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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – BEVERLY HILLS COURTHOUSE

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

14 Plaintiff,

15 vs.

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

23 Defendants.

Case No.: 21SMCV00156

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

CLASS ACTION

**PLAINTIFF'S NOTICE OF UNOPPOSED
MOTION AND UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: July 22, 2022
Time: 8:30 a.m.
Dept: 207

[Filed concurrently with Declaration of Taras Kick
and [Proposed] Order]

Complaint filed: January 21, 2021
Trial date: September 22, 2022

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

3 **PLEASE TAKE NOTICE** that on July 22, 2022, at 8:30 a.m. in Department 207 of the
4 above-captioned court, or as soon thereafter as the matter as the matter may be heard, Plaintiff
5 McKenna Alyse Johnson (“Plaintiff”) respectfully moves this Court for an order to:

- 6 1. Preliminarily approve the proposed Stipulation of Class and Representative Action
7 Settlement and Release (“the Agreement”), attached as **Exhibit 1** to the concurrently filed
8 Declaration of Taras Kick;
- 9 2. Certify the Class for settlement purposes only;
- 10 3. Appoint Plaintiff as the Class Representative;
- 11 4. Appoint Simpluris, Inc. as the Settlement Administrator;
- 12 5. Appoint Taras Kick of The Kick Law Firm, APC as Class Counsel;
- 13 6. Approve the Class Notice, attached as Exhibit A to the Agreement, and the plan for
14 distribution of the Class Notice;
- 15 7. Approve a schedule, including set a Final Approval Hearing; and,
- 16 8. Finalize and enter the concurrently filed [Proposed] Order Granting Preliminary Approval.

17 This Motion is made pursuant to Rules of Court, Rules 3.764, 3.766, and 3.769 and Code of
18 Civil Procedure section 382, which provide the Court with jurisdiction to approve settlements of a
19 putative class actions and allow the Court to preliminarily certify a class for settlement purposes.
20 Good cause exists to grant this Motion because the Settlement is fair, adequate, and reasonable.

21 The motion is based on this Notice, the attached Memorandum of Points and Authorities, the
22 accompanying Declaration of Taras Kick and its exhibits, the complete files and records of this case,
23 and any other evidence or argument which may be considered by the court at the time of the hearing.

24 Dated: June 29, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

26 By Taras Kick

27 Taras Kick
Attorneys for Plaintiff
28 MCKENNA A. JOHNSON

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 Plaintiff McKenna Alysse Johnson (“Plaintiff”) seeks preliminary approval of a wage-and-
4 hour class action and PAGA proposed settlement with Defendants Randy Taylor Consulting LLC and
5 Harvest Dispensaries, Cultivations and Production Facilities LLC (“Defendants”) (collectively with
6 Plaintiff, the “Parties”) in the gross non-reversionary amount of \$485,000.00. The “Settlement Class”
7 has approximately 121 individuals, and is defined as: “All current and former non-exempt California
8 employees of Defendants from December 20, 2018 through April 30, 2022.”¹ (“Settlement
9 Agreement,” “Settlement,” “Agreement,” or “S.A.”, attached as **Exhibit 1** to the concurrently filed
10 Declaration of Taras Kick in support of this Motion (“Kick Decl.”).²

11 The proposed settlement was reached after arm’s length negotiations before the Honorable Lisa
12 Hart Cole (Ret.), and is the result of an accepted mediator’s proposal. It is non-reversionary, and Class
13 members will not have to submit claims in order to receive their settlement share. Instead, Class
14 members will automatically receive a share of the Settlement unless they affirmatively elect to opt out
15 of the Settlement. Subject to Court approval, all participating Class members will receive pro-rata
16 shares of the Net Settlement Amount common fund, which is estimated as follows after allocations:

Gross Settlement Amount	\$485,000.00
Attorneys’ Fees (1/3 of the GSA)	(\$161,505.00)
Litigation Costs (estimated)	(\$15,000.00)
Settlement Administration Costs (maximum)	(\$4,000.00)
Service Payment to Class Representative	(\$10,000.00)
PAGA Payment (75% to LWDA)	(\$30,000.00)
Net Settlement Amount	\$264,495.00

21 The Settlement is a fair result for the Class, including because of the risks in the case. As the
22 Class consists of approximately 121 members, the mean average which each will receive of the net
23 amount, *after fees and costs*, is more than \$2,185. As is further evident from the following analysis,
24 all of the criteria for preliminary approval are met here. Preliminary approval should be granted.

25 _____
26 ¹ Filed concurrently with this Motion for Preliminary Approval is a Joint Stipulation and Proposed
27 Order Granting Leave to File First Amended Complaint which adds the class action allegations.

28 ² The Notice of Class Action Settlement (“Class Notice”) is attached as Exhibit A to the Settlement Agreement.

II. The History of this Case

Plaintiff worked at Defendants' Harvest of Napa dispensary, which sells proprietary and third-party cannabis products to patients and customers, from September 2019 through November 2020. She was initially hired as a part-time non-exempt, hourly-paid part-time Dispensary Associate, working 8-hour shifts, 3-4 days a week. At the end of September 2019, her status was changed to full-time. Plaintiff alleged she often was precluded the opportunity to take timely, off-duty breaks. In addition, Plaintiff alleged she was required to clock out for all breaks, including rest breaks, which time is deducted from employees' pro rata share of pooled tips, and that there was a non-compliant wage statement. Defendants denied these allegations.

On November 16, 2020, Plaintiff submitted her PAGA Notice to the Labor and Workforce Development Agency ("LWDA") and to Defendants, LWDA Case No. LWDA-CM-812735-20, of her intention to litigate various alleged Labor Code violations. (Kick Decl. ¶ 6, Ex. 2.) On December 18, 2020, Defendants submitted notice to the Labor Workforce Development Agency ("LWDA") and to Plaintiff of their attempts to cure the allegedly non-compliant wage statements by issuing revised statements that name the employer as "Randy Taylor Consulting, LLC," rather than "Randy Taylor Consulting, Inc." (Kick Decl. ¶ 7.)

On January 21, 2021, Plaintiff filed the initial complaint on behalf of herself and others similarly situated to recover civil penalties for the Labor Code violations alleged against Defendants pursuant to PAGA ("the Action"). (Kick Decl. ¶ 8.) On June 29, 2022, Plaintiff filed notice of the proposed Settlement Agreement, as well as this Motion and notice of the hearing date for it with the LWDA. (Kick Decl. ¶ 6, Ex. 3.)

A. Summary of the Allegations

1. Failure to Pay Minimum Wages

Labor Code §§ 1194 and 1197 make payments of less than minimum wages fixed by the Industrial Welfare Commission unlawful. Under California law, any time an employee spends subject to an employer's control is compensable. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 583. Specifically, employees must be compensated "for all hours worked" in accordance with California's Minimum Wage Order. See MW-2014 § 2. Plaintiff alleged she was required to clock out for all

1 breaks, including rest breaks. As a result, she alleges she was not paid for the time she was clocked
2 out on rest breaks, nor was she paid minimum wage for the entirety of the time she worked per shift
3 due to her being clocked out when she was on compensated work breaks.

4 **2. Failure to Pay Meal and Rest Period Premium Wages**

5 Labor Code § 512 and Wage Order 7 mandate that “[n]o employer shall employ any person for
6 a work period of more than five (5) hours without a meal period of not less than 30 minutes[.]” *Brinker*,
7 53 Cal.4th at 1033, 1036-37; 8 Cal. Code Regs. § 11070(11)(A). Plaintiff alleged Defendants adopted
8 a policy and practice of altering aggrieved employees’ timesheets to avoid paying meal and rest period
9 premiums in lieu of non-compliant breaks. Defendants denied this practice.

10 **3. Failure to Pay All Overtime Premium Wages**

11 Plaintiff’s expert, after examination of the sample of 20% of Defendant’s pay information,
12 concluded that Defendants did properly pay overtime. Therefore, these claims were not a factor in
13 Plaintiff’s *Kullar* analysis, *infra*. (Kick Decl. ¶ 11.)

14 **4. Failure to Furnish Accurate Itemized Wage Statements**

15 Labor Code § 226(a) requires employers to provide accurate itemized wage statements.
16 Plaintiff alleged Defendants did not provide employees with wage statements showing all minimum
17 and premium wages due or the correct distribution of pooled tips.

18 **5. Failure Timely to Pay All Wages at Termination**

19 Labor Code §§ 201-202 requires employers to provide wages to employees at the time of
20 discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides “if
21 an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the
22 wages of the employee shall continue as a penalty. . .” for up to 30 days. Plaintiff alleged Defendants
23 failed to pay their former employees all minimum and premium wages within mandatory time
24 constraints at the time the employment relationship was terminated. Lab. Code §§ 201-202.

25 **6. Failure to Pay All Gratuities**

26 Labor Code § 351 provides in pertinent part that “[n]o employer or agent shall collect, take, or
27 receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or
28 deduct any amount from wages due an employee on account of a gratuity.” Plaintiff alleged

1 Defendants' policies and practices for gratuities, including its tip pooling policy, did not fully comply
2 with the Labor Code.

3 **7. Necessary Business Expenses and Unlawful Deductions**

4 Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary
5 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
6 duties. Plaintiff alleged that Defendants violated Labor Code § 2802 by failing to reimburse class
7 members for multiple expenses, including but not limited to expenses for uniforms, cell phone usage,
8 and other employment-related expenses. Plaintiff alleged that Defendants did not pay these expenses.

9 **8. PAGA Penalties**

10 The Private Attorneys General Act (PAGA) permits aggrieved employees to recover civil
11 penalties specified by the Labor Code that previously only the Labor Commissioner could recover.
12 Labor Code § 2699(e)(1). Under PAGA, a successful employee acting as a private attorney general
13 keeps 25% of the penalties collected, while 75% goes to the state.

14 **B. Summary of the Investigation and Discovery Conducted, Including the Specific**
15 **Documents Reviewed Prior to Agreeing to Settle the Case**

16 Prior to attending private mediation, Plaintiff gathered the facts and data necessary to reach a
17 fair and reasonable settlement. (Kick Decl. ¶¶ 10-11.) As part of informal discovery, Defendants
18 produced a redacted employee list with their dates of work as well as additional information regarding
19 position, rates of pay, or change in status. (*Id.*) Also produced was a randomly selected time and pay
20 record sampling (20% employee census method) including (a) time records and/or other
21 documentation that shows clock in and out data entries as well as those for meal breaks and (b) payroll
22 records showing payments to employees, total hours worked, rates of pay, premium payments and
23 any deductions made from pay or made to reimburse expenses. (*Id.*) Finally, company policies and
24 procedures that applied to non-exempt employees regarding their work, hours, pay, breaks and
25 deductions/reimbursements were also produced. (*Id.*)

26 Class Counsel retained an expert specializing in wage and hour damages and PAGA penalties
27 calculation, Berger Consulting, to analyze this data, and the analysis was used as a damages model
28 for the mediation. (Kick Decl. ¶ 11.) Class Counsel carefully considered the class claims at issue

1 and its expert's analysis of violation rates for Defendant's sample of time and payroll data.

2 The investigation and discovery conducted in this matter have been adequate to give the
3 Plaintiff and Class counsel a sound understanding of the merits of their position, Defendant's defenses,
4 and to evaluate the reasonable value range of the claims of the Class. (Kick Decl. ¶¶ 10-11). The
5 discovery conducted and the information exchanged through the Parties' negotiations allowed Class
6 counsel to reliably assess the merits of each side's position and to compromise the issues on a fair and
7 equitable basis. (*Id.*) Based on their own independent investigation, discovery, and evaluation, Class
8 counsel has determined that the settlement terms and conditions set forth below are in the best interests
9 of Plaintiff and the members of the Class. (*Id.*)
10

11 **C. Summary of Settlement Negotiations, Including When the Settlement Was
12 Reached, and Whether the Parties Were Assisted by a Mediator**

13 The Settlement was reached after a formal mediation presided over by The Hon. Lisa Hart
14 Cole (Ret.), on April 5, 2022. (Kick Decl. ¶ 12). Negotiations at all times were arm's length. (*Id.*)
15 The parties were not successful in reaching a settlement during the mediation negotiations.
16 However, at the end of the mediation session, Judge Cole presented a mediator's proposal, which
17 both sides accepted on April 6, 2022. (*Id.*) Following the acceptance of the mediator's proposal,
18 the Parties drafted and executed a Memorandum of Understanding, and then a long form agreement.
19 (*Id.*) This is what is being brought to this Court for consideration of approval.

20 **III. TERMS OF THE PROPOSED SETTLEMENT**

21 For purposes of preliminary approval, the Court need only find the settlement's terms fall
22 within the range of possible final approval, based on such key factors as the litigation risks avoided
23 through the settlement and its value as compared to the potential recovery. As demonstrated below,
24 this settlement is the product of thoroughly investigated, arm's length, non-collusive proceedings,
25 arrived at with the assistance of a highly regarded mediator, Judge Lisa Hart Cole (Ret.). Plaintiff
26 submits that the Agreement is fair, adequate, and reasonable in all respects.

27 **A. Monetary Terms of the Proposed Settlement**

28 The Maximum Settlement Amount ("MSA") to be paid by Defendants is \$485,000.00. In

1 reality, calling it a “maximum” amount is a misnomer, since the proposed settlement is non-
2 reversionary, and this is the amount which will be paid by the Defendants, if approved by this Court.
3 No money will revert to Defendants under any circumstances. If any Settlement Share or Individual
4 PAGA Settlement Share remains uncashed one hundred eighty (180) days after the date the check is
5 issued, such check(s) will be voided by the Settlement Administrator. (*Id.* (§ III.I.3).) Thereafter, the
6 unclaimed funds represented by any voided check shall be distributed to the appropriate *cy pres*
7 recipient, subject to the Court’s approval. (*Id.*)

8 **B. Class Definition**

9 As noted above, the Agreement proposed to dispose of Plaintiff’s claims on behalf of a class
10 of current and former non-exempt employees who were employed by Defendants in California from
11 December 20, 2018, through July 2, 2022 (“Class Period”). (Kick Decl. ¶ 12, Ex. 1 (Agreement § I.D,
12 E.) The “Settlement Class” and “Class Members” refer to all such non-exempt employees. (*Id.*)

13 **C. The Release**

14 The agreed-upon Release does not contain any terms outside the scope of the Action. (*Id.* (§
15 III.I.1.) The Release will be deemed effective for absent Class Members as of the date Defendants
16 fully fund the Maximum Settlement Amount. (*Id.* (§§ I.O, III.I.3.) In addition, Plaintiff agrees to
17 release her individual claims pursuant to Civil Code § 1542. (*Id.*, § III.I.2.)

18 **D. Administration and Administration Costs**

19 Class Counsel requested a bid for settlement administration and Simpluris, Inc.’s bid, capped
20 at \$4,000, was accepted. (Kick Decl. ¶ 13, Ex. 4.) Accordingly, the Parties propose that Simpluris,
21 Inc. be appointed as the Settlement Administrator. (*Id.*) The Simpluris proposal is attached as Exhibit
22 4 to the Kick Declaration. The Class Notice administration plan is as follows.

23 Within ten (10) business days of preliminary approval by the Court, Defendants shall provide
24 the Settlement Administrator a list of all Class Members, including, *inter alia*, contact information
25 and dates of employment (“Class Data List”). (*Id.* (§ III.K.1).) Within ten (10) calendar days of
26 receiving the Class Data List, the Settlement Administrator shall perform a National Change of
27 Address (“NCOA”) search, to confirm the validity of and update Class Members’ mailing addresses,
28

1 and mail the Class Notice to Class Members by First-Class Mail (“the Notice”). (*Id.* § III.K.2.) If
2 any Class Notice is returned as non-deliverable within thirty (30) days with a forwarding address, the
3 Class Notice shall be sent by First Class U.S. Mail to the new address within five (5) days. (*Id.* §
4 III.K.3.) If any notice is returned as non-deliverable without a forwarding address, the Settlement
5 Administrator will have five (5) days to attempt to locate a current mailing address for the Settlement
6 Class Member by skip trace and mail the Notice to the updated address identified. (*Id.*)

7 The Class Notice shall be mailed to Class Members substantially in the form attached as
8 Exhibit A to the Agreement, as approved by the Court. (*Id.* ¶ 12, Ex. 1 (Agreement (§ III.J.1).)
9 Pursuant to Rule 3.766(d) of the California Rules of Court, the Class Notice includes the following:
10 1) a brief explanation of the case, including the Parties’ basic contentions or denials; 2) a statement
11 that the court will exclude from the Settlement Class any Class Member who timely requests
12 exclusion; 3) a procedure for requesting exclusion from the Settlement Class; 4) a statement that the
13 judgment, whether favorable or not, will bind all Participating Class Members; and 5) a statement
14 that any Participating Class Member may enter an appearance through counsel. (*Id.*)

15 In addition to providing information about the Agreement, the Class Notice advises Class
16 Members that they may either exclude themselves from, or opt out of, the Settlement Class or object
17 to the terms of the Agreement. (Kick Decl. ¶ 12, Ex. 1 (Agreement § III.L).)

18 **E. PAGA Allocation**

19 When PAGA claims are settled, the trial court must “review and approve” the settlement.
20 Labor Code § 2699(l). In so doing, the court must consider whether the proposed “PAGA settlement
21 is fair and adequate in view of the purposes and policies of the statute.” *O’Connor v. Uber Techs.,*
22 *Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). The proposed LWDA Payment is Forty
23 Thousand Dollars (\$40,000), with Thirty Thousand Dollars (\$30,000), or 75%, to be made payable
24 to the Labor and Workforce Development Agency (“LWDA”), and the remaining Ten Thousand
25 Dollars (\$10,000) or 25%, to be distributed to PAGA Employees based on the number of 14-day
26 pay periods that each worked during the period from November 16, 2019 through July 2, 2022 (“the
27 PAGA Period”). (*Id.* (§§ I.S, III.G).)

1 The \$40,000.00 amount allocated towards PAGA penalties here is fair and reasonable given
2 the nature of the PAGA claims. Courts “repeatedly approve[] PAGA allocations of both smaller
3 amounts and that comprised a smaller portion of the total settlement consideration in the agreements
4 at issue.” (See *Davis v. Cox Commc’ns California, LLC*, No. 16cv989 BAS (BLM), 2017 WL
5 1496407, at *1 (S.D. Cal. Apr. 26, 2017) (preliminarily approving \$4,000 PAGA allocation in
6 \$275,000 settlement); *Moore v. Fitness Int’l, LLC*, No. 12cv1551 LAB (NLS), 2014 WL 12571448,
7 at *5 (S.D. Cal. Jan. 22, 2014) (approving \$2,500 PAGA allocation when attorneys’ fees award alone
8 amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL
9 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA allocation in \$1,200,000
10 settlement); *Singer v. Becton Dickinson & Co.*, No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2
11 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v.*
12 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009)
13 (approving \$11,250 PAGA allocation in \$1,026,000 settlement); *In re Nordstrom Commission Cases*,
14 186 Cal. App. 4th 576, 579 (2010) (“[T]he trial court did not abuse its discretion in approving a
15 settlement which does not allocate any damages to the PAGA claims.”) As discussed above, the
16 availability of PAGA penalties here rely on contested factual issues. Moreover, both the PAGA and
17 misclassification statutes provide the Court with broad discretion to adjust and reduce the amount of
18 penalties awarded, if any. Given these factors, the proposed PAGA allocation is well within a fair and
19 reasonable range for the PAGA penalties.

20 Here, Plaintiff is settling the PAGA claims for a gross payment of \$40,000.00 (“LWDA
21 Payment”), which represents approximately 8% of the Gross Settlement Amount of \$485,000.00. Of
22 that amount, \$30,000 (75%), will be paid to the LWDA as required by statute, and 121 Aggrieved
23 Employees will receive the remaining \$10,000 (25%) on a *pro rata* basis, in addition to their
24 Individual Settlement Payments.

25 **F. Attorneys’ Fees and Costs**

26 Pursuant to Labor Code section 1194 and Code of Civil Procedure section 1021.5, Class
27 Counsel request, and Defendants do not oppose, attorneys’ fees of \$161,505, or one-third (1/3), of the
28

1 MSA, and reimbursement of reasonable litigation costs in an amount not to exceed \$15,000. (Kick
2 Decl. ¶ 16, Ex. 1 (Agreement § III.B).) Considering both the risks and the potential value of the
3 litigation, the request, calculated as a percentage of the common fund, is reasonable, as the amounts
4 are well-within the range of fees generally sought and approved in similar class action cases. *Chavez*,
5 162 Cal.App.4th at 66 (“Empirical studies show that, regardless whether the percentage method or
6 the lodestar method is used fee awards in class actions average around one-third of the recovery.”).

7 “[T]he court may determine the amount of a reasonable fee by choosing an appropriate
8 percentage of the fund created.” *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal. 5th 480, 503. In
9 *Laffitte*, a \$19 million employment class action case involving an objection to a one-third percent-
10 based recovery, the California Supreme Court held that “the trial courts have discretion to conduct a
11 lodestar cross-check on a percentage fee . . . [and] also ***retain the discretion to forego a lodestar***
12 ***cross-check*** and use other means to evaluate the reasonableness of a requested percentage fee.” *Id.* at
13 506 (emphasis added). The percentage approach is preferable to the lodestar calculation approach
14 because it “more accurately reflects the results achieved.” *Id.* at 504 (quoting *Rawlings v. Prudential-*
15 *Bach Properties* (1993) 9 F.3d 513, 516). In fact, “[a] task force commissioned by the Third Circuit
16 concluded that the lodestar approach ... is a cumbersome, enervating, and often surrealistic process of
17 preparing and evaluating fee petitions that now plagues the Bench and Bar and recommended a return
18 to the percentage of the recovery fee formula in cases involving a settlement fund.” *Lealao v.*
19 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 29 (citations and quotation marks omitted).
20 Class Counsel is comprised solely of The Kick Law Firm, APC, and there is thus no question of fee-
21 sharing to consider. (Kick Decl. ¶ 30.) Regardless, should this Court wish to perform a lodestar cross-
22 check, Class Counsel will also provide its lodestar at the time of final approval.

23 **G. Class Representative Service Award**

24 The Settlement Agreement provides for a service award of \$10,000 to the proposed class
25 representative, subject to Court approval, intended, among other things, to recognize the time, effort,
26 and risk that Plaintiff undertook in bringing this case and helping to secure the relief obtained for the
27 members of the Class. *See Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726

(2004) (upholding “service payment” to named plaintiff for his efforts in bringing class case); *Rodriguez v. West Publishing*, 563 F.3d 948, 959 (9th Cir. 2009) (stating that incentive awards are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”). To determine the propriety of a service award, courts consider the actions protecting class interests, the benefit provided to the class based on those actions, and the amount of time and effort expended by the plaintiff. *Staton v. Boeing Co.*, 327 F.3d 938, 976-7 (9th Cir. 1993).

Here, Plaintiff stepped forward with willingness to serve the Class. (Kick Decl. ¶ 17). Without Plaintiff’s willingness to step forward, this action could not have proceeded. The proposed incentive award falls well within the range of reasonable incentive payments awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2988879 (E.D. Cal. June 30, 2011) (approving **\$11,250** service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving **\$20,000** enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of **\$10,000** each from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.*, NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006) (“the court finds Plaintiff’s enhancement payments of **\$15,000** each to be reasonable.”); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007) (finding “requested payment of \$ 25,000 to each of the named plaintiffs is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving “**\$25,000** incentive award for each Class Representative” in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **\$20,000** or more where, as here, the class representative has demonstrated a strong commitment to the class”).

1 In addition, public policy considerations require the award of adequate enhancement awards
2 reflective of the risks and efforts undertaken by class representatives. “Many courts have also noted
3 a fourth rationale for incentive payments: that such payments do precisely what their name hopes they
4 will—incentivize class members to step forward on behalf of the class.” *Newberg on Class Actions* §
5 17:3 (5th ed.) § 17:3 - Rationale for incentive awards. From a public policy standpoint, the failure to
6 approve fair and adequate incentive payments would result in individuals being less willing to come
7 forward on behalf of others similarly situated, thereby depriving significant benefits, such as those
8 obtained here, to the aggrieved.

9 **H. Calculation of Individual Payments**

10 Defendants have identified 121 Class Members who worked a total of 3,490 pay periods
11 during the Class Period. (Agreement § 1.K.) Assuming the Court approves the above amounts, the
12 Net Settlement Amount (“NSA”) to be distributed to Class Members is estimated to be at least Two
13 Hundred Forty Thousand Dollars (\$240,000), with an average value per pay period of approximately
14 Sixty-Eight Dollars and Seventy-Six Cents (\$68.76), *after fees and costs already have been paid*. (*Id.*
15 ¶ 15 (§ I.P, Z); *Id.* ¶ 30.) The amount to be paid to each Class Member who does not opt out
16 (“Participating Class Member”) will be calculated by dividing the NSA by the total number of pay
17 periods worked during the Class Period by all Class Members, based on Defendants’ records (“Pay
18 Period Value”). (*Id.* (§ I.Z.) Settlement Shares and Individual PAGA Settlement Shares will be
19 calculated by multiplying the number of pay periods the Participating Class Member worked by the
20 Pay Period Value (“Settlement Share”). (*Id.* ¶ 16 (§ III.F.1).) Defendants’ payroll records shall be
21 determinative for purposes of calculating the Pay Period Value and all Settlement Shares, absent proof
22 to the contrary. (*Id.* (§ III.M).) As the Class consists of 121 members, each will receive an average of
23 \$2,185.90, a substantial sum. ($\$264,495.00 \div 121 = \$2,185.90$).

24 **I. Tax Treatment**

25 Twenty Percent (20%) of each Settlement Share shall be allocated to wages and interest and
26 reported on an IRS Form W-2. Eighty Percent (80%) shall be allocated to interest, penalties, and other
27 non-wage damages and reported on an IRS Form 1099. (*Id.* (§ III.F.2).) All legally required employer
28

side payroll taxes (e.g., FICA, FUTA, etc.) shall be paid by Defendants from outside, and in addition to, the MSA. (*Id.* (§ III.A).) One Hundred Percent (100%) of each Individual PAGA Settlement Share shall be allocated to penalties and reported on an IRS Form 1099. (*Id.* (§ III.F.3).) Neither Defendants, Class Counsel, nor Defense Counsel are giving any tax advice in connection with the Agreement, or any payments made pursuant to its terms. Participating Class Members will be responsible for characterizing their individual payments correctly for tax purposes and paying taxes due, if any.

J. Cy Pres Distribution

Subject to this Court’s approval, Plaintiff proposed, and Defendants do not object, that the sum of any unclaimed or abandoned funds, which may result from envelopes returned as “undeliverable” or checks for Individual Settlement Payments that remain uncashed after one hundred eighty (180) days from the date of issuance, shall be paid as a *cy pres* remedy to Public Citizen Foundation. (*Id.* ¶ 16, Ex. 1 (Agreement § III.G.3).) 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.) Plaintiff is not aware of any interest or involvement by any counsel or party in the governance or work of the proposed *cy pres* recipient.

K. If Notice Will Be Given in English Only, Explain Why this is Sufficient

The Parties have agreed to give Notice in English as Defendant stated that all class members worked at Defendant’s retail counter and understand English. (Kick Decl. ¶ 19).

L. Provide Information Regarding Any Fee Splitting Agreement and Whether the Client Has Given Written Approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769

This item is not applicable, as no fee splitting agreement is at issue here. (Kick Decl. ¶ 18).

IV. Kullar Analysis

The court acts as a fiduciary of absent class members by inquiring into the fairness of any proposed settlement. *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555; *see also Kullar*

1 *v. Footlocker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008). Accordingly, settlement of a class action
2 requires court approval to prevent fraud, collusion, or unfairness to the class. *Dunk*, 48 Cal.App.4th
3 at 1800-1801. Where it determines that the proposed settlement appears to be fair and adequate for
4 the defined class, the Court will order that notice be sent to class members advising them of a final
5 “Fairness Hearing.” Preliminary approval of a proposed class action settlement does not bind the
6 court to grant final approval; evidence may be presented both in support of and in opposition to the
7 settlement at the subsequent Fairness Hearing, after which the Court will determine finally whether
8 the proposed settlement is “fair, adequate and reasonable.” *7-Eleven Owners for Fair Franchising*
9 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (quoting *Dunk*, 48 Cal.App.4th at 1802).

10 **A. Quantification of the Penalties/Damages**

11 Plaintiff’s expert calculated Defendants’ estimated exposure for civil penalties under PAGA
12 based on average number of workweeks, current number of employees, and average rates of pay for
13 the period from November 16, 2019, through February 26, 2022. Plaintiff’s expert quantified PAGA
14 penalties for unpaid wages/tips, meal breaks, rest breaks, and non-compliant wage statements under
15 PAGA, Lab. Code § 2699(f)(2), using a \$200 per employee per pay period for each subsequent
16 violation, at \$1,756,800. (Kick Decl. ¶ 11.) However, in reality, under current law the enhanced
17 penalties of \$200 arguably would not be applicable as there was not yet a finding the alleged conduct
18 was wrongful. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021). Therefore, the
19 total exposure of Defendant for 100% PAGA penalties was about half of that, or \$900,000.

20 Further, Defendants are confident that Defendants are confident that any PAGA award made
21 at trial, assuming the case had made it to trial, would be reduced because it will be “unjust, arbitrary
22 and oppressive, or confiscatory” in light of Defendants’ good faith efforts to comply with California
23 law. *See* Cal. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203
24 Cal.App.4th 1112, 1135 (2012). Defendants contend that they maintained and implemented
25 compliant wage and hour policies at all relevant times, made employees aware of such policies, and
26 implemented a process to compensate employees if a compliant meal or rest period was not provided.
27 Even Plaintiff’s expert agreed there did not appear to be any overtime violations. (Kick Decl. ¶ 11.)

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

5 Finally, regarding the class claims, not only are there only 121 class members, but there is a
6 strong argument by Defendant that the class members, including Plaintiff, were subject to an
7 arbitration agreement, and that this would preclude a class action. (Kick Decl. ¶ 15.) In addition to
8 the possible binding arbitration preclusion, with respect to the additional statutory “waiting time
9 penalties” available for unpaid wages pursuant to Labor Code § 203, Defendants also reasonably
10 contend that individual questions of fact predominate as to the predicate “willfulness.” Defendants’
11 affirmative defense that any underpayment to its employees was the result of a “good faith mistaken
12 belief that wages are not owed” would, if successful, preclude any recovery. *See, e.g., Diaz v. Grill*
13 *Concepts Services, Inc.* (2018) 23 Cal. App. 5th 859, 868. Moreover, Class Counsel believe it would
14 be difficult to show that the defense is “unsupported by any evidence, [is] unreasonable, or [is]
15 presented in bad faith,” as required. (Kick Decl. ¶ 14.)

16 **B. Summary of the Risks**

17 The Action involves multiple complex legal issues, including with respect to Defendants’
18 liability for alleged Labor Code and UCL violations, contractual interpretation, and class certification.
19 Defendants produced a statistically significant sample of Class Members’ timekeeping and payroll
20 records in advance of the Parties’ mediation with Judge Cole. (Kick Decl. ¶¶ 11, 12.) If the proposed
21 Agreement is not approved, the litigation would be protracted and contentious, as Defendants dispute
22 all claims alleged. Several years of further litigation would be extremely expensive and an inefficient
23 use of limited judicial resources. (*Id.* ¶¶ 14-16.)

24 As a threshold matter, if the Agreement is not approved, Plaintiff will have to prepare and file
25 a motion for class certification, which outcome is uncertain based on Defendants’ contentions, *inter*
26 *alia*, that individual questions of fact predominate, and that Plaintiff cannot show the “willfulness”
27 requirement for Section 203 penalties. (Kick Decl. ¶¶ 14-16.) Further, as stated Defendant argues,
28

1 perhaps convincingly, that Plaintiff and other class members have enforceable binding arbitration
2 clauses, which arguably would preclude a class action. (*Id.*) Further, if the proposed class(es) were
3 certified, Defendants would certainly appeal certification, move for decertification, and/or move for
4 Summary Judgment. Plaintiff believes she had a likelihood to prevail on the question of certification,
5 but the risks of further litigation to absent Class Members are significant. (*Id.*)

6 To succeed on the merits, Plaintiff would have to prove that Defendants actually engaged in
7 the practices and policies alleged and that those practices and policies were unlawful. While Class
8 Counsel believe admissible evidence exists showing Defendants' liability, the risk remains that the
9 trier of fact might not find such evidence persuasive. (*Id.*) In fact, Plaintiff's expert did not identify
10 overtime pay violations. (Kick Decl. ¶ 11.) If the case were to proceed to trial, the Parties then would
11 incur significant additional expenses, which money could go instead to fund a settlement for the
12 benefit of the entire Class. (Kick Decl. ¶14-16.) Moreover, regardless of which Party prevailed,
13 appellate practice would no doubt ensue, further delaying any possible recovery by Class Members
14 and which amount would likely be reduced by the costs to Defendants of the litigation. (*Id.*) In other
15 words, both Parties would likely incur substantial attorneys' fees and costs from continued litigation,
16 money that would be better spend funding a settlement that could be disbursed to Class Members in
17 the foreseeable future.

18 Finally, and not insignificant, the United States Supreme Court's very recent decision
19 in *Viking River Cruises, Inc. v. Moriana* (Case No. 20-1573) interjects an entire additional variable
20 into the analysis for any proposed PAGA settlement.

21 For the foregoing reasons, Class Counsel submit that the Agreement is fair, adequate, and
22 reasonable and should be preliminarily approved.

23 **V. SETTLEMENT CLASS CERTIFICATION**

24 In California, two criteria must be established to certify a class, pursuant to Section 382 of the
25 Code of Civil Procedure: 1) the existence of an ascertainable class; and 2) a well-defined community
26 of interest among the class members. *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.

27 In addition, courts may certify a settlement class in connection with a class action settlement,
28

1 provided the moving party establishes the requirements for class certification, excluding
2 manageability concerns. The court thus “bears the responsibility to ensure that the recovery represents
3 a reasonable compromise, given the magnitude and apparent merit of the claims being released,
4 discounted by the risks and expenses of attempting to establish and collect on those claims by
5 pursuing the litigation.” *Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81, 94-95 (citation
6 omitted); *see also Amchem Prod., Inc. v. Windsor* (1997) 521 U.S. 591, 619-21.

7 **A. Settlement Class Definition**

8 The class is defined as current and former non-exempt employees who worked for Defendants
9 in California for the period from December 20, 2018, through July 2, 2022 (“Class Period”). (Kick
10 Decl. ¶ 16, Ex. 1 (Agreement § I.E).) The “Settlement Class” and “Class Members” refer to all such
11 non-exempt employees. (*Id.* § (I.D).)

12 **B. Numerosity**

13 Defendants have identified 121 Aggrieved Employees and represent that Class Members
14 worked a total of 3,490 pay periods during the Class Period. (Agreement § 1.K.) Courts have found
15 the numerosity requirement satisfied by as few as twenty-eight potential class members. *See, e.g.,*
16 *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (finding twenty-eight members sufficient to
17 maintain class action); *Occidental land, Inc. v. Superior Court* (1976) 18 Cal.3d 355, 364, n.7 (finding
18 more than 150 members sufficient to maintain a class action); 1 Herbert B. Newberg & Alba Conte,
19 Newberg on Class Actions § 3.5 (3d ed. 1992) (“[A]s few as 40 class members should raise a
20 presumption that joinder is impracticable.”). Numerosity is therefore satisfied.

21 **C. Ascertainability**

22 Although certification of a settlement class does not require a showing of ascertainability,
23 Defendants have already identified 121 members of the Settlement Class from its records, *supra*. *See*
24 *Luckey*, 228 Cal. App. 4th at 93-94. This satisfies the ascertainability requirement. *Noel v. Thrifty*
25 *Payless* (2019) 7 Cal.5th 955, 966 (“Class members are ‘ascertainable’ where they may be readily
26 identified without unreasonable expense or time by reference to official records.”).

27 ///

1 **D. Community of Interest**

2 The community of interest requirement has three essential elements: “(1) predominant
3 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
4 class representatives who can adequately represent the class.” *Linder v. Thrifty Oil Co.* (2000) 23
5 Cal.4th 429, 435 (quoting *Richmond*, 29 Cal.3d at 470). As discussed below, each of these criteria is
6 met in this case.

7 **1. Predominance**

8 The “ultimate question” presented by the element of predominance is whether “the issues
9 which may be jointly tried, when compared with those requiring separate adjudication, are so
10 numerous or substantial that the maintenance of a class action would be advantageous to the judicial
11 process and to the litigants.” *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1024. Central to the
12 predominance inquiry is the defendant’s uniform conduct toward the class. *Vasquez v. Superior Court*
13 (1971) 4 Cal.3d 800, 810-11. Accordingly, claims should be certified where they arise from the same
14 nucleus of facts. *Richmond*, 29 Cal.3d at 470; *Linder*, 23 Cal.4th at 435.

15 Here, Plaintiff alleges that, as a result of uniform policies and procedures, Defendants failed
16 to provide Class Members lawful meal and rest periods, failed to issue premium wages as
17 compensation for violations, failed properly to implement its tip pooling scheme, and failed to provide
18 Class Members with accurate wage statements. While Defendants challenge the appropriateness of
19 class certification, the Parties agree that the question whether Plaintiff’s claims can be litigated on a
20 class-wide basis is dispositive of liability. Accordingly, Defendants have stipulated to certification of
21 a Settlement Class as a condition of the Agreement.

22 **2. Typicality**

23 Typicality does not require that the plaintiff’s claims or the applicable defenses be identical
24 with respect to other class members. *See, e.g., Franchise Tax Bd. Limited Liability Corp. Tax Refund*
25 *Cases* (2018) 25 Cal. App. 5th 369, 395 (citation omitted) (“The test of typicality is...whether other
26 class members have been injured by the same course of conduct”); *Sav-On Drug Stores, Inc. v.*
27 *Superior Court* (2004) 34 Cal. 4th 319, 338 (“Plaintiffs’ theory does not depend on class members
28

having identical claims, nor does the law of class certification require such.”) (citation omitted). A plaintiff’s claim is thus typical of the class where “pursuing his own self-interest will advance the interests of the class members accordingly.” *Zhu v. Fujitsu Group 401(k) Plan*, 2004 U.S. Dist. LEXIS 32013, *18, 2004 WL 3252573 (citing *In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litigation* (1988) 122 F.R.D. 251, 256). In this case, the claims alleged on behalf of the Settlement Class, including Plaintiff’s, arise from the same policies and practices and are based on the same legal theories regarding Defendants’ liability. The typicality requirement is thus satisfied.

3. Adequacy

To satisfy the requirement that a class representative and his or her counsel fairly and adequately represent absent class members, the named plaintiff must be represented by counsel experienced and qualified to conduct the pending litigation, and the named plaintiff's interests cannot be antagonistic to those of the class. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. The adequacy requirement is clearly satisfied on both counts.

As a threshold matter, Class Counsel, Taras Kick of The Kick Law Firm, APC has significant experience in complex litigation, including wage and hour class actions, and has been diligent in representing the putative Settlement Class. (Kick Decl. ¶¶ 2-4.) The Agreement itself speaks to Class Counsel’s adequacy, evidencing the arm’s-length negotiating by which Class Counsel secured a favorable settlement that provides substantial benefits to absent Class Members without incurring unnecessary costs or risking the delays and uncertainty of further, protracted litigation. Plaintiff, the proposed class representative, has participated actively and conscientiously at all stages of the litigation, and her interests are wholly aligned with those of absent Class Members. (Kick Decl. ¶ 17.) As discussed above, Plaintiff was subject to the same uniform policies and practices as all other Class Members during her employment with Defendants and suffered the same injuries with respect to underpayment of wages. (*Id.*) The California Supreme Court has held that “only a conflict that goes to the very subject matter of the litigation will defeat a party’s claim of representative status.” *Richmond*, 29 Cal.3d at 470 (reversing an order denying class certification); *accord*, *National Solar Equipment Owners’ Ass’n v. Grumman Corp.* (1991) 235 Cal.App.3d 1273, 1285 (finding no

1 irreconcilable conflict and reversing denial of class certification). In this case, Plaintiff's interests are
2 virtually identical to the interests of the Settlement Class, and there is no indication of any conflict,
3 incidental or otherwise. (*Id.*)

4 **4. Superiority**

5 Resolving the Action on a class basis "eliminates the possibility of repetitious litigation and
6 provides small claimants with a method of obtaining redress for claims which would otherwise be too
7 small to warrant individual litigation." *Richmond*, 29 Cal.3d at 469. Because any recovery on an
8 individual basis for claims common to Class Members would likely be quite small, certification of
9 the Settlement Class in the instant matter serves adequately to deter and redress the misconduct
10 alleged. Resolving Plaintiff's claims on a class-wide basis is thus superior to litigating the claims
11 individually, the expense of which would likely be prohibitive for Class Members and produce
12 inconsistent results.

13 **VI. EXHIBITS TO THE MOTION**

14 **Exhibit 1** to the Declaration of Taras Kick is a copy of the Settlement Agreement. **Exhibit A** to the
15 Settlement Agreement is the Proposed Class Notice. **Exhibit 2** to the Declaration of Taras Kick is a
16 copy of the Notice Letter to the LWDA. **Exhibit 3** to the Declaration of Taras Kick is copy of the
17 email confirming submission of the settlement agreement and this Motion to the LWDA. **Exhibit 4**
18 to the Declaration of Taras Kick is copy of the Simpluris administration bid.

19 **VII. PROPOSED SCHEDULE FOR NOTICE AND SETTLEMENT**

20 The proposed schedule for implementation of the Agreement and its terms is as follows:

- 21 • Last Day for Defendant to provide the Class Data List to Settlement Administrator –
 - 22 ○ Within ten (10) business days after entry of the Order Granting Preliminary
 - 23 Approval;
 - 24 • Last Day for Settlement Administrator to send Notice by First-Class Mail -
 - 25 ○ Within ten (10) calendar days of receiving the Class Data List;
 - 26 • Last Day for Class Members to opt out in writing –
- 27
28

- Thirty (30) calendar days after the date that the Settlement Administrator first mails the Class Notice (“Opt-Out Response Deadline”);
- Last Day for Plaintiff to file Motion for Final Approval / Fee Motion –
 - Five Days After the Opt-Out Response Deadline;
- Last Day for Class Members to object in writing –
 - Fifty (50) calendar days after the date that the Settlement Administrator first mails the Class Notice (“Objection Response Deadline”);
- Last Day for Parties to Respond to Objections (if any)
 - Five (5) court days before hearing on Motion For Final Approval;
- Motion for Final Approval / Fee Motion Hearing Date –
 - 16 court days after last day to object in writing.
- Last Day to file Final Accounting
 - 240 days after entry of Order Granting Final Approval.

VIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully submits that the Settlement is fair, adequate, and reasonable and requests that the Court enter an Order preliminarily approving the Agreement, conditionally certifying the Settlement Class, appointing Simpluris as the administrator, appointing Plaintiff as Class Representative, appointing Plaintiff’s counsel as Class Counsel, approving the Notice of Proposed Class and Representative Action Settlement, and setting the Final Approval Hearing.

Dated: June 29, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

By: Taras Kick
Taras Kick
Timothy Burke
Attorneys for Plaintiff
MCKENNA ALYSSE JOHNSON

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I, the undersigned, certify and declare that I am over the age of 18 years, employed in the
4 County of Los Angeles, State of California, and not a party to the above-entitled cause. My
5 business address is The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, CA 90049.

6 On **June 29, 2022**, I served the document(s) described as:

- 7 **1. PLAINTIFF'S NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR**
8 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND**
9 **2. DECLARATION OF TARAS KICK IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION**
10 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

11 on the interested parties in this action by sending a true copy thereof to interested parties
12 as follows:

13 Jody Landry
14 Krystal Weaver
15 **LITTLER MENDELSON P.C.**
16 501 W. Broadway, Suite 900,
17 San Diego, CA 92101-3577
18 jlandry@littler.com
19 kweaver@littler.com

20 *Attorneys for Defendants*

21 [✓] **BY E-MAIL:** Based on an agreement of the parties to accept electronic service by e-mail or a
22 request by the party or parties who have appeared and are represented by counsel identified above
23 for e-service, I caused the documents to be sent to the person(s) at the e-mail address(es) listed
24 above in keeping with California Code of Civil Procedure § 1010.6. The transmission was either
25 reported as being sent, complete and without error, or I did not receive, within a reasonable time
26 after the transmission, any electronic message or other indication that the transmission was
27 unsuccessful, to the addressees as stated above.

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

Executed on June 29, 2022, in Los Angeles, California.

/s/ Alina Muresan

Alina Muresan