

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

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

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

Plaintiff,

vs.

LAMP COMMUNITY, an unknown business
entity; LAMP, INC., a California
corporation; THE PEOPLE CONCERN, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21STCV07381

Honorable Maren E. Nelson
Department SSC17

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Joanna Ghosh); Declaration of Proposed
Class Representative (Shannon Bostic);
Declaration of Defendant (John Maceri);
Declaration of Proposed Settlement
Administrator (Eric Springer); and
[Proposed] Order filed concurrently
herewith]

Date: February 8, 2023
Time: 9:00 a.m.
Department: SSC17

Complaint Filed: February 24, 2021
FAC Filed: May 12, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on February 8, 2023 at 9:00 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, 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Shannon Bostic (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Joanna Ghosh, 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 Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Shannon Bostic as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Alexandra Rose of Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action 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 Payment for Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

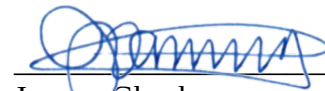
This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Joanna Ghosh), Proposed Class Representative (Shannon Bostic), Defendant (John Maceri), and the Proposed Settlement Administrator (Eric Springer), 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: September 29, 2022

LAWYERS for JUSTICE, PC

By:



Joanna Ghosh
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Shannon Bostic (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant The People Concern, successor by merger to Lamp, Inc., dba Lamp Community (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this matter for a Total Settlement Amount of one million five hundred thousand dollars and no cents (\$1,500,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of fifteen thousand dollars and no cents (\$15,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or \$525,000.00, and reimbursement of litigation costs and expenses not to exceed twenty five thousand dollars and no cents (\$25,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed fifteen thousand dollars and no cents (\$15,000.00)⁵; and (5) the amount of two hundred twenty-five thousand dollars and no cents (\$225,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$168,750.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$56,250.00) will be

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Joanna Ghosh (“Ghosh Decl.”), ¶ 6.mm. If it is determined that the total number of Workweeks during the Class Period exceed 90,000 by more than ten percent (10%) (i.e., exceeds 99,000), then, the Total Settlement Amount will be increased on a proportional basis by the same number of percentage points above ten percent (10%) by which the actual number of Workweeks exceeds 99,000. *Id.*, ¶ 37.

² *Id.*, ¶ 6.r.

³ *Id.*, ¶ 11.

⁴ *Id.*, ¶ 10.

⁵ *Id.*, ¶ 12.

distributed to all Class Members employed by Defendant at any time during the PAGA Period (“PAGA Employees”).⁶

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

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately one thousand and eighty-nine (1,189) individuals.⁸

Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period (“Workweeks”).⁹

The Settlement resolves the Released Class Claims of Plaintiff and Settlement Class Members and the Released PAGA Claims of the State of California and PAGA Employees, against the Released Parties.¹⁰

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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⁶ Settlement Agreement, ¶¶ 6.x & 13. “PAGA Period” is defined as the time period from February 19, 2020, through January 28, 2022. *See id.*, ¶ 6.z.

⁷ *Id.*, ¶ 6.d. “Class Period” is defined as the time period from February 24, 2017, through January 28, 2022. *See id.*, ¶ 6.f.

⁸ Ghosh Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 6.s, 6.ll, 6.nn, & 14.

¹⁰ *See id.* at ¶ 6.ee, for the full scope of the “Released Class Claims,” *id.* at ¶ 6.ff, for the full scope of the Released PAGA Claims, and *id.* at ¶ 6.gg for the definition of the “Released Parties.”

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

2 Defendant is a social service agency that was formed as a result of a merger between two
3 long standing social service organizations based in Los Angeles County: Ocean Park
4 Community Center and The Lamp Community. Headquartered in Los Angeles, Defendant is a
5 501(c)(3) non-profit organization that provides an integrated system of care to homeless
6 individuals, domestic violence survivors, and challenged youth. Defendant’s services include
7 outreach, interim housing, mental and medical health care, and domestic violence services.
8 Defendant employees over 100 employees including case managers, accounts receivable
9 specialists, certified nursing assistants, client services specialists, counselor advocates, and
10 maintenance technicians. Plaintiff Shannon Bostic is a former employee of Defendant.

11 On February 19, 2021, Plaintiff provided written notice to the Labor and Workforce
12 Development Agency by online submission and to Defendant by certified mail, of the specific
13 provisions of the California Labor Code that Defendant violated (“PAGA Letter”).

14 On February 24, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los
15 Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
16 (“Action”).

17 On April 27, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
18 Attorneys General Act, California Labor Code § 2698, *Et Seq.* entitled *Shannon Bostic v. Lamp*
19 *Community, et al.* in the Superior Court of California for the County of Los Angeles, Case No.
20 21CMCV00097 (“*Bostic* PAGA Action”).

21 On May 28, 2021, Defendant filed an Answer to Plaintiff’s PAGA Complaint.

22 On July 7, 2021, Defendant filed an Answer to Plaintiff’s Class Action Complaint.

23 On May 12, 2022, Plaintiff filed a First Amended Consolidated Class Action Complaint
24 for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code
25 § 2698, *Et Seq.* (“Operative Complaint”) in the Action, which added the PAGA claims alleged
26 in the *Bostic* PAGA Action.

27 Together, the Action and *Bostic* PAGA Action are referred to as the “Actions”.
28

Plaintiff's 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. Plaintiff contend that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On June 1, 2022, Defendant filed an Answer to Plaintiff's First Amended Consolidated Complaint.

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

The Parties have actively litigated the Actions since the Action was commenced on February 24, 2021. On January 18, 2022, the Parties participated in a formal, full-day mediation conducted by Lynn S. Frank, 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 Actions in their entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Members) and the Released PAGA Claims of the State of California and the PAGA Employees with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by

¹¹ Settlement Agreement, ¶¶ 30 & 31.

deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed five hundred twenty-five thousand dollars and no cents (\$525,000.00) (i.e., up to 35% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed twenty five thousand dollars and no cents (\$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 fifteen thousand dollars and no cents (\$15,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) two hundred twenty-five thousand dollars and no cents (\$225,000.00) allocated to penalties under PAGA ("PAGA Amount"); and (4) payment in the amount of up to fifteen thousand dollars and no cents (\$15,000.00) to Plaintiff Shannon Bostic ("Enhancement Payment").¹² The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's *pro rata* share of the available Net Settlement Amount (i.e., 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 Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹³
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁴

The Parties have agreed that the Settlement Administrator will determine each PAGA Employee's *pro rata* share of the twenty-five percent (25%) portion of the PAGA Amount ("Individual PAGA Payment"), in accordance with the Settlement Agreement and as follows: the Settlement Administrator will divide the twenty-five percent (25%) portion of the PAGA

¹² Settlement Agreement, ¶¶ 10, 12, & 13.

¹³ *Id.*, ¶ 14.a. "Preliminary Approval" is defined as the entry of the Court order granting preliminary approval of the Settlement Agreement. *See id.*, ¶ 6.dd.

¹⁴ *Id.*, ¶ 14.b. "Final Approval" is defined as the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon. *See id.*, ¶ 6.o.

Amount (“PAGA Employee Amount”) by the total number of Workweeks each PAGA Employee worked for Defendant during the PAGA Period (“PAGA Workweeks”) 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.¹⁵

Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁶ 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”).¹⁷ Defendant will pay the employer’s share of taxes and contributions in connection with the wages portion of Individual Settlement Shares (“Employer Taxes”) in addition to the Total Settlement Amount.¹⁸ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.¹⁹

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.²⁰ In recognition that Defendant is a non-profit organization providing charitable and other services to the public, pursuant to California Code of Civil Procedure Section 384, all funds associated with such cancelled checks will be transmitted to Defendant.²¹ Defendant shall hold said funds for one hundred eighty (180) calendar days to pay the Settlement Class Members and/or PAGA Employees whose checks were cancelled should they come forward to request payment from Defendant.²² Should the Court reject Defendant as

¹⁵ Settlement Agreement, ¶¶ 6.bb, 6.q, 6.y, & 15.

¹⁶ *Id.*, ¶ 25.

¹⁷ *Id.*, ¶¶ 6.r & 25.

¹⁸ *Id.*, ¶¶ 6.m & 25.

¹⁹ *Id.*, ¶ 25.

²⁰ *Id.*, ¶ 20.

²¹ *Ibid.*

²² *Ibid.*

a viable *cy pres* recipient, the Parties agree to select California Rural Legal Assistance, Inc. as an alternative *cy pres* recipient.²³

Any Class Member wishing to be excluded from the Class Settlement must submit a written letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice by the Settlement Administrator (“Response Deadline”).²⁴ A Request for Exclusion must: (a) contain the case name and number of the Action; (b) contain the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specific address, postmarked on or before the Response Deadline.²⁵ Any Class Member who submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will not be issued an Individual Settlement Payment.²⁶ Notwithstanding the above, all PAGA Employees will be bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.²⁷

To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) 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.²⁸ The Notice of Objection must: (a) contain the case name and number of the Action; (b) contain the objector’s full name, signature, address, telephone number, and the last four (4) digits of his or her Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specific address,

²³ Settlement Agreement, ¶ 20.

²⁴ *Id.*, ¶¶ 6.hh, 6.ii, & 21.

²⁵ *Id.*, ¶ 6.hh.

²⁶ *Id.*, ¶ 21.

²⁷ *Ibid.*

²⁸ *Id.*, ¶¶ 6.v & 22.

1 postmarked on or before the Response Deadline.²⁹ Settlement Class Members, individually or
2 through counsel, may also present their objection orally at the Final Approval Hearing,
3 regardless of whether they have submitted a Notice of Objection.³⁰

4 Class Members who wish to dispute the number of Workweeks and/or PAGA
5 Workweeks to which they have been credited, as reflected in their respective Class Notices, may
6 do so by submitting a written letter to the Settlement Administrator that: (a) contains the case
7 name and number of the Action; (b) contains the full name, signature, address, telephone
8 number, and the last four (4) digits of the Social Security Number of the disputing Class
9 Member; (c) clearly states that the Class Member disputes the number of Workweeks and/or
10 PAGA Workweeks credited to him or her and what he or she contends is the correct number to
11 be credited to him or her; (d) includes information and/or attaches documentation demonstrating
12 that the number of Workweeks and/or PAGA Workweeks that he or she contends should be
13 credited to him or her are correct; and (f) is returned by mail to the Settlement Administrator at
14 the specific address, postmarked on or before the Response Deadline.³¹

15 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
16 **SETTLEMENTS**

17 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
18 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
19 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
20 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
21 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*
22 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair
23 and reasonable, whether certification of the class was proper, and whether the attorney fee award
24 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
25 decision to approve a class action settlement may be reversed only upon a strong showing of
26

27 ²⁹ Settlement Agreement, ¶ 6.v.

28 ³⁰ *Id.*, ¶ 22.

³¹ *Id.*, ¶ 19.

“clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent

of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties actively litigated the Actions since the Action was commenced on February 24, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.³²

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the matter, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.³³ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, a detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s Employee Handbook, company policy

³² Ghosh Decl., ¶¶ 12-14.

³³ *Id.*, ¶ 13.

acknowledgements (including, but not limited to, Defendant's Acknowledgment of Receipt of Handbook), forms, new hire checklist, Defendant's operations and employment practices, forms, procedures, and policies (including, not limited to, Defendant's policies regarding Workweek, Work Day, and Work Schedule, Meal and Rest Periods, Dress Code, Compensation, Overtime Pay, Payroll, Paychecks, and Deductions, and Expenses and Vehicle Use), among other information and documents.³⁴ Class Counsel also gathered and considered information regarding Defendant's financial circumstances and its non-profit status and related governance and management structure and restriction on use of funds, all of which impacted potential financial terms of a settlement resolution.³⁵ Class Counsel interviewed Plaintiff and conducted investigations to gather facts and circumstances surrounding Plaintiff and putative class members' employment and to identify potential witnesses.³⁶ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, informal discovery and the production of documents and data in the course of litigation and mediation, and Defendant's financial and organizational circumstances.³⁷ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁸

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Lynn S. Frank, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁹ 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 cases and various aspects of the cases, including but not limited to, Defendant's financial circumstances, 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 law and

³⁴ Ghosh Decl., ¶ 13.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ *Id.*, ¶ 12.

1 enforcement, and PAGA representative claims, as well as the evidence produced and analyzed,
2 and the possibility of appeals, among other things.⁴⁰ During all settlement discussions, the
3 Parties conducted their negotiations at arm's length in an adversarial position.⁴¹ Arriving at a
4 settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt
5 strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class
6 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴² After
7 conducting extensive investigations, informal discovery, extensive settlement negotiations, and
8 with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited
9 for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs
10 and risks to both sides that would attend further litigation.⁴³

11 The Settlement takes into account the strengths and weaknesses of each side's position
12 and the uncertainty of how the cases might have concluded at certification and trial.⁴⁴ The
13 Parties have had the opportunity to interview and obtain information from their respective
14 witnesses.⁴⁵ Counsel for the Parties have also reviewed documents and information relating to
15 Plaintiff's and the Class Members' employment with Defendant and performed significant
16 research into the law concerning class certification, PAGA representative actions, off-the-clock
17 theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and
18 Defendant's defenses thereto, as well as facts discovered.⁴⁶ The Parties have reached the
19 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class
20 Counsel has extensive experience in employment class actions, including significant experience
21 in California wage-and-hour litigation.⁴⁷

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25 ⁴⁰ Ghosh Decl., ¶ 12.

26 ⁴¹ Ibid.

27 ⁴² *Id.*, ¶¶ 12, 17-19.

28 ⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ *Id.*, ¶¶ 12-14 & 17-19.

⁴⁷ *Id.*, ¶¶ 2-7.

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

2 The Settlement, which provides for a Total Settlement Amount of one million five
3 hundred thousand dollars and no cents (\$1,500,000.00), represents a fair, adequate, and
4 reasonable resolution of the matter.⁴⁸ The Settlement was calculated using the information and
5 data uncovered during litigation, case investigation, as well as the informal exchange of
6 information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in any
7 case and, in particular, in the matter at issue.⁵⁰ Moreover, considering all of the facts and
8 circumstances of the matter, the Settlement represents a fair, reasonable, and adequate recovery
9 for the Class.⁵¹

10 Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount,
11 and Settlement Administration Costs are approved by the Court and paid in the full amounts
12 provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is
13 currently estimated to be six hundred ninety-five thousand dollars and no cents (\$695,000.00).⁵²
14 As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the
15 Settlement Class Members, in accordance with the Settlement Agreement. The amount of each
16 Settlement Class Member's Individual Settlement Share will be calculated based on his or her
17 Workweeks.⁵³ There is no reason to doubt the fairness of the proposed plan of allocation of
18 the settlement funds for purposes of preliminary approval. Even at the final approval stage,
19 "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval],
20 particularly if recommended by experienced and competent class counsel." *In re American*
21 *Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-
22 30.

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26 ⁴⁸ Ghosh Decl., ¶¶ 12, 14, 15 & 25.

27 ⁴⁹ *Id.*, ¶¶ 12-14.

28 ⁵⁰ *Id.*, ¶¶ 17-19.

⁵¹ *Id.*, ¶¶ 12, 14, & 25.

⁵² *Id.*, ¶ 15.

⁵³ Settlement Agreement, ¶ 14.

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 and PAGA Employees.⁵⁴ 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 informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁵ The discovery and information that Class Counsel obtained from Plaintiff, Defendant, and 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.⁵⁶ As outlined in the Declaration of Joanna Ghosh, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁷

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.⁵⁸ 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.*

⁵⁴ Ghosh Decl., ¶¶ 12, 14, & 25.

⁵⁵ *Id.*, ¶¶ 12-14 & 19.

⁵⁶ *Id.*, ¶ 19.

⁵⁷ *Id.*, ¶¶ 22-23.

⁵⁸ Settlement Agreement, ¶ 32.a.

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This matter involves a class of approximately one thousand and eighty-nine (1,189) individuals.⁵⁹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representative with claims or defenses typical of the class; and (3) class representative who can adequately represent the class." *Sav-On, supra*, 34

⁵⁹ Ghosh Decl., ¶ 9.

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

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

12 Here, common issues of fact and law predominate as to each of the claims alleged and
13 asserted in the Operative Complaint. Based on the documents and information obtained through
14 informal discovery and exchange of information in this matter, Plaintiff contends that Class
15 Members were subject to the same or similar job duties and uniform operations and employment
16 practices, policies, and procedures during the time period at issue.⁶⁰ Plaintiff’s claims arise from
17 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
18 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
19 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
20 to timely pay wages during employment and upon termination of employment, failing to provide
21 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
22 necessary business-related expenses.⁶¹

23 Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect
24 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶²
25 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
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27 ⁶⁰ Ghosh Decl., ¶ 17.

28 ⁶¹ *Ibid.*

⁶² *Ibid.*

1 compensation due to them from Defendant during the time period at issue.⁶³

2 Plaintiff maintains that the outcome of this litigation would be determined by
3 Defendant's alleged uniform operations and employment policies and procedures that applied
4 across its hourly-paid or non-exempt employees who worked in California during the Class
5 Period. Accordingly, the Court should certify the Class for settlement purposes only.

6 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
7 **ATTORNEYS' FEES AND COSTS**

8 Class Counsel has litigated the matter for over one year, and was actively preparing for
9 class certification and trial.⁶⁴ The ongoing work has been extensive, demanding, and ultimately
10 successful in achieving a substantial settlement resolution. Class Counsel conducted extensive
11 investigations into the facts of the matter and informal discovery. Class Counsel reviewed a
12 large volume of pages of documents and data⁶⁵ and also interviewed and obtained information
13 from Plaintiff, researched applicable law, undertook damages/valuation calculations, and met
14 and conferred with Defendant's counsel regarding the pleadings and the production of
15 documents and data prior to mediation.⁶⁶ Counsel for the Parties also undertook extensive
16 settlement discussions, which included participating in a formal, full-day mediation.⁶⁷

17 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
18 experience to obtain a great result for the Class.⁶⁸

19 The Settlement establishes a Total Settlement Amount of one million five hundred
20 thousand and no cents (\$1,500,000.00), and provides for Class Counsel to apply to the Court for
21 Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five
22 percent (35%) of the Total Settlement Amount (i.e., \$525,000.00) and an amount not to exceed
23 twenty-five thousand dollars and no cents (\$25,000.00) for costs and expenses.⁶⁹ The attorneys'
24 fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took

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26 ⁶³ Ghosh Decl., ¶ 17.

27 ⁶⁴ *Id.*, ¶¶ 12-14.

28 ⁶⁵ *Id.*, ¶ 13.

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶ 12.

⁶⁸ *Id.*, ¶¶ 2-7.

⁶⁹ Settlement Agreement, ¶ 10.

1 in bringing and litigating the matter, (2) the extensive time, effort and expense that Class
2 Counsel dedicated to the matter, (3) the skill and determination that Class Counsel has shown,
3 (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the
4 Settlement that Class Counsel has achieved for the Class Members and PAGA Employees, and
5 (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to
6 this matter. The proposed Class Notice provides Class Members with information about the
7 amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys'
8 Fees and Costs will be sought, as provided for by the Settlement.⁷⁰

9 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
10 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
11 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced
12 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
13 *v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should
14 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
15 incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82
16 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can
17 be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee
18 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
19 litigation." *Id.* at 50. In cases where class members present claims against a settlement fund
20 and the settlement agreement provides that the defendant agrees to paying the attorneys a
21 percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

22 The propriety of calculating and awarding attorneys' fees as a percentage of a settlement
23 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
24 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California
25 Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar
26 cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check
27 and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he
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⁷⁰ Settlement Agreement, Exh. A.

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).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff’s motion for final approval of the Settlement and application for the 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).

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⁷¹ Ghosh Decl., ¶ 20.

1 The proposed Class Notice⁷² describes the Settlement, the deadlines and procedures to
2 submit a Notice of Objection, Request for Exclusion, and/or dispute regarding Workweeks
3 and/or PAGA Workweeks, and the date and time set for the Final Approval Hearing.⁷³

4 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
5 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
6 members to make an informed decision about their participation.” *Manual for Complex*
7 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
8 proceedings to date and the terms and conditions of the Settlement in an informative and
9 coherent manner.⁷⁴ The proposed Class Notice recognizes that the Court has not yet granted
10 final approval of the settlement.⁷⁵ The proposed Class Notice also apprises the Class Members
11 and PAGA Employees of, *inter alia*, how their Individual Settlement Share and Individual
12 PAGA Payment is calculated and the number of Workweeks and PAGA Workweeks credited
13 to them.⁷⁶

14 The proposed Class Notice satisfies all due process requirements and complies with the
15 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23©(2) and 23(e); *Newberg*,
16 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The
17 essentials of due process of law in class suits would appear to be afforded by fair representation
18 in the assertion of claims of class members against the opposing parties in any lawsuit, and
19 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

20 **IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT**

21 **ADMINISTRATOR**

22 The Parties have selected Simpluris to administer the Settlement.

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26 ⁷² Settlement Agreement, Exh. A.

27 ⁷³ Ibid.

28 ⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

1 The Settlement Administrator will mail the Class Notice to each Class Member by First-
2 Class U.S. mail in English and Spanish.⁷⁷ With respect to Class Notices that are returned as
3 undeliverable on or before the Response Deadline, after the initial mailing of the Class Notice,
4 the Settlement Administrator will perform a single search for an alternative address by way of
5 skip-trace and perform a single re-mailing of the Class Notice within five (5) calendar days.⁷⁸
6 The Response Deadline to submit a Request for Exclusion, Noticed of Objection, or dispute
7 regarding Workweeks and/or PAGA Workweeks for Class Members to whom a Class Notice is
8 re-sent, after having been returned as undeliverable to the Settlement Administrator, will be
9 extended fifteen (15) calendar days.⁷⁹ The Settlement Administrator will receive and process
10 Requests for Exclusion, Notices of objection, and any disputes regarding Workweeks and/or
11 PAGA Workweeks.⁸⁰

12 The Settlement Administrator will calculate the amounts of the Individual Settlement
13 Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal
14 taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual
15 Settlement Payment checks to Settlement Class Members and Individual PAGA Payment
16 checks to PAGA Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys'
17 Fees and Costs, Enhancement Payment, and PAGA Amount; and perform such other tasks
18 necessary to effectuate the terms of the Settlement Agreement.⁸¹ The Settlement Administration
19 Fees are currently estimated not to exceed fifteen thousand dollars and no cents (\$15,000.00)
20 and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁸²

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

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26 ⁷⁷ Settlement Agreement, ¶ 18.a.

27 ⁷⁸ *Id.*, ¶ 18.b

28 ⁷⁹ *Id.*, ¶ 6.ii.

⁸⁰ *Id.*, ¶ 19, 21, & 22.

⁸¹ *Id.*, ¶ 12; Ghosh Decl., ¶ 16.

⁸² Settlement Agreement, ¶ 12.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸³

Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Settlement Administrator with the following information for each Class Member: full name, last known mailing address, Social Security Number, and dates worked for Defendant during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (collectively, "Class List").⁸⁴

Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail the Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail.⁸⁵ With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, after the initial mailing of the Class Notice, the Settlement Administrator will perform a single search for an alternative address by way of skip-trace and perform a single re-mailing of the Class Notice within five (5) calendar days.⁸⁶ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, dispute regarding Workweeks and/or PAGA Workweeks, and/or Notice of Objection.⁸⁷

Defendant will fund the Total Settlement Amount pursuant to an installment plan, in accordance with the Settlement Agreement and as follows:

- a. Within five (5) business days of Final Approval, Defendant will make a deposit of one-third of the Total Settlement Amount (i.e., \$500,000.00) into a qualified settlement account established by the Settlement Administrator ("First Installment").⁸⁸

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⁸³ Settlement Agreement, ¶ 18.a.

⁸⁴ *Id.*, ¶¶ 6.c & 17.

⁸⁵ *Id.*, ¶ 18.a.

⁸⁶ *Id.*, ¶ 18.b.

⁸⁷ *Id.*, ¶¶ 19, 21, & 22.

⁸⁸ *Id.*, ¶ 9.b.i.

- b. One (1) year after the funding of the First Installment, Defendant will make a deposit of one-third of the Total Settlement Amount (i.e., \$500,000.00), plus an amount sufficient to pay Employer Taxes, into the qualified settlement account established by the Settlement Administrator (“Second Installment”).⁸⁹
- c. One (1) year after the funding of the Second Installment, Defendant will make a deposit of the remaining one-third of the Total Settlement Amount (i.e., \$500,000.00), into the qualified settlement account established by the Settlement Administrator (“Third Installment”).⁹⁰

The Settlement Administrator will disburse payments allocated under the Settlement, in accordance with the Settlement Agreement and as follows:

- a. Within seven (7) calendar days of the funding of the Second Installment, the Settlement Administrator will issue the Individual Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees, LWDA Payment to the LWDA, and Enhancement Payment to Plaintiff.⁹¹
- b. Within seven (7) calendar days of the funding of the Third Installment, the Settlement Administrator will issue the Attorneys’ Fees and Costs to Class Counsel and the Settlement Administration Costs to itself.⁹²

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.⁹³ In recognition that Defendant is a non-profit organization providing charitable and other services to the public, pursuant to California Code of Civil Procedure Section 384, all funds associated with such cancelled checks will be transmitted to Defendant.⁹⁴ Defendant shall hold said funds for one hundred eighty (180) calendar days to pay the Settlement Class Members and/or PAGA Employees whose checks were cancelled should they come forward to request payment from Defendant.⁹⁵ Should the Court reject Defendant as a viable *cy pres* recipient, the Parties agree to select California Rural Legal Assistance, Inc. as an alternative *cy pres* recipient.⁹⁶

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⁸⁹ Settlement Agreement, ¶ 9.b.ii.

⁹⁰ *Id.*, ¶ 9.b.iii.

⁹¹ *Id.*, ¶ 9.d.i.

⁹² *Id.*, ¶ 9.d.ii.

⁹³ *Id.*, ¶ 20.

⁹⁴ *Ibid*; Declaration of John Maceri (“Maceri Decl.”), ¶¶ 4-6.

⁹⁵ Settlement Agreement, ¶ 20.

⁹⁶ *Ibid*.

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

Plaintiff Shannon Bostic respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to fifteen thousand dollars and no cents (\$15,000.00) to Plaintiff.⁹⁷ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁸ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.⁹⁹ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for her services on behalf of the Class, PAGA Employees, and the State of California in addition to her Individual Settlement Payment and Individual PAGA Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Alexandra Rose of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Shannon

⁹⁷ Settlement Agreement, ¶ 11.

⁹⁸ Ghosh Decl., ¶ 21; Declaration of Shannon Bostic in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Bostic Decl."), ¶ 3-4.

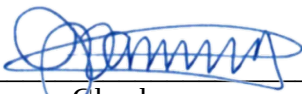
⁹⁹ Ghosh Decl., ¶ 21; Bostic Decl., ¶¶ 3-4.

1 Bostic as Class Representative; appoint Simpluris, Inc. as the Settlement Administrator;
2 preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment,
3 PAGA Amount, and Settlement Administration Costs; approve the proposed Class Notice;
4 direct the Settlement Administrator to undertake the notice and settlement administration
5 process in conformity with the deadlines and procedures provided by the Settlement Agreement;
6 schedule a Final Approval Hearing to take place in approximately six (6) months; and permit
7 the filing of a memorandum that exceeds the page limit.

8 Dated: September 29, 2022

LAWYERS for JUSTICE, PC

9
10 By:


Joanna Ghosh
Attorneys for Plaintiff