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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

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

Plaintiff,

vs.

101 PHOENIX, INC., a California
corporation; and DOES 1 through 100,
inclusive,
Defendants.

Case No.: 20STCV36090

Honorable Carolyn B. Kuhl
Department SSC-12

CLASS ACTION

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

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

Date: February 15, 2022
Time: 11:00 a.m.
Dept: SSC-12

Complaint Filed: September 22, 2020
FAC Filed: January 11, 2021
Trial Date: None Set

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

3 **PLEASE TAKE NOTICE** that on February 15, 2022, at 11:00 a.m., or as soon
4 thereafter as the matter may be heard before the Honorable Carolyn B. Kuhl in Department SSC-
5 12 of the Superior Court of California for the County of Los Angeles, Spring Street Courthouse
6 located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Reveriano Diaz
7 (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- 8 • Granting preliminary approval of the proposed class action settlement described
9 herein and as set forth in the Stipulation and Settlement of Class Action and Private
10 Attorneys General Act Representative Claims (“Settlement,” “Agreement,” or
11 “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin
12 Aiwazian, including, but not limited to, the means of allocation and distribution of
13 funds, including and not limited to, the allocations for penalties under the California
14 Labor Code Private Attorneys General Act of 2004 (“PAGA Settlement Amount”),
15 Attorneys’ Fees and Costs, Class Representative Enhancement Payment, and
16 Settlement Administration Costs;
- 17 • Conditionally certifying the Class for settlement purposes;
- 18 • Preliminarily appointing Plaintiff Reveriano Diaz as Class Representative;
- 19 • Preliminarily appointing Lawyers for Justice, PC as Class Counsel;
- 20 • Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached
21 as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class
22 Action Settlement;
- 23 • Directing the mailing of the Class Notice to the Class Members;
- 24 • Approving the proposed deadlines for the notice and settlement administration
25 process;
- 26 • Approving Simpluris, Inc. as the Settlement Administrator; and

27 ///

- 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 Attorneys' Fees and Costs, Class Representative Enhancement Payment, Settlement Administration Costs, and PAGA Settlement Amount.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwarzian) and the Proposed Class Representative (Reveriano Diaz) 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: December 15, 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 Reveriano Diaz (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Stipulation and Settlement of Class Action and Private Attorneys General Act Representative Claims (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant 101 Phoenix, Inc. (“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 Amount of Two Hundred Sixty-One Thousand One Hundred Eighty Dollars (\$261,180.00).¹

The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) employee’s share of payroll taxes with respect to the wage portion of Individual Settlement Payments³; (3) Class Representative Enhancement Payment to Plaintiff in an amount up to Seven Thousand Five Hundred Dollars (\$7,500.00)⁴; (4) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, or \$91,413.00, and reimbursement of litigation costs and expenses not to exceed Twenty Five Thousand Dollars (\$25,000.00)⁵; (5) Settlement Administration Costs to the Settlement Administrator anticipated to be no greater than Four Thousand Dollars (\$4,000.00)⁶; and (6) the amount of Forty Thousand Dollars (\$40,000.00) allocated to penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), of which seventy five percent (75%), or \$30,000.00, will be distributed to the Labor and Workforce Development Agency (“LWDA Payment”) and twenty five percent (25%), or \$10,000.00, will

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § I.L. The Gross Settlement Amount is subject to increase if the actual number of Workweeks increased by more than ten percent (10%) by October 1, 2021 (i.e., more than 7,180). See *id.*, § X.20.

² *Id.*, § VIII.7(d).

³ *Id.*, § I.B.

⁴ *Id.*, § I.I.

⁵ *Id.*, § I.B.

⁶ *Id.*, § I.D.

be distributed to Participating Class Members as a part of the Net Settlement Amount.⁷

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

All current and former non-exempt hourly employees who were employed by Defendant 101 Phoenix, Inc. in the State of California at any time during the period from September 22, 2016 through October 1, 2021 (“Class” or “Class Members”).⁸

The Class is estimated to consist of approximately ninety-six (96) individuals.⁹

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Participating Class Members”) will receive a share of the Net Settlement Amount calculated and apportioned based on the number of weeks each Class Member was engaged in any productive work activity, during the period from September 22, 2016 through October 1, 2021 (“Class Period”), for which they were paid, not including leaves of absence or paid time off, to be calculated by Defendant by reviewing available payroll and timekeeping data (“Workweeks”).¹⁰ The Net Settlement Amount refers to the portion of the Gross Settlement Amount remaining after deduction of the approved Class Representative Enhancement Payment, Settlement Administration Costs, LWDA Payment, and the Attorneys’ Fees and Costs, which shall be fully distributed to Participating Class Members without any reversion to Defendant.¹¹

The Settlement resolves the Plaintiff’s Released Claims and Class Released Claims of Participating Class Members, against the Released Parties.¹²

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

⁷ Settlement Agreement, § I.W.

⁸ *Id.*, § I.G. “Class Period” is defined as the period of time from September 22, 2016 through October 1, 2021. *See id.*, § I.H.

⁹ *Id.*, I.G.

¹⁰ *Id.*, §§ I.P & VIII.7.

¹¹ *Id.*, I.T.,

¹² *See id.* at § I.Z, for the full scope of the “Plaintiff’s Released Claims,” *id.* at § I.BB for the full scope of the “Class Released Claims,” and *id.* at § I.CC for the definition of “Released Parties.”

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

2 Defendant is a Chinese restaurant. Plaintiff Reveriano Diaz is a former employee of
3 Defendant.

4 On September 22, 2020, Plaintiff filed a Class Action Complaint for Damages in the Los
5 Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
6 (“Action”).

7 On November 2, 2020, Plaintiff notified the California Labor and Workforce
8 Development Agency (“LWDA”) of his PAGA claim by submitting a letter to LWDA for the
9 purpose of complying with Labor Code Section 2699 *et seq.* (and any amendments thereto).
10 Upon the expiration of the 65-day exhaustion period, on January 11, 2021, Plaintiff filed a first
11 amended complaint, entitled Class Action Complaint for Damages & Enforcement Under the
12 Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*, adding a PAGA cause
13 of action (“Operative Complaint”).

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

24 On March 19, 2021, Defendant filed an Answer to Plaintiff’s Operative Complaint.

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

The Parties have actively litigated this matter since the Action was commenced on September 22, 2020. The Parties have conducted significant formal and informal discovery and investigation into the claims. Both sides have propounded multiple sets of formal written discovery requests in various forms. The Parties engaged in extensive discussions about the strengths and weaknesses of Plaintiff's claims and Defendant's defenses thereto, to try to resolve the Action. Ultimately, the Parties reached the proposed Settlement described herein to resolve this Action in its entirety.

On July 20, 2021, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Plaintiff's Released Claims and the Class Released Claims of Participating Class Members with respect to the Released Parties. 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 in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount, or \$91,413.00, and reimbursement of litigation costs and expenses in an amount not to exceed Twenty Five Thousand Dollars (\$25,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) payment in the amount of up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Reveriano Diaz ("Class Representative Enhancement Payment"); (3) the amount that the Parties have agreed to pay to the LWDA in connection with the claims asserted under PAGA, which is \$30,000.00 constituting seventy-five percent (75%) of the amount that the Parties have agreed is allocated to civil penalties under PAGA (i.e., \$30,000.00 out of \$40,000.00) ("LWDA Payment"); and (4) settlement administration costs, which are currently estimated not to exceed Four Thousand Dollars (\$4,000.00) to the Settlement Administrator ("Settlement Administration Costs").¹³

¹³ Settlement Agreement, § I.T.

1 The entire Net Settlement Amount will be distributed to Participating Class Members in
2 accordance with the terms of the Settlement and no portion of the Net Settlement Amount or
3 Gross Settlement Amount will revert to or be retained by Defendant.¹⁴

4 The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement
5 Administrator”) to handle the notice and settlement administration process.

6 The Parties have agreed that the Settlement Administrator will determine each
7 Participating Class Member’s respective share of the Net Settlement Amount (“Individual
8 Settlement Payment”), in accordance with the Settlement Agreement and as follows¹⁵:

9 (a) The total number of Workweeks worked by each Class Member during the Class
10 Period and the aggregate total number of Workweeks worked by all Class
11 Members during the Class Period, will be determined.¹⁶

12 (b) To determine each Class Member’s estimated Individual Settlement Payment, the
13 Settlement Administrator will use the following formula: The Net Settlement
14 Amount will be divided by the aggregate total number of Workweeks, resulting in
15 the “Workweek Value.” Each Class Member’s Individual Settlement Payment
16 will be calculated by multiplying each individual Class Member’s total number of
17 Workweeks by the Workweek Value.¹⁷

18 (c) The entire Net Settlement Amount will be disbursed to Participating Class
19 Members. If there are any valid and timely requests to be excluded from the
20 Settlement (“Requests for Exclusion”), the Settlement Administrator shall
21 recalculate the Workweek Value excluding the Workweeks of those who have
22 excluded themselves and proportionately increase the Individual Settlement
23 Payment for each Participating Class Member accordingly, so that the amount
24 actually distributed to the Settlement Class equals 100% of the Net Settlement
25 Amount.¹⁸

26 ¹⁴ Settlement Agreement, § VII.6.

27 ¹⁵ *Id.*, § VIII.7.(f).

28 ¹⁶ *Id.*, § VII.7.(a).

¹⁷ *Id.*, § VIII.7.(a) & (b).

¹⁸ *Id.*, § VIII.7.(e).

1 For taxation purposes, the Individual Settlement Payment to each Class Member shall
2 be allocated seventy percent (70%) to penalties and interest to be reported on an IRS 1099 Form;
3 and thirty percent (30%) to wages to be reported on a IRS W-2 Form.¹⁹ Each Individual
4 Settlement Payment will be subject to reduction for employee-side taxes, withholdings, and
5 deductions with respect to the wages portion of the Settlement. The employer's portion of any
6 payroll taxes and contributions with respect to the wages portion of the Settlement will be paid
7 by Defendant separately and in addition to the Gross Settlement Amount.²⁰

8 Individual Settlement Payment checks issued by the Settlement Administrator to
9 Participating Class Members will be negotiable for one-hundred eighty (180) calendar days after
10 the initial mailing of the check. After one-hundred eighty (180) calendar days from the date of
11 mailing, the checks shall become null and void, and any monies remaining in the distribution
12 account shall be distributed to the Controller of the State of California to be held pursuant to the
13 Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Class
14 Members whose check is cancelled, until such time that they claim their property. The Parties
15 agree that this disposition results in no "unpaid residue" under California Civil Procedure Code
16 § 384, as the funds representing the Individual Settlement Payment will be forwarded to the
17 Controlled in the name of the Participating Class Members whose Individual Settlement
18 Payment checks are cancelled.²¹

19 Any Class Member wishing to opt-out from the Settlement must submit a timely and
20 valid Request for Exclusion to the Settlement Administrator.²² For the Request for Exclusion
21 to be timely, the Class Member must postmark the Request for Exclusion to the Settlement
22 Administrator within forty-five (45) calendar days from the initial mailing of the Class Notice
23 by the Settlement Administrator, unless the 45th day falls on a Sunday or Federal holiday, in
24 which case the Response Deadline will be extended to the next day on which the U.S. Postal
25 Service is open (the "Response Deadline").²³ For the Request for Exclusion to be valid, it must

26 ¹⁹ Settlement Agreement, §VIII.7.(c).

27 ²⁰ *Id.*, §VIII.7.(d).

28 ²¹ *Id.*, §XI.24.

²² *Id.*, §IX.15.

²³ *Id.*, §I.EE.

1 include the Class Member's full name, signature, address, telephone number and a written
2 statement requesting to be excluded from the Settlement. The Request for Exclusion must be
3 submitted to the Settlement Administrator at the specified address and postmarked on or before
4 the Response Deadline. A Class Member who does not submit a timely and valid Request for
5 Exclusion from the Settlement will be deemed a Participating Class Member and will be bound
6 by all terms of the Settlement Agreement if the Settlement is granted Final Approval by the
7 Court.²⁴

8 Class Members who do not submit a Request for Exclusion may object to the Settlement
9 by filing a written objection with the Settlement Administrator (who shall serve all objections
10 as received on Class Counsel and Defendant's counsel, as well as file all such objections with
11 the Court) within the Response Deadline.²⁵ For the Notice of Objection to be complete and
12 timely, it must contain the objector's full name, signature, address, telephone number and a
13 written statement of all grounds for the objection accompanied by legal support, if any, for such
14 objection.²⁶ The Notice of Objection must be submitted to the Settlement Administrator at the
15 specified address and postmarked on or before the Response Deadline.

16 Class Members will have an opportunity to dispute the Workweeks. To the extent Class
17 Members dispute the number of Workweeks credited to them and used to calculate the amount
18 of their Individual Settlement Payment, Class Members may provide documentation to the
19 Settlement Administrator showing that such information is inaccurate. Defendant's records will
20 be presumed correct, but the Settlement Administrator will evaluate the documentation
21 submitted by the Class Member and will make the final decision as to the Individual Settlement
22 Payment to which the Class Member may be entitled.²⁷ In order to dispute Workweeks, Class
23 Members must submit a written letter to the Settlement Administrator that: (i) makes reference
24 to the Action; (ii) includes the disputing Class Member's full name, signature, address,
25 telephone number; (iii) clearly states that the Class Member disputes the number of Workweeks
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27 ²⁴ Settlement Agreement, §IX.15.

28 ²⁵ *Id.*, §IX.16.

²⁶ *Ibid.*

²⁷ *Id.*, §IX.14.

1 credited to him or her and what he or she contends is the correct number to be credited to him
2 or her; and (iv) includes information and/or attaches documentation demonstrating that the
3 number of Workweeks that he or she contends should be credited to him or her are correct. The
4 Workweek dispute must be submitted to the Settlement Administrator at the specified address
5 and postmarked on or before the Response Deadline.²⁸

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

8 The settlement of a class action requires approval by the Court. *Dunk v. Ford Motor Co.*
9 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
10 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
11 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
12 or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer,*
13 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair
14 and reasonable, whether certification of the class was proper, and whether the attorney fee award
15 was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s
16 decision to approve a class action settlement may be reversed only upon a strong showing of
17 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
18 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

26 Preliminary approval of a settlement does not require a court to make a final
27 determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made
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²⁸ Settlement Agreement, §IX.14.

only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.

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

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

litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

The Parties actively litigated the Action since it was commenced on September 22, 2020. 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 matter for a motion for class certification.²⁹

Prior to reaching the Settlement, Class Counsel conducted significant investigation into the facts of the case and engaged in extensive formal and informal discovery and review and analysis of thousands of pages of documents and data produced by Defendant.³⁰ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: a detailed sampling of Class Members’ time and pay data.³¹ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³² Class Counsel propounded multiple sets of formal written discovery requests onto Defendant and noticed the depositions of Defendant's Person Most Knowledgeable designees.³³ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁴ Class Counsel also drafted pleadings and the mediation brief and prepared for and attended court proceedings, mediation, and settlement negotiations, among other tasks.³⁵

The Parties also engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq.³⁶ Prior to and during the mediation and

²⁹ Aiwazian Decl., ¶¶ 11-13.

³⁰ *Id.*, ¶ 12.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Id.*, ¶ 11.

1 settlement discussions, the Parties exchanged class information and engaged in an intensive
2 discussion regarding their evaluations of the Action and various aspects of the Action, including
3 but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
4 with representative adjudication and class certification, the law relating to off-the-clock theory,
5 meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as
6 the evidence produced and analyzed, and the possibility of appeals, among other things.³⁷
7 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
8 adversarial position.³⁸ Arriving at a settlement that was acceptable to both Parties was not easy.
9 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
10 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
11 certification and prevail at trial.³⁹ After conducting investigations, significant formal and
12 informal discovery, extensive settlement negotiations, and with the aid of the mediator's
13 evaluation, the Parties have agreed that this case is well-suited for settlement given the legal
14 issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that
15 would attend further litigation.⁴⁰

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

25 ³⁷ Aiwazian Decl., ¶ 11.

26 ³⁸ *Ibid.*

27 ³⁹ *Id.*, ¶¶ 16-18.

28 ⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶¶ 11-13 & 16-18.

extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁴

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

The Settlement, which provides for a Gross Settlement Amount of Two Hundred Sixty-One Thousand One Hundred Eighty Dollars (\$261,180.00) represents a fair, adequate, and reasonable resolution of this case.⁴⁵ The Settlement was calculated using the information and data uncovered during the litigation, case investigation, as well as the formal and informal exchange of information.⁴⁶ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this case.⁴⁷ Moreover, considering all of the facts and circumstances of this case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁸

Assuming that the Attorneys' Fees and Costs, 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 One Hundred Three Thousand Two Hundred Sixty-Seven Dollars (\$103,267.00).⁴⁹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members without any reversion to Defendant, in accordance with the Settlement Agreement. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period.⁵⁰ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities*

⁴⁴ Aiwazian Decl., ¶¶ 6-7.

⁴⁵ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁶ *Id.*, ¶¶ 11-13.

⁴⁷ *Id.*, ¶¶ 16-18.

⁴⁸ *Id.*, ¶¶ 11, 13, & 21.

⁴⁹ *Id.*, ¶ 14.

⁵⁰ Settlement Agreement, §VIII.7.

Litigation (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

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

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery, and exchanged thousands of pages of documents, data, and information prior to engaging in mediation.⁵² The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵³ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁴

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

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

⁵¹ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁵² Aiwazian Decl., ¶¶ 11-13 & 18.

⁵³ *Id.*, ¶ 18.

⁵⁴ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁵ Settlement Agreement, ¶ 78.

members.” *Id.*

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

A. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

This action involves a class of approximately ninety-six (96) individuals.⁵⁶ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding all current and former non-exempt hourly employees who were employed by Defendant in the State of California at any time during the Class Period.

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

⁵⁶ Aiwazian Decl., ¶ 9; Settlement Agreement, §I.G.

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

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

13 Here, common issues of fact and law predominate as to each of the claims alleged and
14 asserted in Operative Complaint. Based on the documents and information obtained through
15 formal and informal discovery and exchange of information in this case, Plaintiff contends that
16 Class Members were subject to the same or similar job duties and uniform operations and
17 employment practices, policies, and procedures during the time period at issue.⁵⁷ Plaintiff also
18 asserted that all of the Class Members were regularly limited in their use of independent
19 discretion and judgment as their decisions were often subject to Defendant’s comprehensive
20 policies and guidelines, and that Class Members spent the majority of their time carrying out the
21 same duties as non-exempt employees. Plaintiff’s claims arise from Defendant’s alleged
22 uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter*
23 *alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to
24 provide compliant meal and rest periods and associated premium pay, failing to timely pay
25 wages during employment and upon termination of employment, failing to provide compliant
26 wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary
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⁵⁷ Aiwazian Decl., ¶ 16.

business-related expenses.⁵⁸

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

Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its current and former non-exempt hourly employees who were employed by Defendant in 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

Class Counsel have litigated the Action for over a year and was actively preparing the matter for representative adjudication and class certification.⁶¹ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages 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.⁶² Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶³

⁵⁸ Aiwazian Decl., ¶ 16.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Id.*, ¶¶ 11-13.

⁶² *Id.*, ¶ 12.

⁶³ *Ibid.*

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁴

The Settlement establishes a Gross Settlement Amount of Two Hundred Sixty-One Thousand One Hundred Eighty Dollars (\$261,180.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$91,413.00) and the reimbursement of all out-of-pocket costs and expenses associated with Class Counsel's litigation and settlement of the Action in an amount not to exceed \$25,000.00.⁶⁵ The attorneys' fees provided for by the Settlement is commensurate with (1) the risk that Class Counsel took in bringing and litigating this 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 their time and efforts to this matter. The proposed Class Notice provides the Class Members with information about the amount allocated toward attorneys' fees, and that Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁶⁶

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

⁶⁴ Aiwazian Decl., ¶¶ 6-7.

⁶⁵ Settlement Agreement, §III.

⁶⁶ Settlement Agreement, Exh. 1.

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

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁷

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 Attorneys’ Fees and Costs and at the Final Approval Hearing. Considering

⁶⁷ Aiwazian Decl., ¶ 19.

the work performed and the risks incurred, the Attorneys' Fees and Costs provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. 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 Notice⁶⁸ describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Settlement, Request for Exclusion from the Settlement, or dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁶⁹

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁰ The proposed Class Notice recognizes that the Court has not yet granted final approval of the Settlement.⁷¹ 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.⁷²

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); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 ("The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of

⁶⁸ Settlement Agreement, Exh. 1.

⁶⁹ *Ibid.*

⁷⁰ Settlement Agreement, Exh. 1.

⁷¹ *Ibid.*

⁷² *Ibid.*

the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail a Class Notice to all Class Members via regular First-Class U.S. Mail, using the last known mailing addresses provided by Defendant.⁷³ Prior to mailing, the Settlement Administrator will perform a skip trace search for information to update and correct any known or identifiable address changes.⁷⁴ Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.⁷⁵ If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing.⁷⁶ Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or by request, will have an additional fifteen (15) calendar days to postmark and submit a Request for Exclusion, Notice of Objection to the Settlement, or Workweek dispute.⁷⁷

The Settlement Administrator will provide the following services: (a) Establish and maintain a Qualified Settlement Account; (b) Calculate the Individual Settlement Payment each Class Member is eligible to receive; (c) Print and mail the Class Notice; (d) Establish and maintain a toll-free information telephone support line to assist Class Members who have questions regarding the Class Notice; (e) Conduct additional address searches for mailed Class Notices that are returned as undeliverable; (f) Process Requests for Exclusion, calculate Participating Class Members’ Individual Settlement Payment, field inquiries from Class Members, and administer any Requests for Exclusion; (g) Issuing to Plaintiff, Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts

⁷³ Settlement Agreement, § IX.11.

⁷⁴ *Id.*, § IX.12.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Aiwazian Decl., ¶ 30.; Settlement Agreement, §§ I.FF & IX.12.

1 paid pursuant to the Settlement; (h) Provide declarations and/or other information to the Court
2 as requested by the Parties and/or the Court; and (i) Provide weekly status reports to counsel for
3 the Parties.⁷⁸ The Settlement Administration Costs are currently anticipated to be no greater
4 than Four Thousand Dollars (\$4,000.00), and will be deducted from the Gross Settlement
5 Amount, subject to the Court's approval.⁷⁹

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

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

11 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
12 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
13 entails mailing of the Class Notice, in the form approved by the Court, to all known and
14 reasonably ascertainable Class Members based on Defendant's records.⁸⁰

15 Within fourteen (14) calendar days of the Court's order granting preliminary approval
16 of the Settlement, Defendant will provide to the Settlement Administrator a complete list of all
17 Class Members that Defendant will diligently and in good faith compile from their records (the
18 "Class List").⁸¹ The Class List will be formatted in a readable Microsoft Office Excel
19 spreadsheet and will include each Class Member's full name, most recent mailing address,
20 telephone number, Social Security number, dates of employment (i.e., hire date and termination
21 date, if applicable), the total number of Workweeks worked for each Class Member during the
22 Class Period.⁸²

23 Within fourteen (14) calendar days after receiving the Class List from Defendant, the
24 Settlement Administrator will mail a Class Notice to all Class Members via regular First-Class
25

26 ⁷⁸ Settlement Agreement, §IX.9.(a)-(i).

27 ⁷⁹ *Id.*, § I.D.

28 ⁸⁰ *Id.*, §§ I.F & §IX.11.

⁸¹ *Id.*, § I.F.

⁸² *Ibid.*

U.S. Mail, using the last known mailing addresses identified in the Class List.⁸³ Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.⁸⁴ If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing.⁸⁵ Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or by request, will have an additional fifteen (15) calendar days to postmark and submit a Request for Exclusion, Notice of Objection to the Settlement, or Workweek dispute.⁸⁶

Within ten (10) calendar days from the date on which the order granting final approval of the Settlement Agreement and judgment based thereon (“Final Approval Order and Judgment”) becomes final (the “Effective Date”), Defendant will deposit the Gross Settlement Amount into a Qualified Settlement Account to be established by the Settlement Administrator.⁸⁷

Within fourteen (14) calendar days of the full funding of the Settlement, the Settlement Administrator will issue payments to: (a) Participating Class Members; (b) the LWDA; (c) Plaintiff; and (d) Class Counsel in accordance with the Final Approval Order and Judgment. Thereafter, the Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement.⁸⁸

As stated above, Individual Settlement Payment checks issued by the Settlement Administrator to Participating Class Members will be negotiable for one-hundred eighty (180) calendar days after the initial mailing of the check.⁸⁹ After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining

⁸³ Settlement Agreement, § IX.11.

⁸⁴ *Id.*, § IX.12.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Id.*, § II.1.

⁸⁸ *Id.*, § IX.18.

⁸⁹ *Id.*, § XI.24.

in the distribution account shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Class Members whose check is cancelled, until such time that they claim their property.⁹⁰

Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.⁹¹

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

Plaintiff Reveriano Diaz respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the request for Class Representative Enhancement Payment in an amount up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff as provided for by the Settlement.⁹² It is within the Court’s discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Class Representative Enhancement Payment to Plaintiff is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹³ Plaintiff was available whenever Class Counsel needed him and actively tried to

⁹⁰ Settlement Agreement, § XI.24.

⁹¹ *Id.*, § XI.25.

⁹² *Id.*, § I.1.

⁹³ Aiwazian Decl., ¶ 20; Declaration of Reveriano Diaz In Support Of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Diaz Decl.”), ¶¶ 3-4.

1 obtain and provide information that would benefit the Class.⁹⁴ Accordingly, it is appropriate
2 and just for Plaintiff to receive reasonable Class Representative Enhancement Payment for his
3 services on behalf of the Class, in addition to his Individual Settlement Payment.

4 **XII. CONCLUSION**

5 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
6 approval of the Settlement; certify the Class for settlement purposes; appoint and designate
7 Lawyers for Justice, PC as Class Counsel; appoint and designate Plaintiff Reveriano Diaz as
8 Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily
9 approve the allocations for Attorneys' Fees and Costs, Class Representative Enhancement
10 Payment, PAGA Settlement Amount, and Settlement Administration Costs; approve the
11 proposed Class Notice; direct the Settlement Administrator to undertake the notice and
12 settlement administration process in conformity with the deadlines and procedures provided by
13 the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately
14 one hundred and twenty (120) days; and permit the filing of a memorandum that exceeds the
15 page limit.

16 Dated: December 15, 2021

LAWYERS for JUSTICE, PC

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18 By:


Edwin Aiwanian
Attorneys for Plaintiff

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