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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

ANDRÉS PAYAN, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

vs.

AIRCRAFT COMPONENT REPAIR, INC. a  
California corporation; and DOES 1 through  
100, inclusive,

Defendants.

Case No. 21STCV04846

*[Assigned for all purposes to the Hon. David S.  
Cunningham, Dept. SSC-11]*

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

Date: February 10, 2022  
Time: 11:00 a.m.  
Dept.: SSC-11

FAC filed: June 23, 2021  
Complaint filed: February 5, 2021

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on February 10, 2022 at 11:00 a.m. in Department SSC-11 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California, 90012, Plaintiff Andres Payan (“Plaintiff”), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

All current and former non-exempt, hourly employees of Defendant Aircraft Component Repair, Inc. who worked at any time in California between February 5, 2017 and the date of preliminary approval.

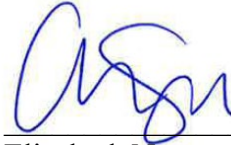
3. Preliminary appointment of Plaintiff Andres Payan as Class Representative;
4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit an enhancement award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Simpluris as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award) which is attached to the Settlement as Exhibit A and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Andres Payan, and Eric Springer of Simpluris, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

1  
2 Dated: January 19, 2022  
3

Respectfully submitted,  
LIDMAN LAW, APC

4  
5 By:



Elizabeth Nguyen  
Attorney for Plaintiff  
ANDRES PAYAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES<sup>1</sup>**

2 **I. INTRODUCTION**

3 Plaintiff Andres Payan (“Plaintiff”) brought this class and representative action against Defendant  
4 Aircraft Component Repair, Inc. (hereinafter “ACR” or “Defendant”) alleging various wage and hour and  
5 related violations. Plaintiff’s primary allegations are that ACR: (1) failed to pay all overtime wages owed;  
6 (2) failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (4)  
7 failed to authorize and permit all legally required rest periods; (5) failed to pay all final wages upon  
8 separation of employment; (6) failed to provide accurate itemized wage statements; (7) engaged in  
9 unlawful business practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys  
10 General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,  
12 class action settlement,<sup>2</sup> in which ACR has agreed to pay Two Hundred Nine Thousand, One Hundred  
13 Dollars and Zero Cents (\$209,100.00) on behalf of the following Settlement Class:

14 All current and former non-exempt, hourly employees of Defendant Aircraft  
15 Component Repair, Inc. who worked at any time in California between February 5,  
16 2017 and the date of preliminary approval.

17 Significantly, Settlement Class members do not need to file a claim. All Settlement Class members  
18 will automatically receive a payment unless they affirmatively opt-out. After deducting administration  
19 costs, Plaintiff’s service award, attorneys’ fees and costs, and payment of PAGA penalties, the remaining  
20 Net Settlement Amount (“NSA”) of approximately \$97,000.00 will be distributed to all Settlement Class  
21 members who do not opt-out of the Settlement. There are approximately 33 Settlement Class members,  
22 which means the average payment to each Settlement Class member is currently expected to be  
23 approximately **\$3,090.91**.

24 This proposed Settlement is well-within the range of possible approval in light of the significant  
25 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible

26 <sup>1</sup>Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court allow Plaintiff to exceed  
27 the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the Court consider the attached memorandum of  
28 points and authorities which is 21 pages in length.

<sup>2</sup> The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen as Exhibit 2. The proposed  
Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award)  
which is attached to the Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the  
Settlement.

monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

## **II. SUMMARY OF THE LITIGATION**

### **A. THE PARTIES**

ACR is a manufacturer of automotive exhaust systems. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. Plaintiff was employed by ACR as a non-exempt employee from approximately November 1990 through on or about August 27, 2020. *See* Declaration of Andres Payan (“Payan Decl.”), ¶ 2. During his employment, Plaintiff worked as a Machine Operator at ACR’s facility in Santa Clarita, California. *Id.*

### **B. BRIEF PROCEDURAL HISTORY**

On February 5, 2021, Plaintiff filed a putative class action complaint against ACR in Los Angeles County Superior Court. Nguyen Decl., ¶ 10. On February 8, 2021, Plaintiff submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and ACR of his intention of filing a PAGA claim based on the labor code violations as alleged in his complaint. *Id.*, Exhibit 1. Therefore, on June 23, 2021, after exhausting his administrative remedies, Plaintiff filed a First Amended Class Complaint adding a cause of action for civil penalties under the PAGA. *Id.*

### **C. CLAIMS ASSERTED**

Plaintiff’s primary allegations are that ACR: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to pay all final wages upon separation of employment; (6) failed to provide accurate itemized wage statements; (7) engaged in unlawful business practices; and (8) liable for civil penalties under PAGA.

Plaintiff will also serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date he files this Motion and will submit a supplemental declaration showing the submission. Nguyen Decl., ¶ 35.

## **III. DUNK/KULLAR ANALYSIS**

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*

1 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the  
2 Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an  
3 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168  
4 Cal.App.4th 116, 130.

#### 5 **A. INVESTIGATION AND DISCOVERY**

6 After agreeing to participate in early mediation, ACR informally produced time records and  
7 payroll data for the each and every putative class member who worked during the relevant time period, as  
8 well as its wage and hour policies and other relevant documents and information relevant to the claims  
9 alleged in advance of mediation. Nguyen Decl., ¶ 11. After the detailed review of the payroll and time  
10 records and other documents and policies produced by ACR, Class Counsel drew on their extensive  
11 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery  
12 allowed the parties to assess the merits and value of Plaintiff’s claims and ACR’s defenses thereto, if a  
settlement could not be reached.

#### 13 **B. ARMS-LENGTH NEGOTIATIONS**

14 On October 26, 2021, after extensive research and analysis, a mediation was held with Steven G.  
15 Mehta, a well-respected wage and hour class action mediator. Nguyen Decl., ¶ 12. During mediation, the  
16 parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s  
17 claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in principle on  
18 a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and  
19 executed the Stipulation of Settlement (“Settlement”).

#### 20 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

21 “Parties represented by competent counsel are better positioned than courts to produce a settlement  
22 that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities*  
23 *Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced  
24 counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and  
25 who have been appointed as class counsel in numerous cases alleging similar claims. *See* Declaration of  
26 Scott M. Lidman (“Lidman Decl.”), ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Declaration of Paul K. Haines (“Haines  
27 Decl.”), ¶¶ 2-8. Class Counsel conducted an in-depth review of ACR’s policies and timekeeping and  
28 payroll records, and drew on their extensive experience in similar cases to assess the strengths and

1 weaknesses of Plaintiff's case. *See* Nguyen Decl., ¶¶ 10-30. The Settlement was also reached with the  
2 assistance of an experienced and respected wage and hour class action mediator. *Id.* This factor strongly  
3 supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

4 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF**  
5 **CLAIMS**

6 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the  
7 face of disputed claims. Plaintiff's analysis of the maximum and realistic expected recoveries for each of  
8 the theories of liability pled is set forth below:

9 ACR Failed to Pay for All Hours Worked: Plaintiff alleges that he and Settlement Class members  
10 were not fully compensated for all of their time worked. Nguyen Decl., ¶ 16. Specifically, Plaintiff  
11 alleges ACR would keep track of his hours and the hours of the other non-exempt employees, and would  
12 unlawfully shave their work time and/or round their work time such that they would not be fully paid for  
13 all time worked. *Id.* Plaintiff also alleges that this time shaving and/or rounding practice utilized by ACR  
14 was not-even handed over time and would almost exclusively round and shave in ACR's favor such that  
15 the employees were routinely underpaid for their time worked. *Id.* Indeed, based on Plaintiff's review  
16 of the timekeeping data produced in connection with mediation, employees were on average underpaid  
17 approximately 10 minutes per week. *Id.* Accordingly, ACR's exposure for its alleged unlawful rounding  
18 is \$23,461 (4,182 workweeks x .17 (10 mins per workweek) x \$33.00 (average overtime rate)). *Id.*

19 ACR contends that it compensated Settlement Class members for all of their time worked.  
20 Nguyen Decl., ¶ 17. ACR also contends that its rounding practices were lawful, and any unpaid time was  
21 *de minimis* and therefore non-compensable. *Id.* ACR further asserts that Plaintiff would be unable to  
22 certify a rounding class given the individualized inquiries that would be required, and also that ACR  
23 rounding mechanism was, according to it, allegedly facially neutral. In light of these defenses, Plaintiff  
24 discounted the maximum exposure by 35% for the risk of non-certification, and an additional 30% to  
25 account for ACR's defenses on the merits, to arrive at an estimated exposure of \$10,674.76. *Id.*

26 ACR Miscalculated the Regular Rate: Plaintiff alleges that ACR failed to include the payment of  
27 quarterly production bonuses to Plaintiff and Settlement Class members in the regular rate of pay when  
28 overtime was paid, resulting in a systematic underpayment of overtime wages. Nguyen Decl., ¶ 18. Based

1 on the payroll data produced in connection with mediation, ACR paid quarterly production bonuses to  
2 approximately 20 of its employees, or 60%, the average production bonus per workweek was \$77.27, and  
3 these employees were underpaid an average of \$22.09 per workweek. *Id.* Further, based on the class list  
4 provided in connection with mediation, on average an employee worked approximately 126.71  
5 workweeks. *Id.* Therefore, over the course of the Class Period, the estimated underpayment in overtime  
6 wages owed as a result of ACR's failure to include these forms of payment in the regular rate was \$55,980  
7 (\$22.09 [average underpayment] x \$126.71 [average workweeks worked] x 20 [60% of the 33 putative  
8 class members]). *Id.*

9 ACR contends that Settlement Class members received all overtime wages to which they were  
10 entitled. Nguyen Decl., ¶ 19. ACR further counters that any bonuses to putative class members during  
11 the relevant time period were discretionary and did not need to be included in the regular rate of pay for  
12 overtime purposes. *See* 29 C.F.R. §§778.208, 778.211 (excluding "discretionary" bonuses from the  
13 regular rate); *see also* DLSE Manual § 49.1.2.4(3) (bonuses are discretionary, and therefore excludable,  
14 if "both the fact that payment is to be made and the amount of the payment" are discretionary). Therefore,  
15 based on these risks, Plaintiff discounted the maximum exposure by 25% for the risk of non-certification,  
16 and an additional 30% to account for ACR's defenses on the merits, to arrive at an estimated exposure of  
17 \$29,389.50. *Id.*

18 ACR Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and Settlement  
19 Class members were not provided with all legally-compliant first meal periods beginning before the end  
20 of the fifth hour of work. Nguyen Decl., ¶ 20. Specifically, Plaintiff alleges that during the relevant time  
21 period, ACR did not record meal periods and would unlawfully deduct thirty (30) minutes of work time  
22 for purported meal periods whether they were taken or not, and whether they were less than 30 minutes or  
23 not. *Id.* Further, for the 5% of the timekeeping data in which ACR kept track of meal periods, the records  
24 showed that in approximately 78% of the meal-enabling shifts, there was either a late, short, or missed  
25 meal period. *Id.* Therefore, Plaintiff calculated ACR's maximum exposure on the alleged meal period  
26 violations at approximately \$454,960 ((4,182 workweeks x 5 shifts per workweek x .95 (% of auto-deduct  
27 shifts) x \$22.00 average hourly rate) + (4,182 workweeks x 5 shifts per workweek x .05 x .78 (non-  
28 compliance rate) x \$22.00 average hourly rate)). *Id.*

1 ACR counters that it has always provided non-exempt employees with an opportunity to take  
2 legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping  
3 records were solely the result of employee choice, rather than any policy or practice of ACR. Nguyen  
4 Decl., ¶ 21. ACR points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th  
5 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are  
6 taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard).  
7 Finally, ACR contends Plaintiff’s meal period claim is not suited for class certification, since individual  
8 inquiries would be required to assess which employees took non-compliant meal periods, how many meal  
9 periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant  
10 meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the  
11 maximum exposure by 45% for the risk of non-certification, and an additional 30% to account for ACR’s  
12 defenses on the merits to arrive at an estimated exposure of \$175,159.60. *Id.*

13 ACR Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and Settlement  
14 Class members were also not authorized and permitted to take all required rest periods due to ACR’s rest  
15 period policies and practices that fail to authorize and permit all rest periods for every four hours worked,  
16 or major fraction thereof. Nguyen Decl., ¶ 22. Specifically, Plaintiff alleges that ACR failed to authorize  
17 and permit Plaintiff and other non-exempt employees to take third rest period when they worked shifts in  
18 excess of 10.0 hours. *Id.* Based on the data, 25% of the shifts worked were in excess of 10.0 hours. *Id.*  
19 Accordingly, Plaintiff calculated ACR’s maximum exposure for rest period violations at \$115,005 (4,182  
20 workweeks x 5 shifts per workweek x .25 (% of shifts over 10.0 hours) x \$22.00 average premium). *Id.*

21 ACR contends it has always maintained and enforced lawful rest period policies and practices, and  
22 that Settlement Class Members were authorized and permitted to take all off-duty rest periods in  
23 compliance with California law. Nguyen Decl., ¶ 23. Further, ACR argues that Plaintiff’s rest period  
24 claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each  
25 Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which  
26 would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the  
27 maximum exposure by 50% for the risk of non-certification, and an additional 35% to account for ACR  
28 defenses on the merits to arrive at an estimated exposure of \$37,376.63. *Id.*

1        ACR Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that ACR issued  
2 inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid minimum  
3 wages, overtime wages, and meal and rest period premium wages described above. Nguyen Decl., ¶ 24.  
4 Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because the wage statements  
5 issued to Settlement Class Members did not include all hours worked and the rate at which they were being  
6 paid. *Id.* Plaintiff's data analysis reflected that there were approximately 1,349 wage statements issued  
7 during the relevant time period. *Id.* Therefore, Plaintiff calculated ACR's maximum exposure for wage  
8 statement violations at approximately \$134,200 (( $\$50.00 \times 14$  current employees) + ( $\$100.00 \times 1,335$   
9 subsequent wage statements)). *Id.*

10        ACR argues that meal and rest period claims cannot support a claim for wage statement penalties  
11 after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, review granted and *Kirby*  
12 *v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (see, e.g., *Jones v. Spherion Staffing*, No. LA-CV-  
13 11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at \*\*8-9). Nguyen Decl., ¶ 25. ACR further  
14 argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and  
15 that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage  
16 statement violations, as required by Lab. Code § 226(e) for imposition of penalties. *Id.* As such, Plaintiff  
17 discounted the calculated exposure by 50% for a risk of non-certification and an additional 45% for a risk  
18 of being unsuccessful on the merits, to arrive at an estimated total of \$36,905.00. *Id.*

19        ACR is Liable for Waiting Time Penalties: Plaintiff alleges that ACR is also liable for waiting time  
20 penalties under Labor Code section 203 as a result of its failure to pay all wages. Nguyen Decl., ¶ 26.  
21 Based on the data provided by ACR, there were approximately 17 Settlement Class members who have  
22 separated their employment with ACR during the relevant time period who could be entitled to waiting  
23 time penalties. *Id.* Therefore, Plaintiff calculated ACR's maximum exposure for waiting time penalties  
24 at approximately \$89,760 (17 former employees x  $\$22.00/\text{hour} \times 30$  days x 8 hours/day). *Id.*

25        ACR asserts it has strong defenses to the waiting time claim because there exist good-faith  
26 disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 27. *See*  
27 *also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of  
28 waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith

dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 40% to account for ACR’s defenses on the merits, to arrive at an estimated exposure of \$29,620.80. *Id.*

ACR is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Nguyen Decl., ¶ 28. Plaintiff calculated ACR’s maximum exposure at \$134,900 (1,349 pay periods x \$100 initial violation rate). *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision).

ACR argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims will fail. Nguyen Decl., ¶ 29; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). ACR also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find ACR liable for any of Plaintiff’s claims. See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at \*4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 50% for a risk of being unsuccessful on the merits, and an additional 35% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$43,842.50. *Id.*

#### **E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$362,968.78. Nguyen Decl., ¶ 30. The proposed settlement of \$209,100.00 therefore represents approximately 57.61% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class members, and will still provide an average recovery to Settlement Class members of over \$3,000.00

The proposed settlement reflects approximately 57.61% of the estimated recovery the Settlement

1 Class could reasonably expect in light of the significant litigation risks, and will provide tangible  
2 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure  
3 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*  
4 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, \*4 (approving settlement  
5 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459  
6 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop.*  
7 *v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement  
8 may be acceptable even though it amounts to only a fraction of the potential recovery that might be  
9 available to the Settlement Class members at trial”). Thus, Plaintiff submits that the proposed settlement  
10 is within the range of possible approval, such that notice should be provided to the Settlement Class so  
11 that they can consider the Settlement. The Court will have the opportunity to again assess the  
12 reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

13 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER**  
14 **LITIGATION**

15 Although the parties engaged in informal discovery, the parties still had significant discovery to  
16 complete in formal litigation had the matter not settled. Nguyen Decl., ¶ 34. Moreover, Plaintiff still had  
17 to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification  
18 ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if the classes sought to be  
19 certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys’ fees and  
20 costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids  
21 those risks and the accompanying expense. Thus, this factor supports preliminary approval.

22 **G. RISK OF MAINTAINING CLASS ACTION STATUS**

23 Plaintiff had not yet filed his motion for class certification and as such, the extent to which  
24 Plaintiff’s proposed classes were certifiable is somewhat speculative. This is especially true in light of  
25 the relatively small class size and ACR’s contention that a number of the Settlement Class members signed  
26 arbitration agreements that covered the claims covered in the instant litigation. Absent settlement, there  
27 was a risk that there would not be a certified class at the time of trial.  
28

1 **IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

2 California Rule of Court 3.769 conditions settlement of a class action on court approval, which is  
3 generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil  
4 Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial court to  
5 determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler*  
6 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine “whether a proposed  
7 settlement is fundamentally fair, adequate, and reasonable”).

8 As explained below, the Settlement Class satisfies the criteria for certification of a settlement class  
9 because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions  
10 of law and fact predominate over individual questions such that class certification is the most efficient  
11 and desirable way to maintain this litigation; (3) Plaintiff’s claims are typical of the claims of absent  
12 Settlement Class members; and (4) Plaintiff and his counsel will fairly and adequately represent  
13 Settlement Class members’ interest. *See* Cal. Civ. Proc. § 382.

14 **A. NUMEROSITY IS SATISFIED.**

15 Here, the proposed Settlement Class consists of approximately 33 members, and is therefore  
16 sufficiently numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v. Sup.*  
17 *Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).  
Thus, numerosity is satisfied.

18 Further, a class is “ascertainable” where the members “may be readily identified without  
19 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*  
20 (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined  
21 as “all current and former non-exempt, hourly employees of Defendant Aircraft Component Repair, Inc.  
22 who worked at any time in California between February 5, 2017 and the date of preliminary approval”  
23 and is ascertainable through ACR’s personnel files maintained in the regular course of business. Nguyen  
24 Decl., ¶ 14.

25 **B. COMMONALITY IS SATISFIED.**

26 The focus in a certification dispute is not the merits, but rather on what types of questions,  
27 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court*  
28 *(Rocher)* (2004) 34 Cal.4th 319, 327.

1 Here, Settlement Class members' claims arise from ACR's common, uniform policies and  
2 practices that applied to Settlement Class members during the class period. Nguyen Decl., ¶ 15.  
3 Specifically, Plaintiff alleged that ACR's common and uniform policies and practices resulted in the  
4 following violations, involving common questions of law and fact: (1) failure to pay all overtime wages  
5 owed; (2) failure to pay all minimum wages owed; (3) failure to provide all legally required meal periods;  
6 (4) failure to authorize and permit all legally required rest periods; (5) failure to pay all final wages upon  
7 separation of employment; (6) failure to provide accurate, itemized wage statements; (7) engagement in  
8 unlawful business practices; and (8) liability for civil penalties under the PAGA. These alleged practices  
9 result in common questions as to the affected Settlement Class members. *See e.g., Benton v. Telecom*  
10 *Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

11 **C. TYPICALITY IS SATISFIED.**

12 The typicality requirement is satisfied where class representatives have claims that are typical of  
13 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,  
14 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class  
in a consumer class action).

15 Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class.  
16 First, Plaintiff was employed by ACR during the Class Period as a non-exempt employee and was subject  
17 to ACR's wage and hour policies at issue in this case. *See* Payan Decl., ¶ 2. Second, Plaintiff was  
18 allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole.  
19 For example, Plaintiff asserts that he was not paid all minimum and/or overtime, wages, was not provided  
20 all meal periods, was not authorized and permitted all rest periods, received inaccurate itemized wage  
21 statements, similar to those received by the Settlement Class members, and was not paid all of his wages  
22 owed upon his separation of employment. *Id.* Given that ACR's policies and practices applied to all  
23 non-exempt employees, Settlement Class members possess a similar interest and have suffered similar  
24 alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all  
25 arise from the same conduct, typicality is satisfied.

26 //

27 //

28 //

1           **D.     ADEQUACY IS SATISFIED.**

2           The adequacy requirement examines conflicts of interest between named parties and the class(es)  
3 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)  
4 Cal.App.4th 676, 697.

5           Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he  
6 seeks to represent. Payan Decl., ¶ 10. Indeed, Plaintiff’s interests are aligned with those of the Settlement  
7 Class members, as they all seek monetary relief under the same facts and legal theories. Additionally,  
8 Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of*  
9 *America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class  
10 Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed  
11 class). Further, Class Counsel also have extensive experience in wage and hour class action litigation  
12 and have vigorously litigated this case. *See* Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶  
13 2-8; Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4.

14           **V.     SETTLEMENT AGREEMENT**

15           **A.     THE BASICS**

16                 1.   Class Definition and Release Period

17           The proposed Settlement Class is defined as “all current and former non-exempt, hourly employees  
18 of Defendant Aircraft Component Repair, Inc. who worked at any time in California between February 5,  
19 2017 and the date of preliminary approval.” Nguyen Decl., ¶ 14. For purposes of this Settlement  
20 Agreement, the “Class Period” shall mean the time period of February 5, 2017 through the date of  
21 preliminary approval of this Settlement Agreement. Nguyen Decl., ¶ 14.

22                 2.   PAGA Employees and PAGA Period

23           The proposed PAGA Employees is defined as “all current and former non-exempt, hourly  
24 employees of Defendant Aircraft Component Repair, Inc. who worked at any time in California between  
25 February 5, 2020 and the date of preliminary approval.” Nguyen Decl., ¶ 14. For purposes of this  
26 Settlement Agreement, the “PAGA Period” shall mean the time period of February 5, 2020 through the  
27 date of preliminary approval of this Settlement Agreement. Nguyen Decl., ¶ 14.

28           //

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1           **B.       RELEASE OF CLAIMS**

2                   1.   Scope of Settlement Class Members’ Release

3           Settlement Class Members and Plaintiff will release and forever discharge any and all claims for  
4 wages, damages, unpaid costs, penalties, liquidated damages, interest, attorney fees, litigation costs,  
5 restitution, or equitable relief, which Plaintiff and Settlement Class Member had, or may claim to have,  
6 against any of the Defendant and all of its officers, directors, shareholders, managers, employees, agents,  
7 insurers, principals, heirs, representatives, successors, accountants, auditors, consultants, and its  
8 respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (“Released  
9 Parties”), arising during the Class Period, that were pled or that could have been pled based on the factual  
10 allegations set forth in the Complaint, including but not limited to: claims for minimum wage violations;  
11 failure to pay overtime wages; rest period violations; meal period violations; failure to timely pay wages;  
12 itemized wage statement violations; waiting time penalties based on the foregoing Labor Code violations  
13 (Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 8 CAL. C.  
14 REGS. § 11130, sections 11 and 12 of IWC Wage Order No. 1); and unfair competition based on the  
15 foregoing (collectively, “Released Claims”). Settlement, ¶ II.FF.

16                   2.   Scope of PAGA Release

17           PAGA Employees (including those who have opted out) will release and discharge the Released  
18 Parties from all claims, demands, rights, liabilities and causes of action under California Labor Code  
19 Private Attorneys General Act of 2004 (Labor Code section 2698 *et seq.*) as asserted in the operative  
20 complaint (as alleged in the letter to the Labor & Workforce Development Agency (“LWDA”) February  
21 8, 2021) that arose during the PAGA Period based on the following claims: (a) failure to pay all overtime  
22 wages owed; (b) failure to pay all minimum wages owed; (c) failure to provide meal periods, or premium  
23 pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for  
24 non-compliant rest periods; (e) failure to timely pay all wages due upon separation of employment; (f)  
25 failure to issue accurate, itemized wage statements based on the foregoing Labor Code violations, Labor  
26 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 8 CAL. C. REGS. §  
27 11130, sections 11 and 12 of IWC Wage Order No. 1. Settlement, ¶ II.Y.

28           //

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1                   3. Releases Effective Date

2           Upon the Effective Date<sup>3</sup>, Plaintiff and Settlement Class Members will be deemed to have fully  
3 released and discharged the Released Parties of and from all of the Released Claims during the Class  
4 Period. Upon the Effective Date, Plaintiff and PAGA Employees will be deemed to have fully released  
5 and discharged the Released Parties of and from all of the PAGA Release during the PAGA Period.  
6 Settlement, ¶ V.J. 1-2.

7           **C. MONETARY TERMS OF SETTLEMENT**

8                   1. Gross Settlement Amount and Timing of Payment

9           If the Court approves this Settlement, ACR will pay a Gross Settlement Amount (“GSA”) of  
10 \$209,100.00.<sup>4</sup> Nguyen Decl., ¶ 13, Exh. 2 (Settlement, ¶ I.O). Significantly, this Settlement is **non-**  
11 **reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement  
12 Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or  
13 she affirmatively opts out of the Settlement. *Id.*

14           Defendant will pay the Gross Settlement Amount within thirty (30) calendar days of the Effective  
15 Date. *See* Settlement, ¶ V.A.5.

16 //

17 //

18 //

19 <sup>3</sup> K. “Effective Date” means the date when all of the following events have occurred: the date when all of the following  
20 events have occurred: (1) the Stipulation of Settlement has been executed by all Parties, Class Counsel and Defendant’s  
21 Counsel; (2) the Court has given preliminary approval to the Stipulation of Settlement; (3) the Notice of Class Action Settlement  
22 has been given to the putative members of the Settlement Class, providing them with an opportunity to object to the terms of  
23 this Stipulation of Settlement or opt out of the settlement; (4) the Court has held a formal fairness hearing and entered a Final  
24 Approval Order and Judgment certifying the Settlement Class, and approving the Stipulation of Settlement; (5) 65 calendar  
25 days have passed since the Court has entered a Final Approval Order and Judgment certifying the Settlement Class, and  
26 approving the Stipulation of Settlement; and (6) in the event there are written objections filed prior to the final fairness hearing  
27 which are not later withdrawn or denied, the later of the following events: five business days after the period for filing any  
28 appeal, writ or other appellate proceeding opposing the Court’s Final Approval Order and Judgment has elapsed without any  
appeal, writ or other appellate proceeding having been filed; or, if any appeal, writ or other appellate proceeding opposing the  
Court’s Final Approval Order and Judgment approving the Stipulation of Settlement has been filed, five business days after  
any appeal, writ or other appellate proceedings opposing the Stipulation of Settlement has been finally and conclusively  
dismissed with no right to pursue further remedies or relief. Settlement, ¶ I.K.

<sup>4</sup> Defendant estimates that there were 4,182 workweeks during the Class Period at the time of mediation. If the number of  
workweeks during the Class Period increases more than 10% than this figure (i.e., if there are 4,600 or more workweeks worked  
by the settlement Class Members), Defendant agrees to increase the Gross Settlement Amount on a proportional basis for the  
amount above 4,600 workweeks (e.g. if there were 5,018.5 workweeks during the Class Period, which is 20% more than the  
estimated workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 10%). See  
Settlement ¶ 5.A.1.

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

|                                                              |                     |
|--------------------------------------------------------------|---------------------|
| <b>Gross Settlement Amount (“GSA”):</b>                      | <b>\$209,100.00</b> |
| Minus Court-approved attorneys’ fees (update to 1/3 of GSA): | \$69,700.00         |
| Minus Court-approved, verified costs (up to \$15,000.00):    | \$15,000.00         |
| Minus Court-approved Class Representative Service Award:     | \$5,000.00          |
| Minus Settlement Administration Costs:                       | \$2,400.00          |
| Minus PAGA:                                                  | \$20,000.00         |
| <b>Net Settlement Amount (“NSA”):</b>                        | <b>\$97,000.00</b>  |

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment, the Settlement requires ACR to pay a Net Settlement Amount (“NSA”) of at least \$97,000.00 to all Settlement Class members who do not timely opt out. Nguyen Decl., ¶ 13, Exh. 2.

3. Class Representative Service Award

“[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for his services to the Settlement Class. Nguyen Decl., ¶ 33, Exh. 2 (Settlement, ¶ V.C.3); Payan Decl., ¶¶ 6-10. As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶ 33; Payan Decl., ¶¶ 6-10; Settlement ¶ V.J.5.

//

1                   4. Attorneys' Fees and Costs

2           California courts recognize an appropriate method for awarding attorneys' fees in class actions is  
3 to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert*  
4 *Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California  
5 class action cases"). Class Counsel's request for fees of one-third of the CSA is well within the range of  
6 reasonableness, and indeed is considered the typical rate for common fund settlements. Historically,  
7 courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the  
8 case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

9           Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which  
10 is currently estimated to be \$69,700.00, and up to \$15,000.00 in verified costs reimbursement. *See*  
11 Settlement, ¶ V.E.; Nguyen Decl., ¶ 31. Plaintiff submits the requested fee is fair compensation for  
12 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.  
13 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen  
14 Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,  
15 analyzing Plaintiff's claims, conducting legal research, analyzing Settlement Class members' timekeeping  
16 data and payroll records, preparing for and attending mediation, negotiating and revising the long-form  
17 Settlement, preparing this Motion, and otherwise litigating the case. Nguyen Decl., ¶ 31. Class Counsel  
18 expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice  
19 process and fielding questions from Settlement Class members, preparing the final approval papers and  
20 attending the Final Approval hearing. *Id.*

21           Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall  
22 percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely  
23 positive results obtained for the class, and the efficiency with which the Parties conducted the litigation.  
24 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and  
25 verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar  
26 analysis.

26                   5. Payroll Taxes

27           The Settlement provides that ACR's payroll taxes shall be paid separately from, and in addition  
28 to, and the Gross Settlement Amount. Settlement ¶ V.A. Defendant agrees to deposit it with the

1 Settlement Administrator on the same date the Gross Settlement Amount is due.

2 6. Payment Formula

3 According to ACR, there are approximately 33 total Settlement Class members. Nguyen Decl., ¶  
4 14. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the  
5 Class Period, as follows:

6 The Settlement Administrator will be responsible for calculating each Settlement Class Member's  
7 share of the Net Settlement Amount ("Individual Settlement Share"), as follows: The Net Settlement  
8 Amount will be divided by the total number of Workweeks worked by all of the Settlement Class Members  
9 to yield a "Class Weekly Rate." Each Settlement Class Member's respective number of Workweeks will  
10 be multiplied by the Class Weekly Rate, to yield his or her respective Individual Settlement Share.  
11 Settlement, ¶ V.D.4.

12 The Settlement Administrator will also be responsible for calculating each PAGA Employee's  
13 share of the PAGA Settlement Amount, as follows: The PAGA Settlement Amount will be divided by  
14 the total number of Workweeks worked by all of the PAGA Employees to yield a "PAGA Weekly Rate."  
15 Each PAGA Employee's respective number of Workweeks will be multiplied by the PAGA Weekly Rate,  
16 to yield his or her respective Individual PAGA amount. Settlement, ¶ V.D.5.

17 Thus, the average Individual Settlement Payment (assuming all Settlement Class members worked  
18 the same length of time) is projected to be approximately **\$3,090.91**. *Id.*

19 7. Tax Allocation

20 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be  
21 allocated as follows: sixty-seven percent (67%) as penalties and interest; and thirty-three percent (33%)  
22 as wages. Settlement, ¶ V.D.6.

23 8. PAGA Penalty

24 The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor  
25 Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or  
26 \$15,000.00. Settlement ¶ 4.D.5. The total amount allocated to PAGA represents approximately 45.6%  
27 of the estimated PAGA exposure discussed above of \$43,842.50. *Id.* In addition, the \$20,000 represents  
28 roughly 9.5% of the \$209,100.00 Gross Settlement Amount and is in line with the zero to two percent  
range for PAGA claims approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118

1 BTM (JMAx), 2009 WL 995864, at \*1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2  
2 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at \*1 (S.D.  
3 Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm’n Cases*,  
4 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA  
5 claims under which no money was allocated to the PAGA claims).

6 **VI. NOTICE ADMINISTRATION**

7 **A. SETTLEMENT ADMINISTRATOR**

8 Simpluris’ fees and expenses are estimated not to exceed \$2,400.00. *See* Declaration of Eric  
9 Springer in support of Plaintiff’s Motion for Preliminary Approval filed concurrently herewith (“Springer  
10 Decl.”). This request is reasonable in light of the proposed class size of approximately 33 Settlement  
11 Class members and the costs and expenses associated with administering the notices and distributing the  
12 awards. Additionally, Simpluris will translate the Notice Packet and mail the Notice in both English and  
13 Spanish to Settlement Class members.

14 **B. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR**

15 Simpluris has extensive experience in class action matters, having provided services in class action  
16 settlements involving antitrust, securities fraud, property damage, employment discrimination,  
17 employment wage and hour, product liability, insurance and consumer issues. Simpluris specializes in  
18 pre-settlement consultation, data management, legal notification, call center support, claims processing  
19 and tax reporting. Springer Decl., ¶ 5.

20 **C. CLASS LIST FROM DEFENDANT**

21 Within twenty (20) calendar days after entry of an order preliminarily approving this Agreement,  
22 Defendant will provide the Settlement Administrator with a Class List consisting of each Class Member’s:  
23 (1) full name; (2) last known mailing address and telephone number, if known; (3) full Social Security  
24 number; and (4) start and end dates of employment during the Class Period. Settlement, ¶ IV.C.1.

25 **D. CLASS LIST UPDATED PRIOR TO INITIAL MAILING**

26 Prior to mailing the Class Notice to the Class, the Settlement Administrator will perform a search  
27 based on the National Change of Address Database to update and correct the Class Members’ addresses,  
28 contained in the Class List, for any known or identifiable address changes. Settlement, ¶ IV.C.3.

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1           **E.       DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS**

2           Within ten (10) calendar days after the Settlement Administrator's receipt of the Class List, the  
3 Settlement Administrator will format and mail the Class Notice to the Class Members via first-class U.S.  
4 mail. Settlement, ¶ IV.C.2.

5           **F.       NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)**

6           The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it  
7 advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties,  
8 and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the  
9 procedures by which to do so, explains the recovery formula and expected recovery amount for each  
10 Settlement Class member, provides them the opportunity to contest their total workweeks included in the  
11 notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out.  
12 *See* Nguyen Decl., Exh. 2 (Settlement, Exh. A). The proposed Class Notice will also notify Settlement  
13 Class members of the final approval hearing date and provides Settlement Class members the contact  
14 information for Class Counsel, and advises Settlement Class members that they may enter an appearance  
15 through counsel if they wish to. This manner of giving notice satisfies California Rule of Court 3.766(e)  
16 as the most reliable and cost-effective method of reaching Settlement Class members.

17           **G.       COURT'S CURRENT SOCIAL DISTANCING PROCEDURES**

18           The Class Notice expressly states the following:

19                   Any Settlement Class member who elects to appear personally at the Court for any  
20                   reason related to this Lawsuit must comply with the Court's social distancing and  
21                   mandatory face covering requirements, as well as any other orders related to COVID-  
22                   19. All such rules and orders can be located at the Court's website: [www.lacourt.org](http://www.lacourt.org).

23                   For more information on how to appear remotely, please visit the Court's website at  
24                   <http://www.lacourt.org/division/civil/CI0040.aspx> and <https://www.lacourt.org/lacc/>

25           **H.       PROCESSING OF PAYMENTS**

26           Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with  
27 the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and  
28 provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of  
approval by counsel for the Parties, the Settlement Administrator will prepare and mail all Individual  
Settlement Payments to Settlement Class Members, Attorneys' Fees and Litigation Costs to Class

Counsel, Plaintiff's Incentive Payment, and Settlement Administration Costs to itself, all as determined by the Court at the Final Approval Hearing, less applicable taxes and withholdings, to participating Settlement Class Members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel. Settlement, ¶ V.D.2-3.

#### **I. UNDELIVERABLE CLASS NOTICES**

The Settlement Administrator will perform a skip-trace search and re-mail all Class Notices that are returned as undelivered on or before the Response Deadline, within seven (7) calendar days of receiving the returned Class Notice. If a new address is obtained after a Class Notice is returned as undeliverable, the Settlement Administrator shall promptly forward the original Notice Packet to the updated address via first-class U.S. mail, indicating the date of such re-mailing. Settlement, ¶ V.C.4.

#### **VII. RESPONSES TO NOTICE**

##### **A. REQUESTS FOR EXCLUSION**

Class Members who wish to exclude themselves from the Settlement must submit to the Settlement Administrator an Opt Out Request, which shall be a written statement (as directed by the Class Notice) requesting exclusion from the Settlement Agreement (also referred to herein as "opt out"), and which must: (a) contain the full name, address, telephone number, last four (4) digits of the Social Security Number, and signature of the person requesting exclusion; (b) contain a clear statement indicating that the person wishes to exclude himself or herself from the Settlement, and referencing the Action by name and/or case number; and (c) be postmarked no later than the Response Deadline. Settlement, ¶ V.D.1.

##### **B. RE-MAILED NOTICES**

If a Class Notice is returned as undeliverable, the Settlement Administrator will continue to attempt to obtain a new address for the Class Member until the Response Deadline expires. Settlement, ¶ V.C.4.

##### **C. OBJECTION PROCEDURES**

Any Class Member who seeks to object to the Settlement may do so by filing his or her objection with the Court and submitting a copy of the objection on the Settlement Administrator by mail. The objection must: (a) contain the objecting Class Member's full name, address, telephone number, last four digits of his or her Social Security number, and signature; (b) contain the words "Notice of Objection" or "Formal Objection"; (c) contain the case name and number of the Action; (d) a clear and concise statement,

1 including factual and legal arguments, explaining his or her objection(s) to the Settlement; (e) contain a  
2 statement indicating whether or not the Class Member is represented by counsel and identifying any such  
3 legal counsel; (f) contain a statement indicating whether the Class Member intends to appear at the Final  
4 Approval Hearing to present his or her objection(s); (g) list any witnesses the objecting Class Member  
5 may call to testify at the Final Approval Hearing; and (h) be submitted to the Settlement Administrator no  
6 later than the Response Deadline. Settlement, ¶ IV.E.1.

7 Members of the Settlement Class who do not request exclusion may also object to the Settlement  
8 by appearing at the Final Approval Hearing irrespective of whether they submitted any written objections.  
9 Settlement, ¶ IV.E.3.

### 10 **VIII. CY PRES DISTRIBUTION**

11 The Settlement provides that Settlement Class members with 180 days from the date the  
12 Settlement Administrator mails the checks and any funds remaining after 180 days shall be transmitted  
13 by the Settlement Administrator to the California State Controller's Office under the unclaimed property  
14 laws in the names and corresponding amounts associated with each Participating Class Member.  
15 Settlement ¶ V.D.8. As all settlement funds will be distributed to the Settlement Class members, there  
16 will be no residue and it is unnecessary to designate *cy pres* recipients.

### 17 **IX. CONCLUSION**

18 This Court should set a hearing for final approval of the Settlement on a date appropriately  
19 scheduled to follow the deadline by which Settlement Class members must file objections to the  
20 Settlement or opt-out. *See* California Rule of Court 3.769.

21 Therefore, for the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily  
22 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order  
23 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

24  
25 Dated: January 19, 2022

Respectfully submitted,  
LIDMAN LAW, APC

26  
27 By:

  
Elizabeth Nguyen  
Attorney for Plaintiff  
ANDRES PAYAN