclusion”), postmarked by the date that is thirty-five (35) calendar days from the date of the initial mailing of the Notice Packet, or such other date as set by the Court in the Preliminary Approval Order (“Notice Response Deadline”).²⁷ The Request for Exclusion must contain: (i) the name of this Action; (ii) the full name, address, telephone number, and the last four digits of the Social Security Number of the person requesting to be excluded; (iii) the words “Request for Exclusion” at the top of the document; (iv) the signature of the Class Member seeking to be excluded; and (v) a statement indicating their desire to be excluded, such as: “I wish to be excluded from the Settlement of the Action, *Marco Rodriguez v. New Penn Financial, LLC*, and Does 1 through 100, Case No. 34-2018-00233-729, currently pending in the Sacramento Superior Court.”²⁸ Class Members who do not submit a valid Request for Exclusion by the Notice Response Deadline will be bound by the terms of the Settlement and Final Approval Order and Judgment.²⁹

Only Class Members who have not submitted a Request for Exclusion have standing to object to the Settlement.³⁰ Participating Class Members who wish to object to the Settlement must send to the Administrator a personally signed, written statement objecting to the Settlement (“Objection”) postmarked on or before the Notice Response Deadline.³¹ The Objection must contain: (i) the name of this Action; (ii) the full name, address, telephone number, and last four digits of the Social Security Number of the person objecting as well as the full name, address, and telephone number of any attorney representing said person with respect to the objection;

²⁵ Settlement Agreement, §§ 4.28 & 4.30.

²⁶ *Id.*, § 4.29.

²⁷ *Id.*, §§ 2.20, 2.28, & 4.8.

²⁸ *Id.*, § 4.9.

²⁹ *Id.*, § 4.11.

³⁰ *Id.*, § 4.14.

³¹ *Id.*, § 4.15.

(iii) the words “Objection” at the top of the document; (iv) the signature of the Class Member seeking to object to the Settlement; and (v) a statement of the basis for their objections and whether or not the Class Member wishes to appear at the Final Approval Hearing to present oral argument.³²

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 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

³² Settlement Agreement, § 4.15.

1 and they have had an opportunity to voice their views of the settlement or to exclude themselves
2 from the settlement. Cal. R. Ct. 3.769(g).

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

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

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

24 The proponent of the settlement has the burden to show that it is fair and reasonable.
25 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
26 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
27 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
28 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.

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

5 The Parties actively litigated the Action since it was commenced on May 25, 2018. Both
6 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
7 claims, and Class Counsel was actively preparing the case for class certification and trial.³³

8 Prior to engaging in mediation, Class Counsel conducted significant investigation and
9 formal and informal discovery regarding the facts of the case, including and not limited to, the
10 exchange, review, and analysis of thousands of pages of documents and data produced by
11 Defendant.³⁴ The volume of data and documents that Class Counsel reviewed and analyzed
12 included and was not limited to: Plaintiff’s and other Class Members’ employment records, a
13 detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s
14 employee handbooks, The Shellpoint Family of Companies Employee Handbook and the
15 California Addendum to the Shellpoint Family of Companies Employee Handbook, various
16 acknowledgements (including, but not limited to, Defendant’s Acknowledgment of Receipt of
17 Employee Handbook and Code of Conduct acknowledgement) and agreements (including, but
18 not limited to, Defendant’s Position Description Acknowledgment & Agreement and
19 Confidentiality and Non-Solicitation Agreement), internal memoranda, job descriptions,
20 checklists (including, but not limited to, Defendant’s Employee Separation Checklist),
21 Defendant’s operations and employment practices, forms (including, but not limited to,
22 Defendant’s Compensation and Hours form, Recommendation for Termination form, and
23 Separation from Employment form), procedures (including, but not limited to, Defendant’s
24 Timekeeping Process and Recording Time Worked procedures), and policies (including, but not
25 limited to, Defendant’s Cell Phone policy, Overtime policy, Working Hours policy, Attendance
26 policy, detailed Business Casual Attire dress policy, Travel & Expense Reimbursement policy,

27
28 ³³ Aiwazian Decl., ¶¶ 11-13.

³⁴ *Id.*, ¶ 12.

Meal & Rest policies, Wage And Salary policy, and Payment Upon Termination policy), among other information and documents.³⁵ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁶ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto, prepared for and took the deposition of Defendant's Person Most Knowledgeable designee as well as defended the deposition of Plaintiff, and worked with Plaintiff to provide responses to multiple sets of discovery requests that were propounded by Defendant.³⁷ Counsel for the Parties 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.³⁸ Class Counsel also drafted three mediation briefs for Plaintiff and prepared for and attended court proceedings, settlement negotiations, and three mediation sessions, among other tasks.³⁹

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation session and two half-day mediation sessions conducted by David Rotman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁴⁰ 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, the 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, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴¹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴² Arriving at a

³⁵ Aiwazian Decl., ¶ 12.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶ 11.

⁴¹ *Ibid.*

⁴² *Ibid.*

1 settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt
2 strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class
3 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴³ After
4 conducting investigations, significant formal and informal discovery, extensive settlement
5 negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the
6 matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims,
7 as well as the costs and risks to both sides that would attend further litigation.⁴⁴

8 The Settlement takes into account the strengths and weaknesses of each side's position
9 and the uncertainty of how the case might have concluded at certification and trial.⁴⁵ The Parties
10 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁶
11 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
12 the Class Members' employment with Defendant and performed significant research into the
13 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
14 rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto,
15 as well as facts discovered.⁴⁷ The Parties have reached the Settlement based on this large volume
16 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
17 employment class actions, including significant experience in California wage-and-hour
18 litigation.⁴⁸

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

20 The Settlement, which provides for a Gross Settlement Fund of three million dollars
21 (\$3,000,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁹ The
22 Settlement was calculated using the information and data uncovered during litigation, case
23 investigation, as well as the formal and informal exchange of information.⁵⁰ The Settlement
24

25 ⁴³ Aiwazian Decl., ¶¶ 11, 16-18.

26 ⁴⁴ *Ibid.*

27 ⁴⁵ *Ibid.*

28 ⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁸ *Id.*, ¶¶ 6-7.

⁴⁹ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵⁰ *Id.*, ¶¶ 11-13.

1 takes into account the potential risks and rewards inherent in any case and, in particular, in the
2 case at issue.⁵¹ Moreover, considering all of the facts and circumstances of the lawsuit, the
3 Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵²

4 Assuming that the Attorneys' Fees and Costs Payment, Service Payment, LWDA
5 Payment, and Administration Costs are approved by the Court and paid in the full amounts
6 provided for by the Settlement, the Settlement provides for a Net Settlement Fund that is
7 currently estimated to be one million five hundred sixty-two thousand five hundred dollars
8 (\$1,562,500).⁵³ As discussed in Part III, *supra*, the entire Net Settlement Fund will be fully paid
9 out to the Participating Class Members, in accordance with the Settlement Agreement. The
10 amount of each Participating Class Member's Individual Settlement Payment will be calculated
11 based on his or her Qualifying Workweeks.⁵⁴ There is no reason to doubt the fairness of the
12 proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even
13 at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis
14 [to warrant approval], particularly if recommended by experienced and competent class
15 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
16 127 F.Supp.2d 418, 429-30.

17 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
18 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁵
19 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
20 the recommendations into account, particularly if Class Counsel appears to be competent, and
21 has experience with this type of litigation, and investigation have been completed, as is the case
22 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
23 Settlement.

24 ///

25 ///

26 ⁵¹ Aiwazian Decl., ¶¶ 16-18.

27 ⁵² *Id.*, ¶¶ 11, 13, & 21.

28 ⁵³ *Id.*, ¶ 14.

⁵⁴ Settlement Agreement, §§ 2.25 and 4.16.2.

⁵⁵ Aiwazian Decl., ¶¶ 11, 13, & 21.

1 **C. The Settlement Is of Significant Value.**

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted significant formal and informal discovery and exchanged thousands of pages of
4 documents, data, and information prior to mediation.⁵⁶ The documents and information that
5 Class Counsel obtained from Defendant and through other sources allowed Class Counsel to
6 develop valuation models in order to evaluate the potential value and merit of the claims, and
7 perform a complete evaluation of Defendant’s defenses thereto.⁵⁷ As outlined in the Declaration
8 of Edwin Aiwasian, Class Counsel performed an extensive analysis of each and every claim
9 pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

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

11 For settlement purposes, the requisites for establishing class certification are met, and
12 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁹
13 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
14 one of a common or general interest, of many persons, or when the Parties are numerous, and it
15 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
16 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
17 “both [1] an ascertainable class and [2] a well-defined community of interest among class
18 members.” *Id.* at 326.

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact that predominate over any questions
21 affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of
22 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
23 Class. Finally, prosecution of separate actions by individual Class Members would create the
24 risk of inconsistent or varying adjudications, and a class action is superior to other available

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26
27 ⁵⁶ Aiwasian Decl., ¶¶ 11-13 & 18.

28 ⁵⁷ *Id.*, ¶ 18.

⁵⁸ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁹ Settlement Agreement, § 4.1.1.

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 three hundred twenty-nine (329) individuals.⁶⁰ 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 Defendant to the Administrator through a review of Defendant’s employment records regarding all current and former non-exempt hourly employees who are or were employed by Defendant within the State of California at any time during the Class Period, in accordance with the Settlement Agreement. 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 focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether

⁶⁰ Aiwazian Decl., ¶ 9.

1 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
2 *Id.* at 692 (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

8 Here, common issues of fact and law predominate as to each of the claims alleged and
9 asserted in the Complaint. Based on the documents and information obtained through formal
10 and informal discovery and exchange of information in this case, Plaintiff contends that Class
11 Members were subject to the same or similar job duties and uniform operations and employment
12 practices, policies, and procedures during the time period at issue.⁶¹ Plaintiff’s claims arise from
13 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
14 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
15 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
16 to timely pay wages during employment and upon termination of employment, failing to provide
17 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
18 necessary business-related expenses.⁶²

19 Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect
20 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶³
21 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
22 compensation due to them from Defendant during the time period at issue.⁶⁴

23 Plaintiff maintains that the outcome of this litigation would be determined by
24 Defendant’s alleged uniform operations and employment policies and procedures that applied
25 across its current and former non-exempt hourly employees who are or were employed by
26

27 ⁶¹ Aiwazian Decl., ¶ 16.

28 ⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

Defendant within the State of California at any time during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for close to three years, and was actively preparing the matter for class certification and trial.⁶⁵ 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 formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant and reviewing Defendant's responses and objections thereto.⁶⁶ Class Counsel also prepared for and took the deposition of Defendant's Person Most Knowledgeable designee and defended the deposition of Plaintiff.⁶⁷ Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁸ Counsel for the Parties also undertook extensive settlement discussions, which included participating in three formal mediation sessions.⁶⁹

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷⁰

The Settlement establishes a Gross Settlement Fund of three million dollars (\$3,000,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs Payment, consisting of attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Gross Settlement Fund (i.e., \$1,140,000.00) and an amount not to exceed eighty-five thousand dollars (\$85,000) for reimbursement of litigation costs and expenses.⁷¹ The

⁶⁵ Aiwazian Decl., ¶¶ 11-13.

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶ 12.

⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶ 11.

⁷⁰ *Id.*, ¶¶ 6-7.

⁷¹ Settlement Agreement, §§ 2.15 and 3.2. L

attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Notice Packet provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs Payment, and that the Attorneys' Fees and Costs Payment will be sought, as provided for by the Settlement.⁷²

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

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check

⁷² Settlement Agreement., Exh. A.

1 and use other means to evaluate the reasonableness of a requested percentage fee[.]” and “[t]he
2 percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

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

14 Class Counsel has borne all of the risks and costs of litigation and will not receive any
15 compensation until recovery is obtained.⁷³

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

21 **VIII. THE PROPOSED NOTICE PACKET IS ADEQUATE**

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

27 ///

28 ⁷³ Aiwazian Decl., ¶ 19.

1 The proposed Notice Packet describes the Settlement, the deadlines and procedures to
2 submit an Objection or Request for Exclusion, and the date and time set for the Final Approval
3 Hearing.⁷⁴

4 The proposed Notice Packet fulfills the requirement of neutrality in notice procedure.
5 *Newberg*, at § 8.29. “Sufficient information about the case should be provided to enable class
6 members to make an informed decision about their participation.” *Manual for Complex*
7 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Notice Packet summarizes the
8 proceedings to date and the terms and conditions of the Settlement in an informative and
9 coherent manner.⁷⁵ The proposed Notice Packet recognizes that the Court has not yet granted
10 final approval of the settlement.⁷⁶ The proposed Notice Packet also apprises the Class Members
11 of, *inter alia*, how their Individual Settlement Share is calculated and the number of Qualifying
12 Workweeks credited to them.⁷⁷

13 The proposed Notice Packet satisfies all due process requirements and complies with the
14 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
15 §§ 8.21, 8.29; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The
16 essentials of due process of law in class suits would appear to be afforded by fair representation
17 in the assertion of claims of class members against the opposing parties in any lawsuit, and
18 notice of the pending suit.”). Accordingly, the Court should approve the proposed Notice
19 Packet.

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

21 The Parties have selected Simpluris to administer the Settlement.

22 The Administrator will mail the Notice Packet to each Class Member by first class
23 United States mail.⁷⁸ Any undeliverable Notice Packet that is returned to the Administrator
24 within thirty (30) calendar days of initial mailing with a forwarding address will be immediately
25

26 ⁷⁴ Settlement Agreement, Exh. A.

27 ⁷⁵ *Ibid.*

28 ⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ Settlement Agreement, § 4.7.

re-mailed to the forwarding address.⁷⁹ With respect to any undeliverable Notice Packet returned within thirty (30) calendar days of initial mailing without a forwarding address, the Administrator will conduct a skip-trace address search and, upon obtaining a new or different address, immediately re-mail the Class Member's Notice Packet.⁸⁰ The Administrator will receive and process Requests for Exclusion and Objections postmarked by the Notice Response Deadline.⁸¹

The Administrator will calculate the number of Qualifying Workweeks worked by Class Members, and resolve any disputes by Class Members about the number of Qualifying Workweeks they worked during the Class Period; calculate the amounts of the Individual Settlement Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Participating Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs Payment, Service Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸² The Administration Costs are currently estimated not to exceed ten thousand dollars (\$10,000.00) and will be paid out of the Gross Settlement Fund, subject to approval by the Court.⁸³

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice Packet, in the form approved by the Court, to all known and

⁷⁹ *Ibid.*

⁸⁰ Settlement Agreement, §§ 4.6 & 4.7.

⁸¹ *Id.*, §§ 4.4, 4.8, & 4.15.

⁸² *Id.*, § 4.4; Aiwazian Decl., ¶ 15.

⁸³ Settlement Agreement, § 2.3.

1 reasonably ascertainable Class Members based on Defendant's records.⁸⁴

2 Within twenty-one (21) calendar days following entry of the Preliminary Approval
3 Order, Defendant will provide the Administrator with the following information for each Class
4 Member: (1) full name; (2) most recently known mailing address; (3) job title(s); (4) telephone
5 number(s); (5) Social Security Number; and (6) dates of employment from which the
6 Administrator can calculate the total number of Qualifying Workweeks (collectively, "Class
7 List and Data").⁸⁵

8 Within fourteen (14) calendar days of receipt of the Class List and Data, the
9 Administrator will mail the Notice Packet to the Class Members via first class United States
10 mail.⁸⁶ Class Members will have until the Notice Response Deadline to submit a Request for
11 Exclusion or Objection to the Administrator.⁸⁷

12 Defendant will remit the Gross Settlement Fund to the Administrator, within fifteen (15)
13 court days after the Effective Date.⁸⁸ Within seven (7) calendar days of the Effective Date, the
14 Administrator will distribute: (1) the Individual Settlement Payments to Participating Class
15 Members; (2) the Court-approved Service Payment to Plaintiff; (3) the Court-approved
16 Attorneys' Fees and Costs Payment to Class Counsel; (4) the LWDA Payment to the LWDA;
17 and (5) the Withholdings and Taxes to the appropriate government entities.⁸⁹ Within ten (10)
18 calendar days from the Effective Date, the Administrator will transmit payment Court-approved
19 Administration Costs to itself.⁹⁰

20 The Individual Settlement Payment checks issued to Participating Class Members will
21 be negotiable for one hundred eighty (180) calendar days from the date of their mailing.⁹¹
22 Checks that are not cashed or otherwise negotiated within the 180-day period will be cancelled,
23 and the funds from such cancelled checks will be transmitted by the Administrator to the
24

25 ⁸⁴ Settlement Agreement, §§ 4.3 and 4.6.

26 ⁸⁵ *Id.*, §§ 2.7 & 4.3.

27 ⁸⁶ *Id.*, § 4.7.

28 ⁸⁷ *Id.*, § 4.8 & 4.15.

⁸⁸ *Id.*, § 4.26.

⁸⁹ *Id.*, § 4.27

⁹⁰ *Ibid.*

⁹¹ *Id.*, § 4.28.

Unclaimed Property Division of the California State Controller's office with an identification of each Participating Class Member and the amount attributable to each Participating Class Member to be held and distributed in accordance with California Unclaimed Property Law, California Code of Civil Procedure § 1500 *et seq.*⁹² If a Participating Class Member has not cashed his or her check by the 30th day from the date of the check's issuance, the Administrator will send a postcard reminding him or her to cash their check before the void date.⁹³

XI. APPOINTMENT OF THE CLASS REPRESENTATIVE AND ALLOCATION FOR SERVICE PAYMENT

Plaintiff Marco Rodriguez respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Service Payment in an amount up to fifteen thousand dollars (\$15,000.00) to Plaintiff Marco Rodriguez.⁹⁴ 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 a Service 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 Payment 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.⁹⁵ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁹⁶ For example, Plaintiff reviewed and responded to formal written discovery,

⁹² Settlement Agreement, §§ 4.28 & 4.30.

⁹³ *Id.*, § 4.29.

⁹⁴ *Id.*, §§ 2.29 and 3.8.

⁹⁵ Aiwazian Decl., ¶ 20; Declaration of Marco Rodriguez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Rodriguez Decl."), ¶ 4.

⁹⁶ Aiwazian Decl., ¶ 20; Rodriguez Decl., ¶¶ 3-6.

prepared for and attended a full-day of deposition, and reviewed his transcript thereafter.⁹⁷ Accordingly, it is appropriate and just for Plaintiff to receive a Service Payment for his services on behalf of the Class, in addition to his Individual Settlement Payment.

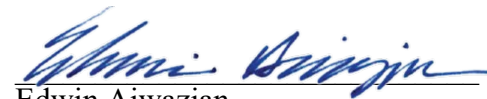
XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to file the Second Amended Complaint; grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Marco Rodriguez as Class Representative; appoint Simpluris, Inc. as the Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs Payment, Service Payment, LWDA Payment, and Administration Costs; approve the proposed Notice Packet; direct the Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: February 11, 2021

LAWYERS for JUSTICE, PC

By:


Edwin Aiwazian
Attorneys for Plaintiff

⁹⁷ Rodriguez Decl, ¶ 5.