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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

AVIS DAVIS, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

GROCERY DELIVERY E-SERVICES USA
INC., an unknown business entity;
INSPERITY PEO SERVICES, L.P., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: C18-02253

Honorable Edward G. Weil
Department 39

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 (Avis
Davis); and [Proposed] Order filed
concurrently herewith.]

Date: TBD
Time: TBD
Department: 39

Complaint Filed: November 6, 2018
Trial Date: None Set

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

PLEASE TAKE NOTICE that on a date and time to be determined before the Honorable Edward G. Weil in Department 39 of the Superior Court of California for the County of Contra Costa, located at Wakefield Taylor Courthouse, 725 Court Street, Martinez, California 94553, Plaintiff Avis Davis (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting Plaintiff leave to file the [Proposed] First Amended Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“First Amended Complaint”) which is attached as “**Exhibit 1**” to the [Proposed] Preliminary Approval and Provisional Class Certification Order;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action 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, Class Counsel Award to Class Counsel, Class Representative Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Avis Davis as Class Representative;
- Preliminarily appointing Edwin Aiwazian and Arby Aiwazian of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action and Proposed Settlement (“Class Notice”), attached as “**Exhibit 2**” to the [Proposed] Preliminary Approval and Provisional Class Certification Order;
- Directing the mailing of the Class Notice to the Class Members;

///

- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Award to Class Counsel, Class Representative Enhancement Payment 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 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.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwarzian) and Proposed Class Representative (Avis Davis) 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: January 19, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Avis Davis (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated, on the one hand, and Defendants Grocery Delivery E-Services USA Inc. (“Grocery Delivery”) and Insperity PEO Services, L.P. (“Insperity”) (together, “Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this Action for a Gross Settlement Amount of five hundred fifty thousand dollars (\$550,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Enhancement Payment of up to seven thousand five hundred dollars (\$7,500.00) to Plaintiff³; (3) the Class Counsel Award to Class Counsel, consisting of attorneys’ fees up to thirty-five percent (35%) of the Gross Settlement Amount, or \$192,500.00, and litigation costs and expenses up to eighteen thousand dollars (\$18,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator, which are estimated not to exceed ten thousand dollars (\$10,000.00);⁵ and (5) the amount of fifty thousand dollars (\$50,000.00) to be paid to settle any and all claims for which penalties under the Private Attorneys General Act (“PAGA”) may be sought or are otherwise available, of which 75% (i.e., \$37,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$12,500.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.⁶

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

¹ Settlement Agreement, attached as “**Exhibit 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 1.15.

² *Id.*, § 1.20.

³ *Id.*, § 2.3.

⁴ *Id.*, § 2.2.

⁵ *Id.*, § 1.3.

⁶ *Id.*, § 2.5.

1 All current and former non-exempt hourly employees who are or were co-employed
2 by Grocery Delivery and Insperity within the State of California, who have not
executed arbitration agreements with class action waivers, at any time during the
Class Period (“Class” or “Class Members”).⁷

3 Excluded from the Class are individuals co-employed by Grocery Delivery and Insperity
4 working as “Brand Ambassadors” or in other similar positions classified as exempt under the
5 outside sales exemption.⁸ Also excluded from the Class are any individuals who executed
6 individual separation or severance agreements containing general releases of all claims at the
7 time of their separation from employment with Defendants.⁹ The Class is estimated to consist
8 of approximately four hundred fourteen (414) individuals.¹⁰

9 Class Members who do not opt out of the Class Settlement by submitting a valid and
10 timely Request for Exclusion¹¹ (“Settlement Class Members”) will receive a share of the Net
11 Settlement Amount (“Individual Settlement Payment”) based upon the number of weeks during
12 which work was performed by each Class Member as a non-exempt hourly employee in
13 California (“Workweeks”).¹²

14 The Settlement resolves the Released Claims of the Releasing Parties against the
15 Released Parties.¹³

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

20 ///

21 ///

22 ///

23
24 ⁷ Settlement Agreement, §§ 1.1 and 1.7. “Class Period” is defined as the period of time from November 6, 2014
through date of entry of the Preliminary Approval Order, or April 8, 2021, whichever is sooner. See *Id.*, § 1.7.

25 ⁸ *Id.*, § 1.1

26 ⁹ *Ibid.*

¹⁰ Aiwazian Decl., ¶ 9.

¹¹ Class Settlement” means the Settlement as it pertains to the settlement and release of the Released Claims,
except the PAGA Release. See Settlement Agreement, § 1.9.

¹² *Id.*, §§ 1.16, 1.31, and 1.33.

¹³ *Id.*, §§ 2.6-2.8. See *Id.* at § 1.26, for the full scope of the “Released Claims,” *Id.* at § 1.27 for the definition of
the “Released Parties,” and *Id.* at § 1.28 for the definition of the “Releasing Parties.”

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

2 Defendant Grocery Delivery is a publicly traded meal kit company and the largest
3 provider of meal kits within the United States, which operates in Richmond, California.
4 Defendant Insperity has provided human resources, payroll, and administration services for
5 Defendant Grocery Delivery. Plaintiff Avis Davis is a former employee of Defendants.

6 On November 6, 2018, Plaintiff filed a Class Action Complaint for Damages (“Original
7 Complaint”) in the Contra Costa County Superior Court (“Court”), thereby commencing the
8 above-captioned lawsuit (“Action”).

9 On January 24, 2019, Defendant Insperity filed an Answer to Plaintiff’s Original
10 Complaint, and thereafter, on February 1, 2019, Defendant Grocery Delivery filed an Answer
11 to Plaintiff’s Original Complaint.

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

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

26 On March 27, 2019, Plaintiff propounded multiple sets of discovery requests onto
27 Defendants, including Requests for Production of Documents, (Set One); Special
28 Interrogatories, (Set One & Two); Form Interrogatories, (Set One), and noticed the depositions

of each Defendant's person most knowledgeable designee regarding job duties and organizational structure of each Defendant. On April 30 and May 23, 2019, Defendant Insperity responded to Plaintiff's discovery requests, and on May 13, 2019, Defendant Grocery Delivery responded to Plaintiff's discovery requests. Defendants Grocery Delivery and Insperity further objected to Plaintiff's notices of deposition on May 1 and May 29, 2019, respectively. On November 21, 2019, Plaintiff propounded additional notices of deposition for each Defendant's person most knowledgeable designee, to which Defendant Grocery Delivery objected on January 9, 2020. Thereafter, on February 21, 2020, Defendant Insperity provided supplemental responses to Plaintiff's written discovery requests. On March 4, 2020, Plaintiff propounded additional sets of discovery requests, including Special Interrogatories, (Set Three & Four), and Requests for Production of Documents, (Set Two), onto Defendant Grocery Delivery.

The Parties have actively litigated the Action since it was commenced on November 6, 2018. On May 7, 2020, the Parties participated in a formal, full-day mediation conducted by Marc J. Feder, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff to file an amended complaint in order to, *inter alia*, add a cause of action for violation of PAGA (Labor Code section 2698 *et seq.*) on behalf of Plaintiff and aggrieved employees, for the purposes of resolution of the Action.¹⁴ As such, Plaintiff respectfully requests leave to file the First Amended Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. ("First Amended Complaint" or "Operative Complaint") so that the operative complaint in this Action formally asserts the causes of action and allegations that have been investigated,

¹⁴ Aiwazian Decl., ¶ 8.

litigated, mediated, and ultimately settled, by the Parties, and so that the terms of the Settlement may be effectuated.¹⁵

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount of five hundred fifty thousand dollars (\$550,000.00) 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 Class Settlement, and each of their successors, assigns, legatees, heirs, and personal representatives (i.e., Releasing Parties) with respect to the Released Parties.¹⁶ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees up to one hundred ninety-two thousand five hundred dollars (\$192,500.00) (i.e., up to 35% of the Gross Settlement Amount) and litigation costs and expenses up to eighteen thousand dollars (\$18,000.00) to Class Counsel (collectively referred to as the "Class Counsel Award"); (2) settlement administration costs, which are currently estimated not to exceed ten thousand dollars (\$10,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Penalty Payment (i.e., \$37,500.00 out of \$50,000.00) ("LWDA Payment"); and (4) payment in the amount of up to seven thousand five hundred dollars (\$7,500.00) to Plaintiff ("Class Representative Enhancement Payment").¹⁷ 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 payment under the Settlement, in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will determine the number of Workweeks during the Class Period for each Settlement Class Member and the total number of Workweeks worked by all Settlement Class Members during the Class Period ("Total Workweeks") based on the Class List provided by Defendants.¹⁸

¹⁵ Settlement Agreement, § 3.1.

¹⁶ *Id.*, §§ 1.15, 1.26, 1.27, and 1.28.

¹⁷ *Id.*, § 1.20; see also, §§ 1.3, 1.15, 1.19, 2.2, 2.3 and 2.5.

¹⁸ *Id.*, § 7.1(a). See also *id.*, § 1.32.

b. The Settlement Administrator will divide the Net Settlement Amount by the number of Total Workweeks to derive the “Workweek Point Value.”¹⁹

c. For each Settlement Class Member, the Settlement Administrator will multiply the number of Workweeks he or she worked during the Class Period by the Workweek Point Value; the resulting being the “Gross Allocated Amount” for each such Settlement Class Member.²⁰

Each Settlement Class Member’s Gross Allocated Amount will be allocated as follows: one-quarter (1/4) wages, subject to applicable employee’s share of taxes and withholding, and three-quarters (3/4) interest and penalties.²¹ 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).²² Settlement Class Members will be issued payment of their Gross Allocated Amount subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of each Gross Allocated Amount (the net payment is referred to as an “Individual Settlement Payment”).²³ Defendants will pay the employer’s share of payroll taxes on the wages portion of Individual Settlement Shares separately and in addition to the Gross Settlement Amount.²⁴

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.²⁵ To remind Settlement Class Members of this time period for negotiating their checks, the Settlement Administrator will send a postcard to all Settlement Class Members who have not negotiated their Individual Settlement Payment checks within 90 calendar days of the mailing of the Individual Settlement Payment checks.²⁶ Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled and the funds from associated with such cancelled checks will be transmitted to the Unclaimed Property Fund maintained by the State Controller’s Office in the Settlement Class Member’s name.²⁷

¹⁹ Settlement Agreement, § 7.1(b).

²⁰ *Id.*, § 7.1(c).

²¹ *Id.*, § 7.1(d).

²² *Ibid.*

²³ *Id.*, §§ 1.16 & 7.1(d).

²⁴ *Id.*, § 2.1(c).

²⁵ *Id.*, § 7.4.

²⁶ *Ibid.*

²⁷ *Ibid.*

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit by U.S. Mail or other delivery service a timely and valid written request indicating that the Class Members requests to be excluded from the Class Settlement (“Request for Exclusion”) to the Settlement Administrator.²⁸ The Request for Exclusion must: (a) state the case name and number of the Action; (b) set forth the name, address, and telephone number of the Class Member requesting exclusion; (c) be signed by the Class Member; (d) be addressed to the Settlement Administrator; and (e) be postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice (“Response Deadline”) or, in the event of a re-mailed Class Notice, the Response Deadline will be extended an additional fifteen (15) calendar days for that individual Class Member.²⁹ Class Members who submit a valid and timely Request for Exclusion will not be bound by the Class Settlement and will have no standing to object to the Settlement; however, they will be bound by the PAGA Release.³⁰

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) have standing to object to the Settlement Agreement.³¹ Settlement Class Members who wish to object to the Settlement must submit a valid and timely written objection to the Settlement Agreement (“Objection”), by U.S. Mail or other delivery service, to the Settlement Administrator, on or before the Response Deadline.³² The Objection must: (a) state the case name and number of the Action; (b) contain the Class Member’s name, current mailing address, most current telephone number, and last four digits of his or her Social Security number; (c) state the basis for the objection; (d) be signed by the Class Member; (e) be submitted to the Settlement Administrator at the address specified in the Class Notice; and (f) be submitted with proof of the submission date (such as a U.S. Postal Service postmark or another delivery service date stamp) on or before the Response Deadline.³³ Settlement Class Members who submit a timely Objection that contains the statement “Notice of Intention to Appear at Final

²⁸ Settlement Agreement, §§ 1.29 & 4.6.

²⁹ *Id.*, §§ 1.29 & 1.30.

³⁰ *Id.* § 4.6.

³¹ *Id.*, § 4.7.

³² *Id.*, §§ 1.22 & 4.7.

³³ *Id.*, § 1.22.

Approval Hearing” will have a right to speak at the Final Approval Hearing in order to have their objections heard by the Court.³⁴

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by mailing a written letter (“Workweeks Dispute”) to the Settlement Administrator on or before the Response Deadline.³⁵ The Workweeks Dispute must: (a) state the case name and number of the Action; (b) set forth the Class Member’s name, address, and telephone number; (c) be signed by the Class Member; (d) include any documentary evidence showing that the Workweek information is inaccurate; and (e) be postmarked or submitted to the Settlement Administrator on or before the Response Deadline.³⁶

V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

³⁴ Settlement Agreement, §§ 1.22 & 4.7.

³⁵ *Id.*, §§ 1.34 & 4.5.

³⁶ *Id.*, § 1.34.

1 federal and state courts, assures class members of the protection of procedural due process
2 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement
3 class.

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

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

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

18 The trial court has broad powers to determine whether a proposed settlement is fair under
19 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
20 this fairness determination, courts must consider several relevant factors, including “the strength
21 of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the
22 risk of maintaining class action status through trial, the amount offered in settlement, the extent
23 of discovery completed and the stage of the proceedings, the experience and view of counsel,
24 the presence of a governmental participant, and the reaction of the class members to the
25 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
26 and the court is free to engage in a balancing and weighing of the factors depending on the
27 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
28 “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 November 6, 2018. 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 Action for class certification and trial.³⁷

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendants.³⁸ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a sampling of Class Members’ time and pay data, multiple iterations of portions of Defendants’ Employee Handbook, agreements (including, but not limited to, Defendants’ Employment Agreement and Second Meal Break Waiver Agreement), company policy acknowledgements (including, but not limited to, the Statement of Understanding for Time and Attendance, California Employee Notice and Acknowledgment, Handbook Acknowledgment, and Employee Acknowledgement of the Attendance Policy, Code of Conduct, Disciplinary Action Procedures, Travel Reimbursement Policy, and other company policies), internal memoranda, job descriptions, Defendants’ operations and employment practices, forms (including, but not

³⁷ Aiwazian Decl., ¶¶ 11-13.

³⁸ *Id.*, ¶ 12.

1 limited to, Defendants' Time Clock Missed Punch Form, Disciplinary Action Form, and
2 Employee Termination Form), procedures (including, but not limited to, Defendants' Electronic
3 Timekeeping, TimeStar System Setup Document, California Lunch Penalty, and Disciplinary
4 Schedule procedures), and policies (including, but not limited to, Defendants' Pay Practices,
5 TimeSheets, Classifications of Employment, Overtime for Non Exempt Employees, Rest and
6 Meal Periods for Non Exempt Employee, Company Property Inspection, Wireless
7 Communication Device Use Guidelines, Paid Time Off, Time & Attendance, California Specific
8 Policies, and holiday restrictions on overtime pay policies), among other information and
9 documents.³⁹ Class Counsel interviewed Plaintiff and other Class Members to gather facts and
10 to identify potential witnesses.⁴⁰ Class Counsel propounded multiple sets of formal written
11 discovery requests on Defendants, reviewed Defendants' responses, objections, and
12 supplemental responses thereto, noticed the depositions of Defendants' Person Most
13 Knowledgeable designees regarding organizational structure and job duties and reviewed their
14 objections thereto, and worked with Plaintiff to provide responses to multiple sets of discovery
15 requests that were propounded by Defendants.⁴¹ Counsel for the Parties met and conferred on
16 numerous occasions, e.g., to discuss issues relating to the pleadings, motion practice, discovery,
17 and the production of documents and data prior to the mediation.⁴² Class Counsel also drafted
18 Plaintiff's mediation brief and prepared for and attended court proceedings, settlement
19 negotiations, and the mediation, among other tasks.⁴³

20 The Parties engaged in extensive settlement negotiations and participated in a formal,
21 full-day mediation conducted by Marc J. Feder, Esq., a well-respected mediator experienced in
22 mediating complex labor and employment matters.⁴⁴ Prior to and during the mediation and
23 settlement discussions, the Parties exchanged class information and engaged in an intensive
24 discussion regarding their evaluations of the case and various aspects of the case, including but
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26 ³⁹ Aiwazian Decl., ¶ 12.

27 ⁴⁰ *Ibid.*

28 ⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶ 11.

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.⁴⁵ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁶ 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.⁴⁷ After conducting investigations, significant formal and informal discovery, 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.⁴⁸

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.⁴⁹ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁵⁰ 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, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁵¹ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Aiwazian Decl., ¶¶ 11, 16-18.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Id.*, ¶¶ 11-13 & 16-18.

employment class actions, including significant experience in California wage-and-hour litigation.⁵²

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

The Settlement, which provides for a Gross Settlement Amount of five hundred fifty thousand dollars (\$550,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁵³ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁵⁴ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵⁵ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁶

Assuming that the Class Counsel Award, Class Representative Enhancement Payment, LWDA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be two hundred eighty-four thousand five hundred dollars (\$284,500.00).⁵⁷ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Payment will be calculated based on his or her Workweeks.⁵⁸ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

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⁵² Aiwazian Decl., ¶¶ 6-7.

⁵³ *Id.*, ¶¶ 11, 13, 14 & 21.

⁵⁴ *Id.*, ¶¶ 11-13.

⁵⁵ *Id.*, ¶¶ 16-18.

⁵⁶ *Id.*, ¶¶ 11, 13, & 21.

⁵⁷ *Id.*, ¶ 14.

⁵⁸ Settlement Agreement, § 7.1.

1 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
2 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁹
3 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
4 the recommendations into account, particularly if Class Counsel appears to be competent, and
5 has experience with this type of litigation, and investigation have been completed, as is the case
6 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
7 Settlement.

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

9 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
10 conducted significant formal and informal discovery and exchanged a large volume of
11 documents, data, and information prior to mediation.⁶⁰ The documents and information that
12 Class Counsel obtained from Defendants and through other sources allowed Class Counsel to
13 develop valuation models in order to evaluate the potential value and merit of the claims, and
14 perform a complete evaluation of Defendants' defenses thereto.⁶¹ As outlined in the Declaration
15 of Edwin Aiwasian, Class Counsel performed an extensive analysis of each and every claim
16 pursuant to *Kullar* prior to entering into the Settlement.⁶²

17 **VII. CERTIFICATION OF THE CLASS IS APPROPRIATE**

18 For settlement purposes, the requisites for establishing class certification are met, and
19 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶³
20 California Code of Civil Procedure Section 382 "authorizes class actions when the question is
21 one of a common or general interest, of many persons, or when the Parties are numerous, and it
22 is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court*
23 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
24 "both [1] an ascertainable class and [2] a well-defined community of interest among class
25 members." *Id.* at 326.

26 ⁵⁹ Aiwasian Decl., ¶¶ 11, 13, & 21.

27 ⁶⁰ *Id.*, ¶¶ 11-13 & 18.

28 ⁶¹ *Id.*, ¶ 18.

⁶² *Id.*, ¶¶ 11-13 & 16-18.

⁶³ Settlement Agreement, § 3.2.

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 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 Action. 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 fourteen (414) individuals.⁶⁴ 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 all current and former non-exempt hourly employees who are or were co-employed by Defendants 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.

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⁶⁴ Aiwazian Decl., ¶ 9.

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

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

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

16 Here, common issues of fact and law predominate as to each of the claims alleged and
17 asserted in the First Amended Complaint. Based on the documents and information obtained
18 through formal and informal discovery and exchange of information in this case, Plaintiff
19 contends that Class Members were subject to the same or similar job duties and uniform
20 operations and employment practices, policies, and procedures during the time period at issue.⁶⁵
21 Plaintiff’s claims arise from Defendants’ alleged uniform policy and systematic scheme, with
22 respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and
23 minimum wages for all hours worked, failing to provide compliant meal and rest periods and
24 associated premium pay, failing to timely pay wages during employment and upon termination
25 of employment, failing to provide compliant wage statements, failing to keep requisite payroll
26 records, and failing to reimburse necessary business-related expenses.⁶⁶

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28 ⁶⁵ Aiwazian Decl., ¶ 16.

⁶⁶ *Ibid.*

Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁷ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.⁶⁸

Plaintiff maintains that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across their current and former non-exempt hourly employees who are or were co-employed by Defendants within the State of California at any time during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VIII. 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.⁶⁹ 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 Defendants and reviewing Defendants' objections, responses, and supplemental responses thereto.⁷⁰ Class Counsel also noticed the depositions of Defendants' Person Most Knowledgeable designees and reviewed Defendants' objections thereto, and worked with Plaintiff to review and provide responses to the formal discovery requests propounded by Defendants.⁷¹ 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 Defendants' counsel regarding the pleadings, motion practice, discovery, and the production of documents and data prior to

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Aiwazian Decl., ¶¶ 11-13.

⁷⁰ *Ibid.*

⁷¹ *Id.*, ¶ 12.

mediation.⁷² Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷³

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷⁴

The Settlement establishes a Gross Settlement Amount of five hundred fifty thousand dollars (\$550,000.00), 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 Gross Settlement Amount (i.e., \$192,500.00) and up to eighteen thousand dollars (\$18,000.00) for litigation costs and expenses.⁷⁵ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Class Counsel Award, and that the Class Counsel Award will be sought, as provided for by the Settlement.⁷⁶

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

⁷² *Ibid.*

⁷³ Aiwazian Decl., ¶ 11.

⁷⁴ *Id.*, ¶¶ 6-7.

⁷⁵ Settlement Agreement, §§ 1.15 and 2.2.

⁷⁶ *Id.*, Exh. C.

1 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
2 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
3 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
4 settlement fund and the settlement agreement provides that the defendant agrees to paying the
5 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

24 Class Counsel has borne all of the risks and costs of litigation and will not receive any
25 compensation until recovery is obtained.⁷⁷

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28 ⁷⁷ Aiwazian Decl., ¶ 19.

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.

IX. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice describes the Settlement, the deadlines and procedures to mail an objection to the Settlement, mail a request for exclusion from the Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁸

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.29. "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 Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁹ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁸⁰ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment is calculated and the number of Workweeks credited to them.⁸¹

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⁷⁸ Settlement Agreement, Exh. C.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

The proposed Class 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, 8.29; *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 Class Notice.

X. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁸² Any undeliverable Class 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.⁸³ With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make an attempt to locate an address by way of skip-trace and promptly re-mail the returned Class Notice via First-Class U.S. Mail.⁸⁴ The Settlement Administrator will receive and process Requests for Exclusion, Objections, and any Workweeks Disputes.⁸⁵

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments; deduct and transmit applicable state and/or federal taxes in connection with the wages portion of the Gross Allocated Amounts; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Award, Class Representative Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁶ The Settlement Administration Costs are currently estimated not to exceed ten thousand dollars (\$10,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁷

⁸² Settlement Agreement, § 4.2.

⁸³ *Id.*, § 4.4.

⁸⁴ *Ibid.*

⁸⁵ *Id.*, § 1.22, 1.29, 1.34, 4.5, 4.6, and 4.7.

⁸⁶ *Id.*, §2.2, 2.3, 2.5, 7.1, and 7.3; Aiwazian Decl., ¶ 15.

⁸⁷ Settlement Agreement, § 1.3.

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

XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸⁸

Within fifteen (15) calendar days after entry of the Preliminary Approval and Provisional Class Certification Order ("Preliminary Approval Order"), Defendants will provide the Settlement Administrator with each Class Member's full name; mailing address and telephone number last known to Defendants; Social Security number; dates of employment with Defendants as a non-exempt employee during the Class Period; and number of Workweeks worked (collectively, "Class List").⁸⁹

Within thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail, using the last known mailing addresses identified in the Class List or updated through the National Change of Address Database.⁹⁰ Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, Workweeks Dispute, and/or Objection.⁹¹

Defendants will pay the Gross Settlement Amount into a Qualified Settlement Fund to be established by the Settlement Administrator, within five (5) business days after the Effective Date.⁹² Within ten (10) business days of the Effective Date, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Court-approved Class Representative Enhancement Payment to Plaintiff; (3) the Court-approved Class

⁸⁸ Settlement Agreement, §§ 1.21 and 3.3.

⁸⁹ *Id.*, §§ 1.6 and 4.1.

⁹⁰ *Id.*, § 4.2.

⁹¹ *Id.*, § 1.30.

⁹² *Id.*, § 2.1(a).

Counsel Award to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁹³

The Individual Settlement Payment checks will remain negotiable for one hundred eighty (180) calendar days from the date of their issuance.⁹⁴ The Settlement Administrator will mail a reminder postcard to all Settlement Class Members who have not negotiated their Individual Settlement Payment checks within ninety (90) calendar days of the mailing of the Individual Settlement Payment checks.⁹⁵ Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled and the funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Unclaimed Property Fund maintained by the State Controller's Office in the Settlement Class Member's name.⁹⁶

XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE ENHANCEMENT PAYMENT

Plaintiff Avis Davis respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Enhancement Payment in an amount up to seven thousand five hundred dollars (\$7,500.00) to Plaintiff.⁹⁷ 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.*

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⁹³ Settlement Agreement, §§ 1.3, 2.1(c), 2.2, 2.3, 2.5, and 7.3.

⁹⁴ *Id.*, § 7.4.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Id.*, §§ 1.8 and 2.3.

The Class Representative Enhancement 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.⁹⁸ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.⁹⁹ For example, Plaintiff reviewed deposition notices and discovery requests propounded by Defendants, and located documents and provided responses thereto. Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Enhancement Payment for her services on behalf of the Class, in addition to her Individual Settlement Payment.

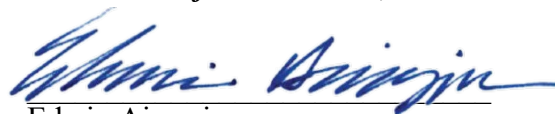
XIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to file the First Amended Complaint; grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwasian and Arby Aiwasian of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Avis Davis as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Class Counsel Award, Class Representative Enhancement Payment, LWDA Payment, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately four (4) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: January 19, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwasian
Attorneys for Plaintiff

⁹⁸ Aiwasian Decl., ¶ 20; Declaration of Avis Davis in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Davis Decl."), ¶ 4.

⁹⁹ Aiwasian Decl., ¶ 20; Davis Decl., ¶¶ 3-6.