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7 individually, and on behalf of all
others similarly situated
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES – BEVERLY HILLS COURTHOUSE**

11 MCKENNA ALYSSE JOHNSON,
individually, and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 vs.

15 RANDY TAYLOR CONSULTING LLC, an
Arizona Limited Liability Company;
16 HARVEST DISPENSARIES,
CULTIVATIONS AND PRODUCTION
17 FACILITIES LLC, an Arizona Limited
Liability Company; and DOES 1 through 100,
18 inclusive,

19 Defendants.
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Case No.: 21SMCV00156

*[Assigned for all purposes to the Hon. Helen
Zukin, Dept. 207]*

COMPLEX CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT;**

PROOF OF SERVICE

Date: November 1, 2022

Time: 9:30 a.m.

Dept: 207

*[Filed concurrently with Declaration of Taras
Kick; Declaration of McKenna Alysse Johnson;
Declaration of Lindsay Kline; and [Proposed]
Order]*

Complaint filed: January 21, 2021

FAC filed: July 1, 2022

Trial date: None set

1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS:**

2 **PLEASE TAKE NOTICE** that on November 1, 2022, at 9:30 a.m. in Department 207 of this
3 Court, or as soon thereafter as the matter as the matter may be heard, Plaintiff McKenna Alysse
4 Johnson (“Plaintiff”) respectfully moves this Court for an order that:

5 1. Finally approves of the proposed class action settlement described herein and as set forth
6 in the parties’ Joint Stipulation of Class Action/PAGA Settlement Agreement and Release
7 (“Settlement” or “Settlement Agreement”), on the grounds that the Settlement is fair, reasonable and
8 adequate for all Class Members;

9 2. Finally certifies and binds the Class for settlement purposes only;

10 3. Finds that the Court-approved Class Notice distributed to the Settlement Class pursuant
11 to the Court’s August 8, 2022 Order granting preliminary approval constituted the best notice
12 practicable under the circumstances;

13 4. Orders Defendant to remit payment of \$485,000.00 to the Settlement Administrator;

14 5. Orders the Settlement Administrator to distribute \$30,000.00 to the California Labor and
15 Workforce Development Agency (“LWDA”) for penalties pursuant to the Labor Code Private
16 Attorneys General Act of 2004 (“PAGA”); and to distribute \$10,000.00 in PAGA penalties to PAGA
17 Members;

18 6. Approves the award of \$10,000.00 to Plaintiff McKenna Alysse Johnson as a Class
19 Representative Service Award for her time and effort in representing the Class and orders the
20 Settlement Administrator to distribute the award to Plaintiff Johnson; and

21 7. Approves Class Counsel’s Attorneys’ Fees Award in the amount of \$161,505 or one-
22 third (33-1/3%) of the total recovery and orders the Settlement Administrator to distribute the fee
23 award to The Kick Law Firm, APC and costs of \$9,481.10 for reimbursement of costs incurred by
24 Class Counsel in connection with the prosecution of this action, and to distribute up to \$4,000.00
25 Settlement Administration Costs to itself, Simpluris, Inc.

26 Plaintiff shall also request that this Court enter a Final Judgment, which includes a provision
27 for this Court’s retention of jurisdiction over the parties to enforce the terms of the judgment.
28

1 This Motion is made pursuant to Rules of Court, Rules 3.764, 3.766, and 3.769, and Code of
2 Civil Procedure section 382, and is based on this Notice, the attached Memorandum of Points and
3 Authorities, the accompanying Declaration of Taras Kick and exhibits thereto, the Declaration of
4 McKenna Alysse Johnson, the Declaration of Lindsay Kline, the complete files and records of this
5 case, and any other evidence or oral argument which may be considered by the court at the time of
6 the hearing.

7
8 Dated: October 5, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

9
10 By: /s/ Taras Kick
Taras Kick
Greg Taylor
Attorneys for Plaintiff
McKenna Alysse Johnson and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY**

3 Plaintiff McKenna Alyse Johnson (“Plaintiff”) filed this class and representative action (“the
4 Action”), individually and on behalf of all others similarly situated, on January 21, 2021, alleging
5 systematic illegal payroll practices and policies of Defendants Randy Taylor Consulting LLC and
6 Harvest Dispensaries, Cultivations and Production Facilities LLC (collectively “Defendants” or
7 “Randy Taylor”) (collectively with Plaintiff, “the Parties”).

8 After engaging in a private mediation with an experienced mediator and continuing to engage
9 in arm’s length negotiations thereafter, the Parties ultimately reached the proposed Settlement. (See,
10 concurrently filed Declaration of Taras Kick [“Kick Declaration”] ¶ 13.) A true and correct copy of
11 the fully executed Joint Stipulation of Class Action/PAGA Settlement Agreement and Release
12 (“Settlement” or “Settlement Agreement”) is attached as **Exhibit 1** to the Kick Declaration.

13 This Court granted preliminary approval to the proposed settlement in an Order dated August
14 8, 2022, and conditionally certified the following Settlement Class: All current and former non-
15 exempt California employees of Defendants from December 20, 2018 through April 30, 2022. (See
16 Order Granting Motion for Preliminary Approval of Class/PAGA Settlement [“Preliminary Approval
17 Order”] ¶ 1.) The Court found preliminarily that the Settlement appears to be “fair, reasonable and
18 adequate, and one that would merit, ultimately, final approval by this Court.” (Preliminary Approval
19 Order, ¶ 5.) The Court also found that the Settlement has been reached as the result of serious and
20 non-collusive, arms-length negotiations by Defendants and Plaintiff. (*Id.*)

21 In its Order, the Court also appointed Simpluris, Inc. (“Simpluris”) as the Settlement
22 Administrator under the terms of the Settlement Agreement (*Id.*, ¶ 8); approved the proposed Notice
23 as to form and content; found that the methods of giving notice prescribed in the Settlement
24 Agreement meet the requirements of due process, are the best notice practicable under the
25 circumstances, and constitute valid, due and sufficient notice to all members of the Class (*Id.*, ¶ 7);
26 and, directed Simpluris to distribute the Notice to the Class Members. (*Id.*, ¶ 8.)

27 Plaintiff can now report that the notice program ordered by this Court has been very
28 successful, and Plaintiff therefore presents the matter for final approval. Specifically, as evidenced

1 by the contemporaneously filed Declaration of Lindsay Kline of the court-appointed claims
2 administrator Simpluris, notice of the proposed Settlement was mailed by Simpluris to 161 unique
3 Class Members, to 158 of whom delivery was successful, meaning a successful deliverable rate of
4 98.1%. (Declaration of Lindsay Kline, Dated August 9, 2022 [“Kline Decl.”], ¶¶ 8-9.)

5 Not a single class member has objected to any aspect of the proposed settlement, and not a
6 single Class Member has elected to opt out of the proposed Settlement being presented to this Court
7 for final approval. (*Id.*, ¶¶ 10-12.) Therefore, if these numbers do not change, if this Court approves
8 the proposed Settlement in full, 161 Settlement Class Members will be paid their portion of the Net
9 Settlement Amount averaging \$1,615.58, including a highest estimated payment of \$6,186.35. (*Id.*, ¶
10 16.) This is in addition to PAGA Members receiving their proportionate share of \$10,000.00 in PAGA
11 penalties, with an estimated average Individual PAGA Payment of \$76.92. (*Id.*, ¶ 17.)

12 In sum, the proposed settlement of this class action is an excellent result for class members,
13 and Class Members’ reaction to it to date has been very favorable. For these reasons, and in keeping
14 with the points and authorities below, Plaintiff respectfully requests this Court enter a Final Approval
15 Order and an accompanying Final Judgment that: (1) finally approves the Settlement; (2) finally
16 certifies and binds the Class to the Settlement; (3) directs payments to Participating Class Members;
17 (4) directs payments to the Settlement Administrator; (5) directs payment to Plaintiff; and (6) directs
18 payments to Class Counsel in accordance with Settlement terms.

19 **II. FACTUAL AND PROCEDURAL BACKGROUND**

20 **A. Factual Background**

21 Plaintiff McKenna Alysse Johnson was employed by Defendants Randy Taylor Consulting,
22 LLC and Harvest Dispensaries, Cultivations and Production Facilities, LLC from September 2019
23 through November 2020. She worked at Defendants’ Harvest of Napa dispensary, which sells
24 proprietary and third-party cannabis products to patients and customers. (Declaration of McKenna
25 Alysse Johnson [“Johnson Decl.”] ¶ 4.) Plaintiff alleged that during her employment she often was
26 precluded the opportunity to take timely, off-duty breaks. In addition, Plaintiff alleged she was
27 required to clock out for all breaks, including rest breaks, which time is deducted from employees’
28 pro rata share of pooled tips, and that there was a non-compliant wage statement. Defendants denied

1 these allegations.

2 **B. Procedural History**

3 On November 16, 2020, Plaintiff submitted her PAGA Notice to the Labor and Workforce
4 Development Agency (“LWDA”) and to Defendants, LWDA Case No. LWDA-CM-812735-20, of
5 her intention to litigate various alleged Labor Code violations. (Kick Decl. ¶ 10.)

6 On January 21, 2021, Plaintiff filed a representative action, entitled *McKenna Johnson v.*
7 *Randy Taylor Consulting, LLC, et al.*, Los Angeles County Superior Court, Case No. 21SMCV00156
8 (the “Action”), on behalf of herself and others similarly situated to recover for for wage and hour
9 violations alleged against Defendant under the Private Attorneys General Act of 2004 (“PAGA”),
10 Lab. Code § 2698, *et seq.*

11 On July 1, 2022, Plaintiff filed a First Amended Complaint (“FAC”) to add additional wage
12 and hour violations alleged against Defendant, including: failure to provide meal periods; failure to
13 provide rest periods; failure to pay overtime wages; failure to pay minimum wages; failure to pay all
14 wages due to discharged or quitting employees; failure to indemnify employees for necessary
15 expenditures incurred in discharge of duties; unlawful wage deductions; failure to provide accurate
16 itemized wage statements; and conversion of tips. Defendant has denied, and continues to deny, any
17 liability and wrongdoing of any kind associated with any of the allegations in the Actions.

18 **C. Investigation and Discovery, Settlement Negotiations, and Preliminary Approval.**

19 Prior to attending private mediation, Plaintiff gathered the facts and data necessary to reach a
20 fair and reasonable settlement. (Kick Decl. ¶¶ 12-13.) In addition to Plaintiff responding to formal
21 requests for production of documents, the Parties engaged in substantial informal discovery, which
22 Class Counsel used to evaluate the value of the claims. Specifically, Defendants produced a redacted
23 employee list with their dates of work as well as additional information regarding position, rates of
24 pay, or change in status. (*Id.*) Also produced was a randomly selected time and pay record sampling
25 (20% employee census method) including (a) time records and/or other documentation that shows
26 clock in and out data entries as well as those for meal breaks and (b) payroll records showing payments
27 to employees, total hours worked, rates of pay, premium payments and any deductions made from
28 pay or made to reimburse expenses. (*Id.*) Finally, company policies and procedures that applied to

1 non-exempt employees regarding their work, hours, pay, breaks and deductions/reimbursements were
2 also produced. (*Id.*)

3 Class Counsel retained an expert specializing in wage and hour damages and PAGA penalties
4 calculation, Berger Consulting, to analyze this data, and the analysis was used as a damages model
5 for the mediation. (*Id.*, ¶ 12.) Class Counsel carefully considered the class claims at issue and its
6 expert's analysis of violation rates for Defendants' sample of time and payroll data.

7 Based on good faith meet and confer efforts, the Parties agreed to proceed to mediation with
8 The Hon. Lisa Hart Cole (Ret.), a well-respected and experienced mediator. (*Id.*, ¶ 13.) On April 5,
9 2022, the Parties attended a full-day, private mediation with Judge Cole. (*Id.*, ¶ 13.) Although the
10 matter did not settle at the mediation, Judge Cole presented a mediator's proposal at the end of the
11 mediation session, which both sides accepted on April 6, 2022. (*Id.*)

12 On June 29, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action
13 Settlement and supporting documents. On August 8, 2022, the Court entered the Order Granting
14 Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Preliminary
15 Approval Order"), preliminarily approving the terms of the Settlement Agreement, the Class Notice,
16 and the proposed administration procedures and associated deadlines. (*Id.*, ¶ 14.)

17 Plaintiff now moves for final approval of the Settlement Agreement.

18 **III. SUMMARY OF PROPOSED SETTLEMENT AGREEMENT**

19 **A. Settlement Amount and Funding after Final Judgment**

20 Defendant has agreed to pay a gross settlement amount of \$485,000.00 to fund all payments
21 pursuant to the Settlement, including: Individual Settlement Payments for wages, penalties, and
22 interest; a proposed Class Representative Service Award, subject to Court approval; Attorneys' Fees
23 and Costs to Class Counsel, as approved by this Court; Settlement Administration Costs; and an
24 allocation for penalties under PAGA (the "PAGA Allocation"). (Kick Decl., ¶ 14, Ex. 1, Agreement,
25 § I(O).) In the Settlement Agreement, this gross amount is called the "Maximum Settlement Amount"
26 (or "MSA"), but it is actually the amount to be paid by Defendant, as no claims are being required,
27 and there is no reversion of any residual funds to Defendant. (*Id.*, §§ III(L), III(J)(3).) Defendant will
28 deposit the MSA with the Settlement Administrator within 30 days of the Effective Date. (*Id.*, §

1 III(G)(1).) Defendant will pay the employer's payroll tax obligations on the wage portion of
2 Individual Settlement Payments ("Employer Taxes") separately and in addition to the MSA. (*Id.*, §
3 III(A).)

4 **B. No-Claim Form Settlement Binding on Parties.**

5 Participating Class Members and PAGA Members will not be required to submit claim forms
6 to receive Individual Settlement Payments or Individual PAGA Payments. (*Id.*, § III(L).)

7 **C. Release.**

8 After Defendant remits the MSA in full to the Settlement Administrator, Participating Class
9 Members shall be deemed to have settled and released the Released Parties of all Released Claims,
10 Plaintiff shall be deemed to have settled and released the Released Parties of Plaintiff's Further
11 Released Claims including by waiver of Civil Code section 1542, and the State of California, by and
12 through Plaintiff and PAGA representative Johnson, shall be deemed to have settled and released the
13 Released Parties of its PAGA Claims. (*Id.*, §§ III(I)(1)-(3).) The Release agreed to by the Parties does
14 not contain any terms outside the scope of the Action. (*Id.*, § III(I)(1).) Only Plaintiff, not any other
15 Class Members, is bound by a further release pursuant to Code of Civil Procedure section 1542. (*Id.*,
16 § III(I)(2).)

17 **D. Net Settlement Amount and Settlement Payments to Participating Class Members.**

18 The Net Settlement Amount ("NSA") shall be calculated by deducting from the Maximum
19 Settlement Amount the following: (i) Class Counsel's attorneys' fees and costs, (ii) the Class
20 Representative Service Award, (iii) the PAGA penalty payment to the LWDA, and (iv) the fees and
21 expenses of the Settlement Administrator. (*Id.*, § I(P).) Under the Settlement, each Participating Class
22 Member will be entitled to payment of a pro rata portion of the Net Settlement Amount (i.e., his or
23 her Settlement Share).

24 The amount to be paid to each Class Member who does not opt out ("Participating Class
25 Member") will be calculated by dividing the NSA by the total number of 14-day pay periods worked
26 during the Class Period by all Class Members, based on Defendants' records ("Pay Period Value").
27 (*Id.*, § III(F)(1).) Settlement Shares and Individual PAGA Settlement Shares will be calculated by
28 multiplying the number of pay periods the Participating Class Member worked by the Pay Period

Value (“Settlement Share”). (*Id.*) Defendants’ payroll records shall be determinative for purposes of calculating the Pay Period Value and all Settlement Shares, absent proof to the contrary. (*Id.*, § III(M)(1).) Each Settlement Share of the Net Settlement Amount will be reported as 20% wages and 80% interest, penalties, and other non-wage damages. (*Id.*, § III(F)(2).)

E. PAGA Payment to the LWDA and PAGA Members.

The PAGA Allocation is \$40,000, with \$30,000, or 75%, of the PAGA Allocation to be made payable to the Labor and Workforce Development Agency (“LWDA”), and the remaining \$10,000, or 25%, to be distributed to PAGA Members based on the number of 14-day pay periods that each worked during the period of November 16, 2019 through July 2, 2022 (“the PAGA Period”). (*Id.*, § III(C).)

The amount to be paid per pay period to eligible Class Members who worked for Defendant during the PAGA Period (“PAGA Members”), will be calculated by the Settlement Administrator by dividing the \$10,000.00 PAGA payment due to PAGA Members by the total number of pay periods for all PAGA Members. Each Individual PAGA Settlement Share will be based on the number of days during the PAGA Period worked by each PAGA Employees by using the hire and termination dates and payroll data in Defendants’ records, dividing by 14 to yield pay periods. (*Id.*, § III(F)(3).) PAGA Members may not opt out of the PAGA Settlement. (*Id.*, § III(L)(5).)

F. Settlement Checks Void at 180 Days and Cy Pres Transfer.

No money will revert to Defendant under any circumstances. (*Id.*, § III(J)(3).) If any Individual Settlement Payment check remains uncashed after one hundred eighty (180) days from the date the check is issued, such check(s) will be cancelled. (*Id.*, § III(G)(3).) Thereafter, the funds represented by any uncashed checks shall be distributed to Public Citizen Foundation, a 501(c)(3) organization, subject to the Court’s approval. (*Id.*) Public Citizen is a 501(c)(3) consumer advocacy organization. The proposed *cy pres* distribution to Public Citizen fulfills the purpose of the underlying causes of action by ensuring the non-reversionary nature of the MSA, which serves to deter the misconduct alleged, and promotes justice for all Californians. *See, e.g., In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 722. (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472.) Neither Class Counsel nor Plaintiff is aware of any financial interest or involvement by any

counsel or party in the governance or work of the proposed *cy pres* recipient. (Johnson Decl., ¶ 10; Kick Decl., ¶ 21.)

IV. THE SETTLEMENT ADMINISTRATION PROCESS

On August 22, 2022, Defense Counsel provided Simpluris with a mailing list (“Class Data List”) containing all Class Members’ contact information and dates of employment. The Class Data List contained data for one hundred and sixty-one (161) Class Members. (Kline Decl., ¶ 5.)

On September 2, 2022, Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) received the Court-approved Notice of Class Action Settlement (“Class Notice”). (*Id.*, ¶ 6.)

Of the 161 Class Members, 130 individuals were identified as PAGA Members, who worked during the PAGA Period from November 16, 2019 through July 2, 2022. (*Id.*, ¶ 17.) The mailing addresses contained in the Class Data List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. (*Id.*, ¶ 7.)

On September 2, 2022, Class Notice was mailed to one hundred and sixty-one (161) Class Members with addresses contained in the Class Data List via First Class mail or updated via the NCOA search. (*Id.*, ¶ 8.) A total of 14 Class Notices were returned as undeliverable and none were returned with forwarding addresses. (*Id.*, ¶ 9.) Simpluris performed an advanced address search (i.e., skip trace) on all of these addresses and was able to locate 11 updated addresses. Simpluris promptly mailed a Class Notice to those updated addresses. Ultimately, there are three (3) Class Notices that remain undeliverable, resulting in a successful delivery rate of 98.1%. (*Id.*)

To date, Simpluris has received no opt-out requests, no pay period disputes, and no objections to the Settlement. (*Id.*, ¶¶ 10-13.)

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

“The trial court has broad discretion to determine whether the settlement is fair. [Citation.]” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581.)¹ The proponent of the settlement has the

¹ “It should consider relevant factors, such as the strength of plaintiffs’ 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 views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement ... Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the

burden to show that it is fair and reasonable. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) “‘Ultimately, the [trial] court’s determination is nothing more than an ‘amalgam of delicate balancing, gross approximations and rough justice.’” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) 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. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.)

In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. (*7-Eleven, supra*, 85 Cal.App.4th at 1146.) The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55.) A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. (*Wershba, supra*, 91 Cal.App.4th at 251.) Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. (*Id.*)

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

The investigation and discovery conducted in this matter have been adequate to give the Plaintiff and Class Counsel a sound understanding of the merits of their position, Defendant’s defenses, and to evaluate the reasonable value range of the claims of the Class. (Kick Decl., ¶¶ 12, 22-30.) In the pre-mediation time period, Defendant produced its company policies and procedures as well as a statistically significant sample of Class Members’ timekeeping and payroll records, using

extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581.)

1 a 20% employee census method. (*Id.*) Class Counsel conducted significant investigation into the
2 claims and estimates by retaining an expert specializing in wage and hour damages and PAGA
3 penalties calculation, Berger Consulting, to analyze this data, and the analysis was used as a damages
4 model for the mediation. (*Id.*, ¶ 12.) Based on the information gathered, including their expert’s
5 calculations, Class Counsel estimated the recovery the Class could potentially obtain, if Plaintiff were
6 to prevail. (*Id.*)

7 On April 5, 2022, the Parties engaged in a full-day mediation session with an experienced
8 mediator, The Hon. Lisa Hart Cole (Ret.). Although the matter did not settle at the mediation, Judge
9 Cole presented a mediator’s proposal at the end of the mediation session, which both sides accepted
10 on April 6, 2022. (Kick Decl., ¶ 13.)

11 **B. The Risks Inherent in Continued Litigation and Individual Settlement Favor Final**
12 **Approval of the Settlement**

13 Had the Action not settled, Defendants would have challenged class certification and liability.
14 Defendants contended that individualized questions of fact predominate over any common issues, and
15 these issues would pose challenges to certification. (Kick Decl., ¶¶ 22-30.) Defendants would have
16 likely argued again at trial, if any, that Plaintiff’s claims were not appropriate for class-wide
17 adjudication. On the other hand, Defendants also faced the risk of the Court certifying a class and
18 allowing a jury to decide Plaintiff’s claims on a class-wide basis. Additionally, preparation for trial
19 would have been expensive for all Parties. (*Id.*)

20 It is preferable to reach an early resolution of a dispute because such resolutions save time and
21 money that would otherwise go to litigation. Were litigation to proceed, there is a strong likelihood
22 it would be protracted and contentious, as Defendants dispute all aspects of Plaintiff’s claims. As a
23 threshold matter, if the Agreement is not approved, Plaintiff will have to prepare and file a motion for
24 class certification, which outcome is uncertain based on Defendants’ contentions, *inter alia*, that class
25 members are subject to an arbitration agreement, that individual questions of fact predominate, and
26 that Plaintiff cannot show the “willfulness” requirement for Section 203 penalties. If the motion were
27 granted, Defendant would likely move for decertification, appeal certification, or move for Summary
28 Judgment. (Kick Decl., ¶¶ 22-30.) Plaintiff believes she would prevail on the question of certification,

1 but the risks to absent Class Members are significant.

2 To succeed on the merits, Plaintiff would have to prove that Defendant actually engaged in
3 the practices and policies alleged and that those practices and policies violated the law. While Class
4 Counsel believe strong evidence exists showing Defendant's liability, there remains a risk that the
5 trier of fact might find otherwise. (*Id.*) If the case were to proceed to trial, additional discovery would
6 be needed and the Parties would thus incur significant additional expenses, which money could go
7 instead to fund a settlement for the benefit of the Class as a whole. (*Id.*) Moreover, discovery disputes
8 would have certainly arisen, which would have cost the Parties additional time and money. (*Id.*)
9 Further, regardless of which Party prevailed, appellate practice would no doubt ensue, further
10 delaying any possible recovery by Class Members. (*Id.*) In other words, both Parties would likely
11 incur substantial attorneys' fees and costs from continued litigation, likely approaching hundreds of
12 thousands of dollars. (*Id.*)

13 In contrast, the Settlement provides real and significant benefits for the Class Members here
14 and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the
15 possibility of recovery.

16 Along with determining a well-defined community of interest, courts may also evaluate "the
17 probability that each class member will come forward ultimately to prove his or her separate claim to
18 a portion of the total recovery and whether the class approach would actually serve to deter and redress
19 alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Here, if absent Class
20 Members wished to seek individual legal redress from Defendants for their wage and hour claims by
21 filing suit on their own, they could have requested to opt out of the Settlement. None did. (Kline
22 Decl., ¶ 11.) Moreover, individual litigation arising from similar operative facts unduly burden the
23 courts and may produce inconsistent results, which may be avoided here. The Settlement fund created
24 will deter and redress the wage-and-hour violations that Defendants are alleged to have committed.

25 It would be grossly inefficient for such a large class of current and former employees to bring
26 individual actions to recover from Defendants for the alleged violations of wage-and-hour laws.
27 Moreover, the potential individual recovery that could be obtained by a Class Member would not be
28 significant enough to provide him or her with the incentive to sue. By granting final approval of the

1 Settlement, the Court can approve a resolution that provides a certain and substantial recovery for
2 Class Members.

3 **C. The Proposed Settlement is Fair and Reasonable.**

4 A trial court has “broad discretion” to determine “whether a settlement [is] fair and
5 reasonable.” (*Wershba, supra*, 91 Cal.App.4th at 234-235; *In re Cellphone Fee Termination Cases*
6 (2010) 186 Cal.App.4th 1380, 1389.) A trial court should consider relevant factors, which may
7 include the strength of a plaintiff’s case, the risk, expense, complexity and likely duration of further
8 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
9 the extent of discovery completed and the stage of the proceedings, the experience and views of
10 counsel, the presence of a governmental participant, and the reaction of the class members to the
11 proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) The court
12 must satisfy itself that the settlement is within the “ballpark” of reasonableness. (*Id.*, at p. 133.)

13 Here, the Settlement, which provides for a gross settlement amount of \$485,000.00, is fair,
14 adequate and reasonable to Class Members. The Settlement was calculated using information and
15 data uncovered through extensive case investigation, expert analysis, informal discovery and the
16 exchange of information in the context of mediation. (Kick Decl., ¶ 12.) The Settlement takes into
17 account the potential risks and rewards inherent in any case and, in particular, in this matter.
18 Moreover, considering all of the facts in the cases, the Settlement represents a considerable recovery.
19 (*Id.*)

20 Plaintiff’s expert calculated Defendants’ estimated exposure for civil penalties under PAGA
21 based on average number of workweeks, current number of employees, and average rates of pay for
22 the period from November 16, 2019, through February 26, 2022. Plaintiff’s expert quantified PAGA
23 penalties for unpaid wages/tips, meal breaks, rest breaks, and non-compliant wage statements under
24 PAGA, Lab. Code § 2699(f)(2), and under current law the enhanced penalties of \$200 arguably would
25 not be applicable as there was not yet a finding the alleged conduct was wrongful. *See Bernstein v.*
26 *Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021). Therefore, the total exposure of Defendant for
27
28

1 100% PAGA penalties was about \$900,000.² (Kick Decl. ¶ 26.)

2 Further, Defendants are confident that any PAGA award made at trial, assuming the case had
3 made it to trial, would be reduced because it will be “unjust, arbitrary and oppressive, or confiscatory”
4 in light of Defendants’ alleged good faith efforts to comply with California law. *See* Cal. Labor Code
5 § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135
6 (2012). Defendants contend that they maintained and implemented compliant wage and hour policies
7 at all relevant times, made employees aware of such policies, and implemented a process to
8 compensate employees if a compliant meal or rest period was not provided. Even Plaintiff’s expert
9 agreed there did not appear to be any overtime violations. (Kick Decl. ¶ 27.)

10 Under these circumstances, Defendants argued that a court likely would reduce any PAGA
11 award by 85% to 95%. Courts have similarly reduced PAGA penalties in this range where they are
12 disproportionate to the underlying violation. *See e.g., Fleming v. Covidien, Inc.*, 2011 U.S. Dist.
13 LEXIS 154590 (C.D. Cal. Aug. 12, 2011) (82% reduction).

14 Finally, regarding the class claims, not only are there only 161 class members, but there is a
15 strong argument by Defendant that the class members, including Plaintiff, were subject to an
16 arbitration agreement, and that this would preclude a class action. (Kick Decl. ¶ 28.) In addition to
17 the possible binding arbitration preclusion, with respect to the additional statutory “waiting time
18 penalties” available for unpaid wages pursuant to Labor Code § 203, Defendants also reasonably
19 contend that individual questions of fact predominate as to the predicate “willfulness.” Defendants’
20 affirmative defense that any underpayment to its employees was the result of a “good faith mistaken
21 belief that wages are not owed” would, if successful, preclude any recovery. *See, e.g., Diaz v. Grill*
22 *Concepts Services, Inc.* (2018) 23 Cal. App. 5th 859, 868. Moreover, Class Counsel believe it would

24
25 ² With regard to the class period exposure, there are 161 class members versus 130 PAGA period members.
26 By extrapolating the number of shifts in the class period based proportionally on the 20,962 shifts that Berger
27 Consulting calculated to be in the PAGA period, it is estimated there are 25,961 shifts in the class period. If
28 an underpayment were assumed for every single shift of .1 hours, this equals 2,596 hours, which at the average
rate of pay of \$18.62 means \$48,338 in underpayment on hourly work. Further, Berger Consulting calculated
10,088 unique rest break violations for the PAGA Period, which if extrapolated to the Class Period equals
approximately 12,509 violations, which at \$18.62 each equals \$232,918. Adding this \$48,338 and \$232,918
to the approximate \$900,000 in PAGA penalties equals \$1,181,256, of which the proposed \$485,000 settlement
is approximately 41%. (Kick Decl. ¶ 26.)

1 be difficult to show that the defense is “unsupported by any evidence, [is] unreasonable, or [is]
2 presented in bad faith,” as required. (Kick Decl. ¶ 29.)

3 Courts have determined that settlements are, of course, reasonable even where plaintiffs
4 recover only a portion of their actual losses. *See, e.g., Behrens v. Wometco Enters., Inc.* (S.D. Fla.
5 1988) 118 F.R.D. 534, 542, *aff’d*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement
6 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or
7 inadequate.”) Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even—a
8 thousandth of a single percent of the potential recovery.” (*Id.*; *see also Martel v. Valderamma* (C.D.
9 Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement of \$75,000 when potential
10 damages were \$1.2 million, or about 6%); *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D.
11 438, 453 (approving settlement with vouchers, not cash, potentially worth a maximum of 3% if all
12 possible claims were actually made, or \$391.5 million aggregate voucher potential where the class
13 could have recovered \$13.05 billion); *City of Detroit v. Grinnell Corp.* (S.D.N.Y. 1972) 356 F. Supp.
14 1380, 1386, *aff’d in part, rev’d on other grounds*, (2d Cir. 1974) 495 F.2d 448 (a recovery of 3.2 %
15 to 3.7 % of the amount sought is “well within the ball park.”)

16 As this Court knows, the inquiry is not whether the settlement agreement is the best one that
17 class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair,
18 adequate, and reasonable.” (*Chavez*, 162 Cal.App.4th at 55.) The Action involves multiple complex
19 legal issues, including Defendant’s liability for alleged Labor Code violations, employee arbitration
20 agreements, and class certification. If the proposed Agreement is not approved, the litigation could
21 go on for several years, which would be extremely expensive and an inefficient use of judicial
22 resources. Continued litigation would also have been expensive, including the expense of expert
23 witnesses and trial consultants, and, potentially hundreds of thousands of additional dollars in attorney
24 fees for both sides. (Kick Decl., ¶¶ 22-30.)

25 Accordingly, Class Counsel believes that \$485,000.00 represents a victory on multiple
26 theories and commensurate with any potential recovery at trial, had Plaintiff certified a class and then
27 prevailed, which outcome is not certain. (*Id.*) Given the risks inherent in continuing to litigate,
28 including 1) the possibility of an unfavorable, or less favorable, result at trial, 2) the likely possibility

1 that post-trial motions may similarly result in a less favorable result than at trial, and 3) the possibility
2 of a less favorable result on appeal, with the certainty that the appeal process would be lengthy, the
3 Agreement is a fair, adequate, and reasonable resolution for the Class as a whole. (Kick Decl. ¶ 30.)

4 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational
5 basis [to warrant approval], particularly if recommended by experienced and competent class
6 counsel.” (*In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127
7 F.Supp.2d 418, 429-30.) The *pro rata* allocation here is a fair and reasonable way to distribute the
8 Net Settlement Amount. In light of the above considerations, Class Counsel believes that the
9 Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.
10 (Kick Decl., ¶ 30.) Although the recommendations of Class Counsel are not conclusive, the Court can
11 properly take the recommendations into account, particularly if Class Counsel appears to be
12 competent, has experience with this type of litigation, and significant discovery and investigation
13 have been completed, as is the case here. (Conte & Newberg, *Newberg on Class Actions* (4th Ed.,
14 2002) § 11.47.) As such, the Court should grant final approval of the Settlement.

15 **VI. REASONABLE SETTLEMENT ADMINISTRATION COSTS TO BE APPROVED**

16 As set forth in the accompanying Declaration of Lindsay Kline from Simpluris, Inc., the total
17 costs incurred and to be incurred by Simpluris for the notice and settlement administration process is
18 \$4,000.00. (Kline Decl., ¶ 18.) The costs incurred and to be incurred include, but are not limited to,
19 expenses for printing and mailing the Notice of Class Action Settlement to Class Members;
20 establishing and maintaining a means to receive and validate opt out requests, objections, or disputes
21 of pay periods submitted by Class Members, including a toll-free telephone number; establishing
22 and maintaining a settlement fund account; processing and mailing payments to the Plaintiff,
23 Class Counsel and Class Members; calculating Employer Taxes and providing appropriate
24 forms and calculations to Defendants; mailing settlement checks, and providing counsel with
25 weekly reports; among other things. (*Id.*, ¶¶ 3-4.) Accordingly, the Court should grant final approval
26 of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in
27 the amount of \$4,000.00.

1 **VII. PLAINTIFF SERVED ADMIRABLY AS CLASS REPRESENTATIVE AND THE**
2 **REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE**

3 Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
4 compensation “for the expense or risk they have incurred in conferring a benefit on other members
5 of the class.” (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th
6 399, 412.) It is within a court’s discretion to award payment to a class representative for their efforts
7 and work. (*Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299 [approving
8 \$50,000 participation award to a single class representative].)

9 The criteria courts may consider in determining whether to make an incentive award
10 include: 1) the risk to the class representative in commencing suit, both financial and
11 otherwise; 2) the notoriety and personal difficulties encountered by the class
12 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. [Citations.] (*Ibid.*)

13 Here, the Court appointed Plaintiff McKenna Alysse Johnson as Class Representative and
14 preliminarily approved a Class Representative Service Award of \$10,000.00. This Class
15 Representative Service Award is fair and appropriate given: (1) the substantial time and effort she
16 expended; (2) the risks she faced and continues to face as a result of bringing the Action; (3) the fact
17 she put Class Members’ interests ahead of her own; and (4) the substantial benefit conferred upon the
18 Class. (Kick Decl., ¶ 20; Johnson Decl., ¶¶ 6-9.) Ms. Johnson spent a substantial amount of time and
19 effort in producing relevant documents and past employment records and providing the facts and
20 evidence necessary to attempt to prove the allegations. (Kick Decl., ¶ 20; Johnson Decl., ¶¶ 6-9.) Ms.
21 Johnson assisted actively in the investigation of the claims alleged, conferred regularly with counsel,
22 aided in preparation for the Parties’ mediation, made herself available the entire day of mediation,
23 and provided all information requested by counsel to benefit the Class. (*Id.*) Accordingly, it is
24 appropriate and just for Plaintiff to receive a Class Representative Service Award for her services on
25 behalf of the Class, in addition to her Individual Settlement Payment as a Class Member.

26 **VIII. PLAINTIFF’S REQUEST FOR ATTORNEYS’ FEES AND COSTS IS REASONABLE**

27 Class Counsel request an award of attorneys’ fees in the amount of \$161,505, which is one-
28 third of the MSA. Although Plaintiff applies pursuant to the percentage-of-the-benefit methodology,

1 the requested fee award is appropriate under both a percentage-of-the-benefit methodology, as well
2 as under a lodestar cross-check. Defendant does not oppose this request.

3 **A. Plaintiff Requests a One-Third Percentage-Based Fee Award**

4 California law allows the award of attorneys' fees in class actions based on the percentage-
5 of-the-fund method. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 486; *Chavez v. Netflix*
6 (2008) 162 Cal.App.4th 43, 63 ["fees based on a percentage of the benefits are in fact appropriate in
7 large class actions when the benefit per class member is relatively low"]; *Wershba v. Apple Computer,*
8 *Inc.* (2001) 91 Cal.App.4th 224, 255; *Consumer Cause v. Mrs. Gooch's Natural Food Markets* (2005)
9 127 Cal.App.4th 387, 397 [the common fund doctrine is "frequently applied in class actions when the
10 efforts of the attorney for the named class representatives produce monetary benefits for the entire
11 class"].) There is substantial authority for determining the fee award based on a percentage of the
12 total value of the recovery. The requested fees fall well within an appropriate range under the
13 common fund approach as it is common to award attorney's fees to class counsel of one-third (33-
14 1/3%) of the settlement amount or higher. (*Chavez, at* 66: "[e]mpirical studies show that, regardless
15 whether the percentage method or the lodestar method is used, fee awards in class actions average
16 around one-third of the recovery.")

17 In *Laffitte*, the Supreme Court of California, in a case involving an objection to a one-third
18 percentage based recovery in a \$19 million employment class action lawsuit, stated: "We hold further
19 that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee ... [and] also
20 retain the discretion to forego a lodestar cross-check and use other means to evaluate the
21 reasonableness of a requested percentage fee." (*Laffitte*, 1 Cal.5th at 506, emphasis added.) Several
22 courts have expressed frustration with the alternative "lodestar" approach, which usually involves
23 wading through voluminous and often indecipherable time records. (See, e.g., *In re Activision*
24 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375.) The percentage approach is
25 preferable to the lodestar because: (1) it provides predictability to class counsel and class members;
26 (2) encourages efficient resolution by providing an incentive for early, yet reasonable, settlement; and
27 (3) reduces the demands on judicial records. (*Id.*, at 1378-79.) In fact, "[a] task force commissioned
28 by the Third Circuit concluded that the lodestar approach... is a cumbersome, enervating, and often

1 surrealistic process of preparing and evaluating fee petitions that now plagues the Bench and Bar and
2 recommended a return to the percentage of the recovery fee formula in cases involving a settlement
3 fund.” (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28, citations and quotation
4 marks omitted.) In *Lealao*, the Court of Appeal considered counsel’s efficiency and skill in bringing
5 the case to an early resolution.

6 [T]he promptness of settlement cannot be used to justify the refusal to apply a
7 multiplier to reflect the size of the class recovery without exacerbating the disincentive
8 to settle promptly inherent in the lodestar methodology. Considering that our Supreme
Court has placed an extraordinarily high value on settlement . . . it would seem counsel
should be ***rewarded, not punished***, for helping to achieve that goal....

9 (*Id.*, at 52, citations omitted, emphasis added.) Newberg notes that achievement of a substantial
10 recovery with modest hours expended should not be penalized but should be rewarded for
11 considerations of time saved by superior services performed. (Newberg on Class Actions, 4th Ed.
12 2002, § 14:6.) Courts should not only consider the size of the class or the amount of the recovery;
13 instead, it should also examine the size of the individual settlement amount of each class member as
14 an indication of counsel’s contribution to the case. (*Lealao*, 82 Cal.App.4th at 53.)

15 Here, not only have there been no objections to any aspect of this proposed settlement, and no
16 requested opt-outs, but Class Counsel obtained an exceptional result – a proposed settlement of
17 \$485,000.00 for a Class of 161 employees.

18 **B. Analysis Pursuant to the Lodestar Methodology.**

19 Regarding the lodestar methodology, a lodestar figure is calculated by multiplying the
20 reasonable hours expended by a reasonable hourly rate. (*Wershba v. Apple Computer* (2001) 91
21 Cal.App.4th 224, 254.) A lodestar amount may be increased by a multiplier. (*Serrano*, 20 Cal.3d at
22 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407.) “Multipliers can range from 2 to 4 or
23 even higher.” (*Wershba*, at 255.) Class Counsel’s lodestar totals \$109,025, after voluntary deductions
24 based on business judgment. (Kick Decl., ¶¶ 6-8.)³ This means a multiplier of only 1.48x is required
25

26 ³ Under California law, this Court may award the attorneys’ fees without the attorneys’ timesheets *Concepcion*
27 *v. Amscan Holdings* (2014) 223 Cal.App.4th 1309, 1324; *Raining Data v. Barrenchea* (2009) 175 Cal.App.4th
28 1363, 1375-76 (“[t]he law is clear, however, that an award of attorney fees may be based on counsel’s
declarations, without production of detailed time records”). The concurrently filed declaration by Taras Kick
of The Kick Law Firm, APC summarizes and categorizes the firm’s time records. Class Counsel can also

1 to get to the requested fee of \$161,505, which is on the low side of the range commonly approved.⁴

2 The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group,*
3 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). “[I]n assessing a reasonable hourly rate, the trial court
4 is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’
5 reputation and status.” (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The
6 trial court may also “find hourly rates reasonable based on evidence of other courts approving similar
7 rates.” (*Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.) The
8 current prevailing billing or “market” rates in the Los Angeles and the Southern California area range
9 from over \$300.00 to over \$1,000.00 per hour.⁵ As can be seen in the Kick Declaration at Paragraph 5,
10 the rate sought here has been approved by numerous courts across the country, including in this Los
11 Angeles County Complex Court. (Kick Decl., ¶ 5.) Further, the rates are well within the range of
12 rates awarded in class action litigation in California. (*In re Toyota Motor* (C.D. Cal. 2013) 2013 U.S.
13 Dist.Lexis 123298 [approving rate of \$950]; *Banas v. Volcano Corp.* (N.D. Cal. 2014) 47 F.Supp.3d
14 957 [approving 2014 rate of \$1,095; *In re High Tech Empl. Antitrust Litig.*, (N.D. Cal. 2015) 2015
15 U.S. Dist. LEXIS 118052 *33 [approving rates of \$975 an hour].)

16 Trial courts consider the following factors when determining whether to apply a multiplier:
17 “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them,
18 (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4)
19 the contingent nature of the fee award.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, citations

20
21 provide time sheets and make them available for *in camera* review by this Honorable Court if the Court so
22 wishes.

23 ⁴ Were this Court for some reason not to accept all of the hours or rates specified in the concurrently filed Kick
24 Declaration, Class Counsel respectfully request a multiplier which will allow the awarded attorneys’ fees to
25 reach the one-third of the \$485,000 recovery, meaning \$161,505.

26 ⁵ See, e.g., *McKnight, et al., v. Uber Technologies, Inc., et al.* 3:14-CV-05615-JST, Docket No. 148, [December
27 8, 2017 attorney fee declaration citing *In re High-Tech Employee Antitrust Litig.* (N.D. Cal. Sept. 2, 2015)
28 2015 WL 5158730, at *9 (finding reasonable “billing rates for partners [that] range from about \$490 to \$975
... billing rates for non-partner attorneys, including senior counsel, counsel, senior associates, associates, and
staff attorneys, [that] range from about \$310 to \$800...”]; *Bickley v. CenturyLink, Inc.* (C.D. Cal. Nov. 29,
2016) No. CV 15-1014-JGB (ASX), 2016 WL 9046911, at *3-4 [finding attorneys’ fee requests of up to \$750
per hour reasonable and in line with the prevailing rate in the District].). In *Bickley*, a billing survey was
submitted from 2013 listing the rates for partners and associates from large law firms, noting that those rates
ranged from a low of \$515/per hour for associates to \$1,220/per hour for partners. (*Id.*, at ¶ 4.) The majority
of the rates for partners were between \$700 and \$1000 per hour. (*Ibid.*)

1 omitted.) In California, “[m]ultipliers can range from two to four or even higher” and are routinely
2 applied. (*Wershba*, 91 Cal.App.4th at 254.)⁶ The goal is “to entice competent counsel to undertake
3 difficult public interest cases.” (*San Bernardino Valley Audubon Soc. v. County of San Bernardino*
4 (1985) 155 Cal.App.3d 738, 755.) Fee awards that are too small “chill the private enforcement
5 essential to the vindication of many rights[.]” (*Lealao*, 82 Cal.App.4th at 53.)

6 If for whatever reason the Court wishes to apply a lower hourly rate such that the fee award
7 were lower than the one-third leading to the \$161,505 sought, Class Counsel respectfully requests an
8 increased multiplier to bring it to that amount. If for whatever reason the Court were inclined to use
9 a percentage lower than one-third, Class Counsel request the lodestar and multiplier be used to arrive
10 at \$161,505. Although there are a number of valid reasons for a multiplier in this case, one is the
11 contingent risk as explained by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal.4th
12 1122, 1133: “A lawyer who both bears the risk of not being paid and provides legal services is not
13 receiving the fair market value of his work if he is paid only for the second of these functions.”

14 Finally, Class Counsel have significant time and resources on this case, which could have been
15 directed towards other cases. (Kick Decl. ¶ 17.)

16 **C. Litigation Costs Reimbursement**

17 Class Counsel seek reimbursement of necessary litigation costs in the amount of \$9,481.10,
18 which is the amount that has been advanced on behalf of the class members to date and is less than
19 the “not to exceed” cost represented in the notice to Class Members as \$15,000. (Kick Decl., ¶ 19).
20 These costs include already incurred costs of filing fees, the fees for expert consultants Berger
21 Consulting who analyzed the electronic data produced by Defendant, legal research, mediation fees,
22 and others. (*Id.*)

23 **IX. THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED**

24 In granting preliminary approval, this Court already determined that the proposed settlement

25
26 ⁶ See also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora*
27 *Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that
28 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125
(awarding a common fund fee award that amounted to a 5.2 multiplier); *Vizcaino v. Microsoft Corp.* (9th Cir.
2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*, 901 F.Supp. at 298-299 (approving
multiplier of 3.6).

1 class fulfills all the criteria of California Code of Civil Procedure section 382, and applicable case
2 law, and is appropriate for certification. None of these factors have changed. It is appropriate now
3 to grant final certification.

4 **X. CONCLUSION**

5 Plaintiff, hence, respectfully requests that this Court enter a Final Approval Order and an
6 accompanying Judgment that: (1) finally approves the Settlement; (2) finally certifies and binds the
7 Class; (3) finds the Class Notice satisfied due process; (4) orders Defendant to remit the Maximum
8 Settlement Amount of \$485,000.00; (5) orders Individual Settlement Payment distribution; (6) orders
9 the \$30,000.00 PAGA Payment to the LWDA; (7) orders the \$10,000.00 PAGA Payment to PAGA
10 Members; (8) orders the \$4,000.00 Settlement Administration Costs distribution; (9) orders the
11 \$10,000.00 Class Representative Service Award to Plaintiff Johnson; (10) orders the \$161,505 Class
12 Counsel Fee Award distribution; and (11) orders the \$9,481.10 Class Counsel Cost Award
13 distribution.

14
15 DATED: October 5, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

17 By: /s/ Taras Kick
18 Taras Kick
19 Greg Taylor
20 Attorneys for Plaintiff
21 McKenna Alysse Johnson and the Class
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I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049.

- **PLAINTIFF’S NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF TARAS KICK IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF MCKENNA ALYSSE JOHNSON IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
- **DECLARATION OF LINDSAY KLINE IN SUPPORT OF PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT.**

Jody Landry
Krystal Weaver
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kweaver@littler.com

Representing:
Defendants Taylor Consulting, LLC and
Harvest Dispensaries, Cultivations and
Production Facilities, LLC

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Alina Muresan
Alina Muresan