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

OSTON JEMBA MADENGUE, HECTOR REYES, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

v.

GOORIN BROS., INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 19STCV23129

Honorable Maren E. Nelson
Department SSC17

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Proposed Class Counsel (Edwin Aiwazian); Declarations of Proposed Class Representatives (Oston Jemba Madengue and Hector Reyes); and [Proposed] Order filed concurrently herewith]

Date: August 19, 2021
Time: 9:30 a.m.
Department: SSC17

Complaint Filed: July 3, 2019
FAC Filed: October 24, 2019
SAC Filed: June 22, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on August 19, 2021, at 9:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Maren E. Nelson in Department SSC17 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Oston Jemba Madengue and Hector Reyes (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the First Amended Stipulation of Class and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Oston Jemba Madengue and Hector Reyes as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and Proposed Class Representatives (Oston Jemba Madengue and Hector Reyes) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: July 28, 2021

LAWYERS for JUSTICE, PC

By:


Edwin Aiwazian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Oston Jemba Madengue and Hector Reyes (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the First Amended Stipulation of Class and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Goorin Bros., Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this Action for a Gross Settlement Amount of five hundred sixty-one thousand four hundred sixty-five dollars (\$561,465.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payments of seven thousand dollars (\$7,000.00) each to Plaintiffs (\$14,000.00 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$196,512.75, and reimbursement of litigation costs and expenses not to exceed twenty-five thousand dollars (\$25,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in an amount that is currently estimated not to exceed ten thousand dollars (\$10,000.00);⁵ and (5) the amount of forty thousand dollars (\$40,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Amount”), of which 75% (i.e., \$30,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA Payment”) and 25% (i.e., \$10,000.00) will be distributed to PAGA Employees (“PAGA Employee Amount”).⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 7.p.

² *Ibid.*

³ *Id.*, ¶ 12.

⁴ *Id.*, ¶ 11.

⁵ *Id.*, ¶ 13.

⁶ *Id.*, ¶ 14.

1 All current and former non-exempt employees employed by Defendant at any time
2 during the during the period from July 3, 2015 through February 1, 2021 (“Class”
or “Class Members”).⁷

3 The Class is estimated to consist of approximately two hundred sixty-three (263)
4 individuals.⁸

5 Class Members who do not submit a timely and valid request to be excluded from the
6 Class Settlement (“Settlement Class Members”) will receive a *pro rata* share of the Net
7 Settlement Amount (“Individual Settlement Share”) based upon the number of weeks each
8 Settlement Class Member worked for Defendant as an hourly-paid or non-exempt employee
9 during the the period from July 3, 2015 through February 1, 2021 (“Workweeks”).⁹ Plaintiffs
10 and all Class Members employed by Defendant at any time during the period from July 3, 2018
11 through February 1, 2021¹⁰ (“PAGA Employees”) will receive a *pro rata* share of the PAGA
12 Employee Amount (“Individual PAGA Payment”) based on the number of Workweeks each
13 PAGA Employee worked for Defendant during the PAGA Period (“PAGA Workweeks”).¹¹

14 With respect to the PAGA Settlement¹², the Settlement resolves the Released Claims
15 arising under PAGA of Plaintiffs and the PAGA Employees, and with respect to the Class
16 Settlement¹³, the Settlement resolves the Released Claims not arising under PAGA of Plaintiffs
17 and the Settlement Class Members, against the Released Parties.¹⁴

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

22
23 ⁷ Settlement Agreement, ¶ 7.d. The period of time from July 3, 2015 through February 1, 2021 is defined as the
“Class Period.” *See id.*, ¶ 7.f.

24 ⁸ Aiwazian Decl., ¶ 9.

25 ⁹ Settlement Agreement, ¶¶ 7.s, 7.ll, & 7.mm.

26 ¹⁰ The time period from July 3, 2018 through February 1, 2021 is defined as the “PAGA Period.” *Id.*, ¶ 7.aa.

27 ¹¹ *Id.*, ¶¶ 7.r, 7.y, & 7.cc.

28 ¹² “PAGA Settlement” means the settlement and release of the Released Claims that do arise under the Private
Attorneys General Act, California Labor Code section 2698, *et seq.* *See id.*, ¶ 7.bb.

¹³ “Class Settlement” means settlement and release of the Released Claims that do not arise under the Private
Attorneys General Act, California Labor Code section 2698, *et seq.* *Id.*, ¶ 7.h.

¹⁴ *See id.* at ¶ 7.ff, for the full scope of the “Released Claims,” and *id.* at ¶ 7.gg, for the definition of the “Released
Parties.”

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant manufactures wool felt, fur felt, and straw hats for the discerning hat wearer; is currently headquartered in San Francisco, California, and operates locations in Los Angeles, San Diego, and San Francisco within California. Plaintiffs Oston Jemba Madengue and Hector Reyes are former employees of Defendant.

On July 3, 2019, Plaintiffs filed a Class Action Complaint for Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On October 24, 2019, Plaintiffs filed a First Amended Class Action Complaint for Damages (“First Amended Complaint”) and, on November 22, 2019, Defendant filed its Answer to Plaintiffs’ First Amended Complaint.

On January 29, 2021, Plaintiffs each provided written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code that Defendant violated.

On June 22, 2021, pursuant to stipulation by the Parties and the Court’s order granting leave thereon, Plaintiffs filed their Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Second Amended Complaint” or “Operative Complaint”), adding a cause of action under the Private Attorneys General Act of 2004, California Labor Code Section 2698, *et seq.* (“PAGA”).

Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties

(including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the Action since it was commenced on July 3, 2019. On December 3, 2020, the Parties participated in a formal, full-day mediation conducted by Mark S. Rudy, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Claims that do not arise under PAGA that Plaintiffs and each of the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Member) may have or had during the Class Period, as well as the Released Claims that do arise under PAGA that Plaintiffs and each of the PAGA Employees may have had during the PAGA Period, with respect to the Released Parties.¹⁵ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed one hundred ninety-six thousand five hundred twelve dollars and seventy-five cents (\$196,512.75) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed twenty-five thousand dollars (\$25,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed ten thousand dollars (\$10,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment in the amount of up to seven thousand dollars (\$7,000.00) each to Plaintiffs Oston Jemba Madengue and Hector Reyes (for a combined total of \$14,000.00) ("Enhancement Payments"); and (4) the amount of forty

¹⁵ Settlement Agreement, ¶¶ 32 & 33.

thousand dollars (\$40,000.00) that the Parties have agreed to pay to settle all claims under PAGA (“PAGA Amount”).¹⁶ The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will calculate each Individual Settlement Share, in accordance with the Settlement Agreement and as follows:

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweeks Value," and multiply each Class Member's individual Workweeks by the Estimated Workweeks Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.¹⁷
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Member to yield the "Final Workweeks Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweeks Value to yield his or her Individual Settlement Share.¹⁸

Furthermore, the Settlement Administrator will calculate each Individual PAGA Payment, in accordance with the Settlement Agreement and as follows:

- c. The Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the total number of PAGA Workweeks of all PAGA Employees to yield the “PAGA Workweek Value,” and multiply each PAGA Employee's individual PAGA Workweeks by the PAGA Workweek Value to yield his or her Individual PAGA Payment.¹⁹

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: one-third (1/3) wages, which will be reported on an IRS Form W-2; and one-third (1/3) penalties and one-third (1/3) interest, which will be reported on an IRS Form 1099.²⁰ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement Payment”).²¹ Defendant will pay the employer's share of taxes and contributions on the wages portion of Individual Settlement Shares separately and in addition to the Gross Settlement

¹⁶ Settlement Agreement, ¶¶ 7.a, 7.m, 7.p, 7.x, & 7.kk; see also, ¶¶ 10-14.

¹⁷ *Id.*, ¶ 15.a.

¹⁸ *Id.*, ¶ 15.b.

¹⁹ *Id.*, ¶ 16.

²⁰ *Id.*, ¶ 27.

²¹ *Ibid.*

Amount.²² Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, interest, and non-wage damages.²³

When issuing payments, the Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA Payment into one check if the intended recipient for both payments is one individual.²⁴ Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.²⁵ All funds associated with such cancelled checks will be transmitted to the Legal Aid Foundation of Los Angeles.²⁶

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit to the Settlement Administrator a timely letter indicating a request to be excluded from the Class Settlement (“Request for Exclusion”).²⁷ The Request for Exclusion must: (a) contain the case name and number of the Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four digits of the Social Security number of the Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be included in the Class Settlement; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the date which is sixty (60) calendar days from the initial mailing of the Class Notice to Class Members (“Response Deadline”), or, in the case of a re-mailed Class Notice, the Response Deadline for that Class Member shall be extended by fifteen (15) calendar days.²⁸ Class Members who submit a valid and timely Request for Exclusion will not be a Settlement Class Member, will not be bound by the Class Settlement, will not receive an Individual Settlement Payment, and will not have any right to object, appeal, or comment on the Class Settlement.²⁹ Notwithstanding the above, all PAGA Employees will be bound to the PAGA Settlement and will receive their

²² *Ibid.*

²³ *Ibid.*

²⁴ Settlement Agreement, ¶ 21.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Id.*, ¶ 7.hh.

²⁸ *Id.*, ¶¶ 7.hh & 7.ii

²⁹ *Id.*, ¶ 22.

Individual PAGA Payment irrespective of whether they submit a Request for Exclusion.³⁰

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) have standing to object to the Class Settlement.³¹ Settlement Class Members who wish to object to the Class Settlement must submit a timely and complete written objection to the Class Settlement (“Notice of Objection”) to the Settlement Administrator, by mail, on or before the Response Deadline or appear at the Final Approval Hearing and offer an oral objection.³² The Notice of Objection must include: (a) the case name and number of the Action; (b) the objector’s full name, signature, address, and telephone number, and the last four digits of his or her Social Security number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based.³³

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by submitting a timely letter (“Workweeks Dispute”) to the Settlement Administrator on or before the Response Deadline.³⁴ The Workweek Dispute must: (a) contain the case name and number of the Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member; (d) clearly state that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (e) include information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct; and (f) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³⁵

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³⁰ *Ibid.*

³¹ Settlement Agreement, ¶ 24.

³² *Id.*, ¶¶ 7.v & 24.

³³ *Id.*, ¶ 7.v.

³⁴ *Id.*, ¶ 7.nn.

³⁵ *Ibid.*

1 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
2 **SETTLEMENTS**

3 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
4 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
5 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
6 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
7 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*
8 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair
9 and reasonable, whether certification of the class was proper, and whether the attorney fee award
10 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
11 decision to approve a class action settlement may be reversed only upon a strong showing of
12 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
13 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

26 In considering a potential class settlement, a court need not reach any ultimate
27 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
28 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495

F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

3 The Parties actively litigated the Action since it was commenced on July 3, 2019. Both
4 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
5 claims, and Class Counsel was actively preparing the case for class certification and trial.³⁶

6 Prior to engaging in mediation, Class Counsel conducted significant investigation and
7 formal and informal discovery regarding the facts of the case, including and not limited to, the
8 exchange, review, and analysis of a large volume of documents and data produced by
9 Defendant.³⁷ The volume of data and documents that Class Counsel reviewed and analyzed
10 included and was not limited to: Plaintiffs’ employment records and earning statements, a
11 detailed sampling of Class Members’ Timecard Data and Payroll Data, company policy waivers
12 (including, but not limited to, Meal Period Waivers for Employee Working Six or Fewer Hours
13 and Second Meal Period Waivers for Employees Working More Than 10 Hours), internal
14 memoranda, job descriptions, Defendant’s operations and employment practices (including, but
15 not limited to, Employee Manual Time Sheets and Merchant Performance Reviews), forms
16 (including, but not limited to, Defendant’s New Hire Forms and Corrective Action Forms),
17 various Goorin Bros. Policies & Procedures (including, but not limited to, Defendant’s Dress
18 Code policy, Time and Attendance policy, On Call Shifts policy, Timekeeping policy, Meal
19 Breaks policy, and Rest Breaks policy, as well as procedures for Clocking In/Out and to
20 Manually Amend Hours), among other information and documents.³⁸ Class Counsel
21 interviewed Plaintiffs to gather facts and to identify potential witnesses.³⁹ Class Counsel
22 propounded multiple sets of formal written discovery requests on Defendant and noticed the
23 depositions of Defendant’s Person Most Knowledgeable designees regarding organizational
24 structure and job duties.⁴⁰ Counsel for the Parties also met and conferred on numerous
25 occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of

26 ³⁶ Aiwazian Decl., ¶¶ 11-13.

27 ³⁷ *Id.*, ¶ 12.

28 ³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

documents and data prior to the mediation.⁴¹ Class Counsel also drafted Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴²

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Mark S. Rudy, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁴³ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, Defendant's financial condition, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁴ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁵ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁶ After conducting investigations, formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁷

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁸ The Parties

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Aiwasian Decl., ¶ 11.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶¶ 11, 16-18.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

1 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁹
2 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and
3 the Class Members' employment with Defendant and performed significant research into the
4 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
5 rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses thereto,
6 as well as facts discovered.⁵⁰ The Parties have reached the Settlement based on this large volume
7 of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in
8 employment class actions, including significant experience in California wage-and-hour
9 litigation.⁵¹

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

11 The Settlement, which provides for a Gross Settlement Amount of five hundred sixty-
12 one thousand four hundred sixty-five dollars (\$561,465.00), represents a fair, adequate, and
13 reasonable resolution of the matter.⁵² The Settlement was calculated using the information and
14 data uncovered during litigation, case investigation, as well as the formal and informal exchange
15 of information.⁵³ The Settlement takes into account the potential risks and rewards inherent in
16 any case and, in particular, in the case at issue.⁵⁴ Moreover, considering all of the facts and
17 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
18 for the Class.⁵⁵

19 Assuming that the Attorneys' Fees and Costs, Enhancement Payments, PAGA Amount,
20 and Settlement Administration Costs are approved by the Court and paid in the full amounts
21 provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is
22 currently estimated to be two hundred seventy-five thousand nine hundred fifty-two dollars and
23 twenty-five cents (\$275,952.25).⁵⁶ As discussed in Part III, *supra*, the entire Net Settlement
24

25 ⁴⁹ *Ibid.*

26 ⁵⁰ Aiwazian Decl., ¶¶ 11-13 & 16-18.

27 ⁵¹ *Id.*, ¶¶ 6-7.

28 ⁵² *Id.*, ¶¶ 11, 13, 14 & 21.

⁵³ *Id.*, ¶¶ 11-13.

⁵⁴ *Id.*, ¶¶ 16-18.

⁵⁵ *Id.*, ¶¶ 11, 13, & 21.

⁵⁶ Aiwazian Decl., ¶ 14.

Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement, on a *pro rata* basis based on their Workweeks during the Class Period.⁵⁷ The entire PAGA Employee Amount will be fully paid out to the PAGA Employees, on a *pro rata* basis based on their Workweeks during the PAGA Period.⁵⁸ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

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

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁶⁰ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant’s defenses thereto.⁶¹ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior

⁵⁷ Settlement Agreement, ¶ 15.

⁵⁸ *Id.*, ¶ 16.

⁵⁹ Aiwazian Decl., ¶¶ 11, 13, & 21.

⁶⁰ *Id.*, ¶¶ 11-13 & 18.

⁶¹ *Id.*, ¶ 18.

to entering into the Settlement.⁶²

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

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

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

⁶² Aiwasian Decl., ¶¶ 11-13 & 16-18.

⁶³ Settlement Agreement, ¶¶ 8-9.

1 This Action involves a class of approximately two hundred sixty-three (263)
2 individuals.⁶⁴ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
3 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
4 requirement as joinder is not practical at that point). Further, all Class Members can and will
5 be identified by Defendant to the Settlement Administrator through a review of Defendant's
6 employment records regarding non-exempt employees in California during the Class Period. As
7 such, the Class is ascertainable and sufficiently numerous.

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

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

18 The "common issues" requirement "involves analysis of whether the proponent's 'theory
19 of recovery' is likely to prove compatible with class treatment." *Capitol People, supra*, 155
20 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,
21 the commonality inquiry centers on the "reasonableness" of the defendant's labor policies as
22 applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

23 Here, common issues of fact and law predominate as to each of the claims alleged and
24 asserted in the Operative Complaint. Based on the documents and information obtained through
25 formal and informal discovery and exchange of information in this Action, Plaintiffs contend
26 that Class Members were subject to the same or similar job duties and uniform operations and
27

28

⁶⁴ Aiwazian Decl., ¶ 9.

1 employment practices, policies, and procedures during the time period at issue.⁶⁵ Plaintiffs'
2 claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to
3 Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
4 wages for all hours worked, failing to provide compliant meal and rest periods and associated
5 premium pay, failing to timely pay wages during employment and upon termination of
6 employment, failing to provide complaint wage statements, failing to keep requisite payroll
7 records, and failing to reimburse necessary business-related expenses.⁶⁶

8 Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect
9 to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁷
10 As a result, Plaintiffs claims that all of the Class Members were uniformly not paid all
11 compensation due to them from Defendant during the time period at issue.⁶⁸

12 Plaintiffs maintain that the outcome of this litigation would be determined by
13 Defendant's alleged uniform operations and employment policies and procedures that applied
14 across its non-exempt employees who worked in California during the Class Period.
15 Accordingly, the Court should certify the Class for settlement purposes only.

16 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
17 **ATTORNEYS' FEES AND COSTS**

18 Class Counsel has litigated the matter for approximately two years, and was actively
19 preparing the matter for class certification and trial.⁶⁹ The ongoing work has been extensive,
20 demanding, and ultimately successful in achieving a substantial settlement resolution. Class
21 Counsel conducted extensive investigations into the facts of the case and formal and informal
22 discovery, including, and not limited to, propounding multiple formal written discovery requests
23 onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most
24 Knowledgeable designees. Class Counsel reviewed a large volume of documents and data⁷⁰ and
25

26 ⁶⁵ Aiwazian Decl., ¶ 16.

27 ⁶⁶ *Ibid.*

28 ⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶¶ 11-13.

⁷⁰ *Id.*, ¶ 12.

also interviewed and obtained information from Plaintiffs, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁷¹ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷²

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷³

The Settlement establishes a Gross Settlement Amount of five hundred sixty-one thousand four hundred sixty-five dollars (\$561,465.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$196,512.75) and an amount not to exceed twenty-five thousand dollars (\$25,000.00) for reimbursement of litigation costs and expenses.⁷⁴ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷⁵

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his

⁷¹ *Ibid.*

⁷² Aiwazian Decl., ¶ 11.

⁷³ *Id.*, ¶¶ 6-7.

⁷⁴ Settlement Agreement, ¶¶ 7.p & 11.

⁷⁵ *Id.*, Exh. A.

court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

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Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁶

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice⁷⁷ describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, a request for exclusion from the Class Settlement, and/or a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁸

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁹ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁸⁰ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share and, if applicable, their Individual PAGA

⁷⁶ Aiwazian Decl., ¶ 19.

⁷⁷ Settlement Agreement, Exh. A.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

Payment, are calculated and the number of Workweeks and PAGA Workweeks credited to them.⁸¹

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF SIMPLURIS, INC. AS SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. Mail.⁸² With respect to any Class Notice that is returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.⁸³ The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any Workweeks Disputes from Class Members.⁸⁴

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment and Individual PAGA Payment checks to the Settlement Class Members and PAGA Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys’ Fees and Costs, Enhancement Payments, and the LWDA Payment; provide necessary weekly reports; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁵ The Settlement Administration Costs are currently estimated not to exceed ten thousand dollars (\$10,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the

⁸¹ *Ibid.*

⁸² Settlement Agreement, ¶ 19.a.

⁸³ *Ibid.*

⁸⁴ *Id.*, ¶¶ 20, 22, 24, & 25.

⁸⁵ *Ibid.*; Aiwazian Decl., ¶ 15.

1 Court.⁸⁶

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

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

7 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
8 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
9 entails mailing of the Class Notice, in the form approved by the Court, to all known and
10 reasonably ascertainable Class Members based on Defendant's records.⁸⁷

11 Within fourteen (14) calendar days after the date on which the Court grants preliminary
12 approval of the Settlement, Defendant will provide the Settlement Administrator with the
13 following information for each Class Member: full name, last known mailing address, Social
14 Security Number, dates worked for Defendant during the Class Period, and such other
15 information as is necessary for the Settlement Administrator to calculate Workweeks
16 (collectively, "Class List").⁸⁸

17 Within fourteen (14) calendar days of receipt of the Class List, the Settlement
18 Administrator will perform a search based on the National Change of Address Database or any
19 other similar services available, to updated the Class Members' mailing addresses, and will
20 mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁹ Class Members will
21 have until the applicable Response Deadline to mail a Request for Exclusion, Workweeks
22 Dispute, and/or Notice of Objection to the Settlement Administrator.⁹⁰

23 Defendant will make a one-time deposit of the Gross Settlement Amount into a
24 settlement account to be established by the Settlement Administrator, within thirty (30) calendar
25

26 ⁸⁶ Settlement Agreement, ¶ 13.

27 ⁸⁷ *Id.*, ¶ 19.a.

28 ⁸⁸ *Id.*, ¶¶ 7.c & 18.

⁸⁹ *Id.*, ¶ 19.a.

⁹⁰ *Id.*, ¶¶ 20, 22, & 24,

days after the Effective Date.⁹¹ Within seven (7) calendar days of the funding of Gross Settlement Amount, the Settlement Administrator will distribute: (1) Individual Settlement Payments to the Settlement Class Members; (2) Individual PAGA Payments to the PAGA Employees; (3) the LWDA Payment to the LWDA; (4) the Court-approved Enhancement Payments to Plaintiffs; (5) the Court-approved Attorneys' Fees and Costs to Class Counsel; and (6) the Court-approved Settlement Administration Costs to itself.⁹²

When issuing payments, the Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA Payment into one check if the intended recipient for both payments is one individual.⁹³ Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.⁹⁴ All funds associated with such cancelled checks will be transmitted to the Legal Aid Foundation of Los Angeles.⁹⁵

XI. APPOINTMENT OF THE CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT PAYMENTS

Plaintiffs Oston Jemba Madengue and Hector Reyes respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Payments in an amount up to seven thousand dollars (\$7,000.00) each to Plaintiffs Oston Jemba Madengue and Hector Reyes (for a combined total of \$14,000.00).⁹⁶ It is within the Court's discretion to award payment to class representatives for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class

⁹¹ Settlement Agreement, ¶ 10.

⁹² *Ibid.*

⁹³ *Id.*, ¶ 21.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Id.*, ¶ 12.

representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payments are fair and appropriate. Plaintiffs each spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁷ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁸ Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Payment for their services on behalf of the Class, in addition to their Individual Settlement Payment and, if eligible, their Individual PAGA Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiffs Oston Jemba Madengue and Hector Reyes as Class Representatives; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payments, the PAGA Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately five months; and permit the filing of a memorandum that exceeds the page limit.

Dated: July 28, 2021

LAWYERS for JUSTICE, PC

By:


Edwin Aiwanian
Attorneys for Plaintiffs

⁹⁷ Aiwanian Decl., ¶ 20; Declaration of Oston Jemba Madengue in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Madengue Decl."), ¶ 4; Declaration of Hector Reyes in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Reyes Decl."), ¶ 4.

⁹⁸ Aiwanian Decl., ¶ 20; Madengue Decl., ¶¶ 3-6; Reyes Decl., ¶¶ 3-6.