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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAIME BARAJAS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SCHUMACHER CARGO LOGISTICS, INC.,
a California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 21STCV04851

*[Assigned for All Purposes to Hon. Amy D. Hogue,
SSC-7]*

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

Date: August 11, 2022
Time: 10:00 a.m.
Dept.: SSC-7

Action Filed: February 5, 2021
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 August 11, 2022 at 10:00 a.m. in Department SSC-7 of the above-entitled Court, located at 312 North
4 Spring Street, Los Angeles, California, 90012, Plaintiff Jaime Barajas ("Plaintiff"), individually and on
5 behalf of a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement
8 purposes only, provisional certification of the following Settlement Class defined as follows:

9 All current and former non-exempt warehouse employees of Defendant
10 Schumacher Cargo Logistics, Inc. who worked for Defendant in California at any
11 time from February 5, 2017 through the date of preliminary approval of the
Settlement.

- 12 3. Preliminary appointment of Plaintiff Jaime Barajas as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
14 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
15 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
16 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
17 payable to the California Labor Workforce Development Agency, and attorneys' fees and
18 costs to Class Counsel;
19 6. Appointment of Simpluris, Inc. as the third-party Settlement Administrator for mailing
20 notices; and
21 7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
22 Class Action and Settlement and Notice of Settlement Award) which is attached to the
23 Settlement as Exhibit C and an order that it be disseminated to the proposed Settlement Class
24 Members as provided in the Settlement Agreement.

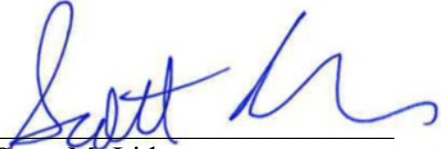
25 This Motion is based on this notice of motion, the memorandum of points and authorities, the
26 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Jaime
27 Barajas, and Eric Springer of Simpluris, Inc., Stanton Ibara of Schumacher Cargo Logistics, Inc. and
28

1 the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral
2 or documentary evidence or argument presented at the time of hearing.

3
4 Dated: April 21, 2022

Respectfully submitted,
LIDMAN LAW, APC

5
6
7 By:



Scott M. Lidman
Attorney for Plaintiff
JAIME BARAJAS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES¹**

2 **I. INTRODUCTION**

3 Plaintiff Jaime Barajas (“Plaintiff”) brought this class and representative action against
4 Defendant Schumacher Cargo Logistics, Inc. (hereinafter “Schumacher” or “Defendant”) alleging
5 various wage and hour and related violations. Plaintiff’s primary claims/allegations are that
6 Schumacher: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3)
7 failed to pay all vacation wages; (4) failed to provide all legally required meal periods; (5) failed to
8 authorize and permit all legally required rest periods; (6) failed to provide accurate, itemized wage
9 statements; (7) failed to timely pay all wages upon termination; (8) engaged in unlawful business
10 practices; and (9) is liable for civil penalties under the Labor Code Private Attorneys General Act of
11 2004 (“PAGA”).

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
13 class action settlement,² in which Schumacher has agreed to pay Five Hundred Thousand Dollars and
14 Zero Cents (\$500,000.00) on behalf of the following Settlement Class:

15 All current and former non-exempt warehouse employees of Defendant
16 Schumacher Cargo Logistics, Inc. who worked for Defendant in California at any
17 time from February 5, 2017 through the date of preliminary approval of the
18 Settlement.

19 Significantly, Settlement Class members do not need to file a claim to benefit from the
20 Settlement because all Settlement Class members will automatically receive a payment unless they
21 affirmatively opt-out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees
22 and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount (“NSA”) of
23 approximately \$289,833.33 will be distributed to all Settlement Class members who do not opt-out of
24 the Settlement. There were approximately 64 Settlement Class members as of the date of mediation,
25 and including the \$5,000 for PAGA Employees, the average payment to participating Settlement Class

26 ¹ Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court
27 allow Plaintiff to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the
28 Court consider the attached memorandum of points and authorities which is 31 pages in length.

² The Settlement is attached to the Declaration of Scott M. Lidman as Exhibit 3. The proposed Notice
Packet is attached to the Settlement as Exhibit C.

1 members is estimated to be approximately \$4,528.65.

2 This proposed Settlement is well-within the range of possible approval in light of the significant
3 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
4 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff
5 respectfully requests that the Court grant preliminary approval of the Settlement.

6 **II. SUMMARY OF THE LITIGATION**

7 **A. THE PARTIES**

8 Schumacher provides international freight transportation and relocation services. *See*
9 Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff, a former employee, was employed
10 by Schumacher as an hourly, non-exempt warehouse employee from approximately May 2005 through
11 approximately October 9, 2020. *See* Declaration of Jaime Barajas (“Barajas Decl.”), ¶ 2.

12 **B. BRIEF PROCEDURAL HISTORY**

13 On February 5, 2021, Plaintiff filed the instant putative class action complaint. Lidman Decl.,
14 ¶ 10. On February 5, 2021, Plaintiff submitted a letter to the California Labor & Workforce
15 Development Agency (“LWDA”) and Schumacher of his intention of filing a PAGA claim based on
16 the labor code violations as alleged in his complaint. *Id.*, **Exhibit 1**. Therefore, on May 7, 2021, after
17 exhausting his administrative remedies, Plaintiff filed a First Amended Class and Representative Action
18 Complaint adding a cause of action for civil penalties under the PAGA. *Id.* To effectuate the terms of
19 the settlement, Plaintiff submitted a supplemental letter to the LWDA on December 23, 2021 to add an
20 underlying labor code violation for failure to provide meal periods. *Id.*, **Exhibit 2**. Plaintiff also filed a
21 Second Amended Class and Representative Action complaint adding a cause of action for meal period
22 violations. *Id.* Subsequently, on March 7, 2022, pursuant to the Parties’ stipulation and the Court
23 granting leave, Plaintiff filed a Third Amended Class and Representative Action Complaint to add a
24 claim for civil penalties under the PAGA for alleged meal period violations. *Id.*

25 **C. CLAIMS ASSERTED AND NEGOTIATED AS PART OF PROPOSED 26 SETTLEMENT**

27 After the Parties agreed to attend a private mediation, they exchanged information and data, and
28 also agreed that they would exchange data and mediate additional claim for failure to provide all legally
required meal periods in addition to the original claims asserted.

1 Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the
2 LWDA on the same date he files this Motion and will submit a supplemental declaration showing the
3 submission. Lidman Decl., ¶ 40.

4 **III. DUNK/KULLAR ANALYSIS**

5 Settlement is the preferred means of dispute resolution, particularly in complex class action
6 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in
7 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
8 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
9 Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of a
10 mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

11 **A. INVESTIGATION AND DISCOVERY**

12 In advance of mediation, Schumacher produced timekeeping and payroll data, as well as its
13 wage and hour policies and other relevant documents and information relevant to the claims alleged.
14 Lidman Decl., ¶ 11. Schumacher also provided necessary metrics, including without limitation, class
15 size, number of workweeks and pay periods. After the detailed review of the documents and data
16 produced by Schumacher, Class Counsel drew on their extensive experience in similar cases to assess
17 the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the
18 merits and value of Plaintiff's claims and Schumacher's defenses thereto.

19 Moreover, after the mediation, Schumacher provided a declaration under oath concerning the
20 workweeks, class size, pay periods at issue. *Id.* These representations will be further verified by
21 Simpluris during the administration of the Settlement. *Id.*

22 **B. ARMS-LENGTH NEGOTIATIONS**

23 On December 2, 2021, a mediation was held with Jeffrey Krivis, Esq., a well-respected wage
24 and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated
25 their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for
26 the claims and defenses. *Id.* Although the case did not settle at mediation, the parties agreed in the
27 weeks that followed on a class-wide resolution. *Id.*

28 //

//

1 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

2 “Parties represented by competent counsel are better positioned than courts to produce a
3 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
4 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
5 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
6 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
7 *Lidman Decl.*, ¶¶ 2-8; *Nguyen Decl.*, ¶¶ 2-8; *Haines Decl.*, ¶¶ 2-8. Class Counsel conducted an in-depth
8 review of Schumacher’s policies and timekeeping and payroll records, and drew on their extensive
9 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See Lidman Decl.*,
10 ¶¶ 10-31. The Settlement was also reached with the assistance of a mediator. *Id.* This factor strongly
11 supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

12 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF**
13 **CLAIMS**

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

17 Schumacher Failed to Pay for All Hours Worked: Plaintiff alleges that he and Settlement Class
18 members were not fully compensated for all of their time worked. *Lidman Decl.*, ¶ 16. Specifically,
19 Plaintiff alleges Schumacher would unlawfully shave their work time and/or round their work time
20 such that they would not be fully paid for all time worked. *Id.* Plaintiff also alleges that this time
21 shaving and/or rounding practice utilized by Schumacher was not-even handed over time and would
22 almost exclusively round and shave in Schumacher’s favor such that the employees were routinely
23 underpaid for their time worked and it appeared on average to be an underpayment of approximately
24 30 minutes per week. *Id.* Accordingly, Plaintiff analyzed this rounding issue and found that it appeared
25 to favor the employer, and then calculated a total wage underpayment of approximately \$59,101.00,
26 which is based on the overtime rate of \$22.74³ since employees generally worked over 8.0 hours in a

27 ³ The average hourly rate of \$15.16 was calculated by looking at the payroll data produced by
28 Schumacher in connection with mediation. Plaintiff reviewed the records and took the average.
Therefore, based on an hourly rate of \$15.16, the overtime rate is \$22.74 (\$15.16 x 1.5).

1 shift. *Id.*

2 Schumacher contends that it compensated Settlement Class members for all of their time
3 worked. Lidman Decl., ¶ 17. Schumacher also contends that its rounding practices were lawful, and
4 any unpaid time was *de minimis* and therefore non-compensable. *Id.* Schumacher further asserts that
5 Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be
6 required, and also that Schumacher's rounding policy/mechanism was, according to it, neutral on its
7 face and in its application. *Id.* In light of these defenses, Plaintiff discounted the maximum exposure
8 by 40% for the risk of non-certification, and an additional 35% to account for Schumacher's defenses
9 on the merits, to arrive at an estimated exposure of \$23,049.39. *Id.*

10 Schumacher Failed to Pay Overtime at the Overtime Rate: Plaintiff alleges that he and
11 Settlement Class members were not paid for all of their overtime hours worked. Lidman Decl., ¶ 18.
12 Specifically, Plaintiff alleges that Schumacher paid all overtime that was paid was paid at the regular
13 and not the overtime rate of pay. *Id.* Moreover, Plaintiff alleges that Schumacher issued a separate
14 wage statement with the overtime hours paid at the base rate of pay. Therefore, Plaintiff calculated an
15 additional .5 or (\$7.58) is owed for overtime hours and on average about 16 hours of overtime was
16 worked each workweek. As such, Schumacher's exposure is at approximately \$630,413 (\$7.58 x 16
17 hours OT/week x 5,198 workweeks). *Id.*

18 Schumacher contends it compensated Settlement Class members for all overtime hours worked
19 at the proper overtime rate. Lidman Decl., ¶ 19. Schumacher further asserts that Plaintiff would be
20 unable to certify a rounding class given the individualized inquiries that would be required. *Id.* In light
21 of these defenses, Plaintiff discounted the maximum exposure by 10% for the risk of non-certification,
22 and an additional 10% to account for Schumacher's defenses on the merits, to arrive at an estimated
23 exposure of \$510,634.53.

24 Miscalculation of Regular Rate (Incentive Pay): Plaintiff alleges that at times during his
25 employment with Schumacher, he and other non-exempt employees were paid non-discretionary
26 bonuses (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay").
27 Lidman Decl., ¶ 20. Plaintiff alleges that Schumacher failed, however, to include the Incentive Pay
28 when calculating the regular rate of pay for purposes of paying Plaintiff and the other non-exempt

1 employees' overtime wages. *Id.* Accordingly, Plaintiff contends that Schumacher did not properly
2 calculate the regular rate of pay for Plaintiff and the other non-exempt employees, thereby causing them
3 to be underpaid for all their required overtime wages. *Id.* Based on the records provided in connection
4 with mediation, Plaintiff calculated that he was owed approximately \$123.73 per workweek for his
5 underpaid overtime wages. Therefore, based on this, Plaintiff estimates Schumacher's exposure at
6 \$643,149 ($\$123.73 \times 5,198$). *Id.*

7 Schumacher contends that Settlement Class members received all overtime wages to which they
8 were entitled. Lidman Decl., ¶ 21. Schumacher further counters that any bonuses paid to putative class
9 members during the relevant time period were discretionary and did not need to be included in the
10 regular rate of pay for overtime purposes. *See* 29 C.F.R. §§778.208, 778.211 (excluding
11 "discretionary" bonuses from the regular rate); *see also* DLSE Manual § 49.1.2.4(3) (bonuses are
12 discretionary, and therefore excludable, if "both the fact that payment is to be made and the amount of
13 the payment" are discretionary). *Id.* Accordingly, based on these risks, Plaintiff discounted the
14 maximum exposure by 15% for the risk of non-certification, and an additional 10% to account for
15 Schumacher's defenses on the merits to arrive at an estimated exposure of \$492,008.99.

16 Schumacher Failed to Pay Vacation Pay: Plaintiff alleges that Schumacher failed to pay
17 separated employees all of their earned, accrued, and unused Personal Time Off ("PTO") wages at the
18 time of their termination. Lidman Decl., ¶ 22. Vacation pay is a form of deferred wages that cannot
19 be forfeited, and upon an employee's separation must be paid to him or her as wages. *See* Cal. Lab.
20 Code § 227.3 *see also* *Suastez v. Plastic Dress-Up*, 31 Cal.3d 774 (1982). Based on a review of
21 Plaintiff's payroll records produced in connection with mediation, Plaintiff estimates the maximum
22 exposure on the vacation pay claim based on each former employee being owed 24 PTO hours at
23 termination. *Id.* Therefore, with 16 former employees and average hourly rate of \$15.16, Plaintiff
24 calculates Schumacher's exposure at approximately \$224,125 ($24 \text{ hours} \times \$15.16 \times 16 \text{ formers}$). *Id.*

25 Schumacher asserts it pays all former Settlement Class members all wages owed upon the
26 separation of employment, including all earned, accrued, and unused PTO wages. Lidman Decl., ¶ 23.
27 Schumacher also argues that Plaintiff's vacation pay is inherently unsuited for class treatment as an
28 individualized inquiry would be required to determine whether the amount of PTO owed and whether

1 all earned, accrued, and unused PTO wages. *Id.* Accordingly, based on these risks, Plaintiff discounted
2 the maximum exposure by 45% for the risk of non-certification, and an additional 40% to account for
3 Schumacher's defenses on the merits to arrive at an estimated exposure of \$73,961.25.

4 Schumacher Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and
5 Settlement Class members were not provided with all legally-compliant first meal periods beginning
6 before the end of the fifth hour of work. Lidman Decl., ¶ 24. Specifically, as a result of the work
7 demands imposed by Schumacher, Plaintiff claims he was often provided with a meal period after his
8 fifth hour of work, or a meal period less than 30 minutes, in violation of California law. *Id.* Plaintiff
9 also alleges that Schumacher did not require him and the other non-exempt employees to clock in and
10 out for their meal periods and believes that Schumacher unlawfully deducted thirty minutes from his
11 work time for purported meal periods, regardless of whether or not they were taken. *Id.* Therefore,
12 based on one violation per shift over 6.0 hours (and virtually all shifts were over 6.0 hours), Plaintiff
13 calculated Schumacher's maximum exposure for the alleged meal period violations at approximately
14 \$394,008 (5,198 workweeks x 5 shifts/week x \$15.16). *Id.*

15 Schumacher counters that it has always maintained a lawful meal period policy and provided
16 non-exempt employees with an opportunity to take legally compliant meal periods, and any non-
17 compliant meal periods reflected in employee timekeeping records were solely the result of employee
18 choice, rather than any policy or practice of Schumacher. Lidman Decl., ¶ 25. Schumacher points out
19 that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to
20 "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have
21 always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Schumacher
22 contends Plaintiff's meal period claim is not suited for class certification, since individual inquiries
23 would be required to assess which employees took non-compliant meal periods, how many meal periods
24 were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal
25 period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the
26 maximum exposure by 50% for the risk of non-certification, and an additional 40% to account for
27 Schumacher's defenses on the merits to arrive at an estimated exposure of \$118,202.40. *Id.*

28 Schumacher Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that he and

1 Settlement Class members were also not authorized and permitted to take all required rest periods due
2 to Schumacher's rest period policies and practices. Lidman Decl., ¶ 26. Specifically, Plaintiff alleges
3 that Schumacher failed to authorize and permit all rest periods for every four hours worked, *or major*
4 *fraction thereof*. *Id.* Therefore, based on one violation per shift over 3.5 hours (and virtually all shifts
5 were over 3.5 hours), Plaintiff calculated Schumacher's maximum exposure for the alleged rest period
6 violations at approximately \$394,008 (5,198 workweeks x 5 shifts/week x \$15.16). *Id.*

7 Schumacher contends it has always maintained and enforced lawful rest period policies and
8 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
9 periods in compliance with California law. Lidman Decl., ¶ 27. Schumacher also argues that Plaintiff's
10 rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into
11 whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest
12 period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff
13 discounted the maximum exposure by 55% for the risk of non-certification, and an additional 35% to
14 account for Schumacher's defenses on the merits to arrive at an estimated exposure of \$115,247.34. *Id.*

15 Schumacher Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that
16 Schumacher issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged
17 unpaid minimum wages and overtime wages, and meal and rest period premium wages described above.
18 Lidman Decl., ¶ 28. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a)
19 because the wage statements issued to Settlement Class Members did not include all hours worked and
20 the rate at which they were being paid. *Id.* Plaintiff also alleges that Schumacher would at time split
21 his hours worked into separate wage statements for the same period. *Id.* Plaintiff's data analysis
22 reflected that there were approximately 2,599 wage statements issued during the relevant time period.
23 *Id.* Therefore, Plaintiff calculated Schumacher's maximum exposure for wage statement violations at
24 approximately \$258,650 ((\$50.00 x 25 current employees) + (\$100.00 x 2,574 subsequent wage
25 statements)). *Id.*

26 Schumacher argues that meal and rest period claims cannot support a claim for wage statement
27 penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, *review granted*
28 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g., Jones v. Spherion Staffing,*

No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Lidman Decl., ¶ 29. Schumacher further argues that its alleged wage statement violations could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. *Id.* As such, Plaintiff discounted the calculated exposure by 10% for a risk of non-certification and an additional 10% for a risk of being unsuccessful on the merits, to arrive at an estimated total of \$209,506.50. *Id.*

Schumacher is Liable for Waiting Time Penalties: Plaintiff alleges that Schumacher is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all wages upon separation. Lidman Decl., ¶ 30. There are approximately 16 Settlement Class members who have separated their employment with Schumacher during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Schumacher’s maximum exposure for waiting time penalties at approximately \$58,214 (16 former employees x \$15.16/hour x 30 days x 8 hours/day). *Id.*

Schumacher asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 31. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of 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 30% for the risk of non-certification, and an additional 20% to account for Schumacher’s defenses on the merits, to arrive at an estimated exposure of \$32,599.84. *Id.*

Schumacher is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 32. Plaintiff calculated Schumacher’s maximum exposure at \$259,900 (2,599 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).

Schumacher argues that Plaintiff’s PAGA claim will fail for the same reasons that his underlying

claims will fail. Lidman Decl., ¶ 33; *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.”). Schumacher 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 Schumacher 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 20% for a risk of being unsuccessful on the merits, and an additional 25% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$155,940.00. *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 \$1,731,150.24. Lidman Decl., ¶34. The proposed settlement of \$500,000.00 therefore represents approximately 29% 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 \$4,000.00.

The proposed settlement reflects approximately 41% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus, Plaintiff submits that the proposed settlement is within the range of approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has expired.

1 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER**
2 **LITIGATION, AND RISK OF MARINATING CLASS ACTION STATUS**

3 Although the parties engaged in informal discovery throughout this action, the parties still had
4 significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 39.
5 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
6 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.*
7 Even if the classes were certified, the parties would incur considerably more attorneys' fees and costs
8 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those
9 risks and the accompanying expense. Thus, this factor supports preliminary approval.

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

11 California Rule of Court 3.769 conditions settlement of a class action on court approval, which
12 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of
13 Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322.

14 As further explained below, the Settlement Class satisfies the criteria for certification of a
15 settlement class under California law because: (1) the Settlement Class is so numerous that joinder
16 would be impractical; (2) common questions of law/fact predominate over individual questions such
17 that class certification is the most efficient way to maintain this litigation; (3) Plaintiff's claims are
18 typical of the claims of absent Settlement Class members; and (4) Plaintiff and his counsel will fairly
19 and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

20 **A. NUMEROSITY IS SATISFIED.**

21 Here, the proposed Settlement Class consists of at least 64 members, and is therefore
22 sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v.*
23 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
24 numerous). Thus, numerosity is satisfied.

25 Further, the class is "ascertainable" because it is defined as "all current and former non-exempt
26 warehouse employees of Defendant Schumacher Cargo Logistics, Inc. who worked for Defendant in
27 California at any time from February 5, 2017 through the date of preliminary approval of the
28 Settlement" and such members can be identified from Defendant's personnel/business records. Lidman
29 Decl., ¶ 14.

1 **B. COMMONALITY IS SATISFIED.**

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

5 Here, Plaintiff alleges Settlement Class members’ claims arise from Schumacher’s common,
6 uniform policies and practices that applied to Settlement Class members during the class period.
7 Lidman Decl., ¶ 15. Specifically, Plaintiff alleged that Schumacher’s common and uniform policies
8 and practices resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure
9 to pay all minimum wages owed; (3) failure to pay vacation wages; (4) failure to provide all legally
10 required meal periods; (5) failure to authorize and permit all legally required rest periods; (6) failure to
11 provide accurate, itemized wage statements; (7) failure to pay all final wages upon separation of
12 employment; (8) engagement in unlawful business practices; and (9) liability for civil penalties under
13 the PAGA. As a result of the common and uniform policies and practices that applied to all Settlement
14 Class members, their claims involve common questions of law and fact as to whether in fact
Schumacher committed these alleged violations.

15 These alleged practices result in common questions as to the affected Settlement Class
16 members. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

17 **C. TYPICALITY IS SATISFIED.**

18 The typicality requirement is satisfied where class representatives have claims that are typical
19 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
20 1341, 1347. Here, Plaintiff’s claims are typical of those held by the members of the proposed
21 Settlement Class. Plaintiff was employed by Schumacher during the Class Period as a non-exempt
22 warehouse employee and was subject to Schumacher’s wage and hour policies at issue in this case. *See*
23 *Barajas Decl.*, ¶ 2. Further, Plaintiff was allegedly injured by the same challenged policies that
24 allegedly injured the Settlement Class as a whole. *Id.* Given that Schumacher’s policies and practices
25 applied to all non-exempt warehouse employees, Settlement Class members possess a similar interest
26 and have suffered similar alleged injuries as Plaintiff. Accordingly, typicality is satisfied.

1 **D. ADEQUACY IS SATISFIED.**

2 The adequacy requirement examines conflicts of interest between named parties and the
3 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
4 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
5 Settlement Class he seeks to represent. Lidman Decl., ¶ 38, Barajas Decl., ¶ 11. Indeed, Plaintiff's
6 interests are aligned with those of the Settlement Class members, as they all seek monetary relief under
7 the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest
8 with the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51.

9 Further, Class Counsel also have extensive experience in wage and hour class action litigation
10 and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Elizabeth Nguyen
11 ("Nguyen Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Milan
12 Moore ("Moore Decl."), ¶¶ 2-4.

13 **V. SETTLEMENT AGREEMENT**

14 **A. THE BASICS**

15 1. Class Definition and Release Period

16 The proposed Settlement Class is defined as "current and former non-exempt warehouse
17 employees of Defendant Schumacher Cargo Logistics, Inc. who worked for Defendant in California at
18 any time from February 5, 2017 through the date of preliminary approval of the Settlement." Lidman
19 Decl., ¶ 14. For purposes of this Settlement Agreement, the "Class Period" shall mean the time period
20 of February 5, 2017 through the date of preliminary approval of the Settlement." *Id.*

21 2. PAGA Employees and PAGA Period

22 The proposed PAGA Employees are defined as "current and former non-exempt warehouse
23 employees of Defendant Schumacher Cargo Logistics, Inc. who worked for Defendant in California at
24 any time from February 5, 2020 through the date of preliminary approval of the Settlement." Lidman
25 Decl., ¶ 14. For purposes of this Settlement Agreement, the "PAGA Period" shall mean the time period
26 of February 5, 2020 through the date of preliminary approval of the Settlement." *Id.*

1 **B. RELEASE OF CLAIMS**

2 1. Scope of Settlement Class Members' Release

3 Plaintiff and every member of the Settlement Class (except those who timely and properly submit
4 a Request for Exclusion as set forth below) will fully and forever completely release and discharge
5 Defendant, and all of its past and present officers, directors, shareholders, managers, employees, agents,
6 principals, heirs, representatives, accountants, auditors, consultants, as well as its respective successors
7 and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the "Released
8 Parties") from all claims, demands, rights, liabilities and causes of action that were pled in the operative
9 Third Amended Complaint in the Action, or which could have been pled in the Third Amended Complaint
10 in the Action based on the factual allegations therein, that arose during the Class Period including, but not
11 limited to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime
12 wages owed; (c) failure to provide meal periods, or pay premium pay for non-compliant meal periods; (d)
13 failure to authorize and permit all rest periods, or pay premium pay for non-compliant rest periods; (e)
14 failure to pay all vacation wages; (f) failure to provide accurate, itemized wage statements; (g) failure to
15 pay all wages owed upon termination; and (h) all claims for unfair business practices that could have been
16 premised on the facts, claims, causes of action or legal theories described above (collectively, the
"Released Claims"). Settlement, ¶ 3.A.

17 2. Scope of PAGA Release

18 PAGA Employees, including Plaintiff, will release and forever discharge all claims, demands,
19 rights, liabilities and causes of action for penalties under California Labor Code Private Attorneys General
20 Act of 2004 against the Released Parties based on (as alleged in the letters to the Labor & Workforce
21 Development Agency ("LWDA") dated February 5, 2021 and December 23, 2021 and the operative Third
22 Amended Complaint: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages
23 owed; (c) failure to provide meal periods, or pay premium pay for non-compliant meal periods; (d) failure
24 to authorize and permit all rest periods, or pay premium pay for non-compliant rest periods; (e) failure to
25 pay all vacation wages; (f) failure to provide accurate, itemized wage statements; (g) failure to pay all
26 wages owed upon termination (collectively, "PAGA Released Claims"). The PAGA Period and the time
27 period of the PAGA Released Claims is defined as the time period of February 5, 2020 through the date
28 that the Court grants preliminary approval of the Settlement ("PAGA Period"). Settlement, ¶ 3.C.

1 3. Releases Effective Date

2 The releases described above will only be effective on the date that Defendant fully funds the
3 Gross Settlement Amount and all employer-side taxes in full. Settlement, ¶ 3.F.

4 **C. MONETARY TERMS OF SETTLEMENT**

5 1. Gross Settlement Amount and Timing of Payment

6 If the Court approves this Settlement, Schumacher will pay a Gross Settlement Amount (“GSA”) of \$ 500,000.00.⁴ Lidman Decl., ¶¶ 13, Exh. 3 (Settlement, ¶ 4). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.*

10 The GSA shall be deposited by Defendant into a qualified settlement fund. Defendant agrees to deposit and pay the GSA in two (2) installments. Defendant agrees to deposit one-half of GSA (\$250,000.00) within ten (10) calendar days after the Effective Date. Defendant agrees to pay the remaining half of the GSA (\$250,000.00) no later than six (6) months after the first payment is made. The employer-side taxes to be paid by Defendant separate and apart from the Gross Settlement Amount shall be deposited no later than five (5) calendar days after the second and final payment is made. The Settlement Administrator shall hold all portions of the GSA in an interest-bearing account for benefit of the Settlement Class until the time for disbursement. *See* Settlement, ¶ 4.C; see also Declaration of Stanton Ibara In Support of Motion for Approval of Class Action Settlement (“Ibara Decl.”), ¶ 6.

19 In the event that the GSA and all employer-side taxes are not paid in full as required under Paragraph 4 of this Agreement, after Defendant’s counsel receives written notice of the default, and is given ten (10) days to cure, then at Plaintiff’s option the Settlement, Final Approval Order, and Judgment may be enforced by remedies available and Defendant agrees to the payment of reasonable attorneys’ fees and costs necessary in enforcing the Agreement. Additionally, after Defendant’s counsel

25 _____
26 ⁴ Defendant represents that there are an estimated 6,773 workweeks worked by the settlement Class Members from February 5, 2017 through January 31, 2022. If the number of workweeks during the Class Period is more than 15% greater than this figure (i.e., if there are more than 7,789 workweeks worked by the settlement Class Members during the Class Period), the Class Period, the Release Period and the PAGA Period will close on the date that the number of workweeks reaches 7,789. See Settlement ¶ 4.F. Moreover, Simpluris will calculate the number of workweeks and will inform Plaintiff’s Counsel of the total number of workweeks during the relevant time period.

receives written notice of the default, and is given ten (10) days to cure and does not cure, all further payments owed under the Settlement shall be due and payable immediately. *Id.*

2. Deductions from Gross Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$500,000.00
Minus Court-approved attorneys’ fees (update to 1/3 of GSA):	\$166,666.67
Minus Court-approved, verified costs (up to \$20,000.00):	\$20,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$3,500.00
Minus PAGA payment to the LWDA:	\$15,000.00
Net Settlement Amount (“NSA”):	\$289,833.33
 Settlement Class Members	 64
Average Individual Payment: NSA/Settlement Class	\$4,528.65

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 results in a Net Settlement Amount (“NSA”) of at least \$289,833.33 to be paid out to all Settlement Class members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 3.

Therefore, this calculation of $\$289,833.33/64 = \$4,528.65$, assumes the Court approves the requested attorneys’ fees, maximum attorneys’ costs, enhancement award, settlement administration costs, and payment to the LWDA. *Id.* This calculation also assumes that all 64 putative class members participate in the settlement and do not submit timely requests for exclusions. *Id.*

3. Class Representative Service Award

Incentive awards are 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 reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Plaintiff will separately apply for a service award at the time of seeking final approval in the amount of \$5,000.00. Lidman Decl., ¶ 33, Exh. 2 (Settlement, ¶ 7.); Barajas Decl., ¶¶ 3-8. As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to recognize

1 the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial
2 factual information and documents to Class Counsel, attending multiple meetings with Class Counsel
3 to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff
4 undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed
5 to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶41;
6 Barajas Decl., ¶¶ 3-8; Settlement ¶ 7.

7 The Class Representative Service Award awarded by the Court shall be paid by the Settlement
8 Administrator to Plaintiff from the Gross Settlement Amount only after Settlement Class member's
9 Settlement Awards have been mailed to Settlement Class members and the Settlement Administrator
10 has been paid all costs and fees awarded by the Court. Settlement, ¶ 7.

11 4. Attorneys' Fees and Costs

12 California courts recognize an appropriate method for awarding attorneys' fees in class actions
13 is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v.*
14 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506. Class Counsel's request for fees of one-third of the
15 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common
16 fund settlements.

17 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
18 is currently estimated to be \$166,666.67, and up to \$20,000.00 in verified costs reimbursement. *See*
19 Settlement, ¶ 6.; Lidman Decl., ¶ 35. Plaintiff submits the requested fee is fair compensation for
20 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
21 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman
22 Decl., ¶ 37. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
23 analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records,
24 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
25 Motion, and otherwise litigating the case. Lidman Decl., ¶ 35. Class Counsel expect to expend
26 additional attorney time in attending the hearing on this Motion, overseeing the Notice process and
27 fielding questions from Settlement Class members, preparing the final approval papers and attending
28 the Final Approval hearing. *Id.*

1 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
2 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
3 include a lodestar analysis.

4 As of the date of this filing, and not including costs associated with filing the instant brief,
5 Plaintiff's costs to date are \$11,057.99. Lidman Decl., ¶ 36. Plaintiff anticipates an additional
6 \$3,500.00 in future costs, which includes costs associated with filing of the motion for Final Approval,
7 court appearances, copying, postage, service fees, and Case Anywhere quarterly fees for the next
8 approximately 2 years (given 2 installment payment plan and 180-day expiration date of checks). *Id.*
9 Therefore, in total Plaintiff's costs are anticipated to be approximately \$14,557.99 and will not exceed
10 the \$20,000.00 maximum. *Id.*

11 Class Counsel's fees and costs awarded by the Court shall be paid by the Settlement
12 Administrator to Class Counsel from the Gross Settlement Amount only after Settlement Class
13 member's Settlement Awards have been mailed to Settlement Class members and the Settlement
14 Administrator has been paid all costs and fees awarded by the Court. Settlement, ¶ 6.

15 5. Payroll Taxes

16 The Settlement provides that Schumacher's payroll taxes shall be paid separately from, and in
17 addition to, and the Class Settlement Amount. Settlement ¶ 4.E. The employer-side taxes shall be
18 deposited no later than five (5) calendar days after the second and final payment is made by Defendant.

19 6. Payment Formula

20 There were approximately 64 total Settlement Class members as of the date of mediation.
21 Lidman Decl., ¶ 14. The Net Settlement Amount shall be allocated to Settlement Class members who
22 worked during the Class Period, as follows:

23 Each participating Settlement Class member shall receive a proportionate settlement share based
24 upon the number of workweeks worked as a non-exempt warehouse employee during the Class Period,
25 the numerator of which is the Settlement Class member's total workweeks worked as a non-exempt
26 employee during the Class Period, and the denominator of which is the total workweeks worked as non-
27 exempt employees by all Settlement Class members (who do not opt out) who worked during the Class
28 Period. Settlement, ¶ 5.B.i.

1 PAGA Amount: Five Thousand Dollars and Zero Cents (\$5,000.00) of the GSA has been
2 designated as the “PAGA Amount.”. Each PAGA Employee shall receive a portion of the PAGA
3 Amount proportionate to the number of workweeks that he or she worked during this PAGA Period
4 which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the
5 PAGA Employee’s number of workweeks worked as a non-exempt employee during the PAGA period,
6 and the denominator of which is the total number of workweeks worked by all PAGA Employees.
7 Settlement, ¶ 5.C.

8 Thus, the average Individual Settlement Payment (assuming all Settlement Class members
9 worked the same length of time) is projected to be approximately **\$4,528.65**. *Id.*

10 7. Tax Allocation

11 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
12 allocated as follows: Sixty-Seven percent (67%) as penalties and interest; and Thirty-Three percent
13 (33%) as wages. Settlement, ¶ 5.E. Defendant’s share of payroll taxes shall be paid by Defendant
14 separately from, and in addition to, the GSA. Settlement, ¶ 4.E.

15 Second, Defendant contends that there has been no determination that Defendant has violated
16 any provision of the Labor Code. Defendant further contends that at Paragraph 12 of the Stipulation of
17 Class Action, it expressly denies and continues to deny each and all of the claims and contentions alleged
18 in the Action. As such, because Defendant denies the allegations and claims, the agreed upon
19 calculation with respect to how each Individual Settlement Payment (at Paragraphs 5.B and 5.C) is
20 determined should not be deemed as an admission with regard to tax allocation.

21 Third, there are approximately 5,198 workweeks at issue during the proposed class period. Of
22 the 5,189 workweeks at issue, approximately 2,599 workweeks (or 50% of the workweeks) are part of
23 the PAGA liability period. Further, if Plaintiff prevailed on his claims at trial, he would request
24 prejudgment interest under Civil Code sections 3287 and 3289 at a rate of 10 percent per annum. Based
25 on the 10% interest rate per annum, the ratio of total amount of wages to total amount of interest that
26 Plaintiff would request for the time period 2017 through 2022, is approximately 67% interest and 33%
27 wages. Therefore, applying this ratio to the workweeks that are **not** part of the PAGA liability period
28 (i.e. 2,599 workweeks) means that approximately 858 workweeks (858 workweeks = 2,599 workweeks
* 33%) would be considered wages and 1,741 workweeks (1,741 workweeks = 2,599 workweeks *

67%) would be considered interest. Based on the foregoing, approximately 83.5% of the overall workweeks ((1,741 + 2,599) = 4,340 and 4,340/5,198 = 83.5%) would be considered interest and penalties, while 16.5% (858/5,198 = 16.5%) of the overall workweeks would be considered wages.

Given that Defendant express denies and continues to deny each and all of the claims and contentions alleged in the Action, the identified percentages at Paragraph 5.E (with respect to each Settlement Class member's share of the settlement) are not admissions of percentages to be allocated as wages versus interest and/or penalties. The formula for determining calculating each Settlement Class member's share is intended to result in an equitable allocation so that the majority of the Net Settlement Amount is to be allocated to all Settlement Class members, while providing for an additional portion if the employee worked during the PAGA period.

8. PAGA Penalty

The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$15,000.00. Settlement ¶ 4.D.5. This \$15,000.00 represents roughly 3% of the \$500,000.00 Class 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 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

VI. NOTICE ADMINISTRATION

A. SETTLEMENT ADMINISTRATOR

Simpluris's costs are estimated not to exceed \$3,500.00. *See* Declaration of Eric Springer in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Springer Decl."). This request is reasonable in light of the proposed class size of approximately 64 Settlement Class members and the costs and expenses associated with administering the notices and distributing the awards. Additionally, Simpluris will translate the Notice Packets and mail the Notice Packets in both English and Spanish to Settlement Class members.

Simpluris also aware of the payment plan, which provides for the first \$3,500 paid by Defendant to be earmarked to pay for Settlement Administration costs. Settlement, ¶ 8.

1 Simpluris has extensive experience administering class action matters. Simpluris has
2 administered complex wage and hour, labor and employment, consumer/ product liability, TCPA,
3 FLSA, FACTA, ERISA and PAGA class action matters, though final approval and distribution.
4 Simpluris has developed a system of quality assurance measures, to ensure the highest quality service
5 is provided in our cases and to class members. Springer Decl., ¶ 5.

6 **B. CLASS LIST FROM DEFENDANT**

7 Within 10 business days after entry of an order preliminarily approving the Settlement,
8 Defendant will provide Simpluris with the names, last known addresses, phone numbers, social security
9 numbers, and dates of employment of each Settlement Class member employed during the Class Period
10 and PAGA Period. Settlement, ¶ 10.A.

11 Consistent with almost all class action settlements, Plaintiff's Counsel will not be receiving the
12 unredacted Class Data after preliminary approval. Lidman Decl., ¶41. However, after the Class Data
13 is received by Simpluris, Simpluris will verify that the information provided by Defendant is complete
14 and accurate for the mailing of the Notice Packet. *Id.* Simpluris will then create an excel spreadsheet
15 with the hire and termination dates (if applicable) and workweek count for each of the putative class
16 members. *Id.* This spreadsheet is then circulated to the Parties for their review and approval, along
17 with the Notice Packet. It is during this process that Plaintiff's Counsel will be able to verify the
18 workweek count and whether or not ¶4.F. of the Settlement Agreement is triggered. *Id.* Further, the
19 Notice Packet includes Plaintiff's Counsel's contact information, therefore, Settlement Class members
20 will be able to contact counsel if they have any questions or concerns with the Class Notice and/or any
21 disputes about the number of workweeks allocated to him or her. *Id.*

22 **C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING AND MAILING**

23 Prior to mailing, the Settlement Administrator shall (i) run the names of all Settlement Class
24 members through the National Change of Address ("NCOA") database to determine any updated
25 addresses for Settlement Class members and (ii) update the address of any Settlement Class member for
26 whom an updated address was found through the NCOA search. Settlement, ¶ 10.B.

27 Within 10 business days from receipt of the class list, the Settlement Administrator shall mail a
28 Notice to each Settlement Class member at his or her last known address or at the updated address found
through the NCOA search, and retain proof of mailing. Settlement, ¶ 10.B.

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

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

14 Moreover, the Class Notice includes the sentence “**PLEASE KEEP THE SETTLEMENT**
15 **ADMINISTRATOR ADVISED OF ANY CHANGE OF YOUR ADDRESS.**”

16 **E. PROCESSING OF PAYMENTS**

17 Within ten (10) calendar days following Defendant’s deposit of the second and final installment
18 of the GSA and the employer-side taxes, Simpluris will calculate Settlement Award amounts and
19 provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of
20 approval by counsel for the Parties, Simpluris will mail Settlement Awards, less applicable taxes and
21 withholdings, to participating Settlement Class members. Settlement, ¶ 5.D.

22 Additionally, before Settlement Awards are mailed, Simpluris will update addresses using the
23 National Change of Address Database. For returned checks directed to Class members whose Class
24 Notice was returned as undeliverable and no new address was ascertained, no further steps need to be
25 taken by the Settlement Administrator with respect to these checks. As to other checks returned, the
26 Settlement Administrator must use skip trace or other usual means to ascertain a new address (and direct
27 contact, if the Class Member is still employed by Defendant). Settlement, ¶ 5.D.
28

1 **F. UNDELIVERABLE SETTLEMENT NOTICES**

2 Any Notice Packets returned as non-delivered on or before the Response Deadline shall be re-
3 mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
4 Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated
5 mailing address within three (3) business days of receiving the returned Notice Packet. If an updated
6 mailing address is identified before the Response Deadline, the Settlement Administrator shall resend
7 the Notice Packet to the Settlement Class member immediately, and in any event within three (3)
8 business days of obtaining the updated address. Settlement, ¶ 10.F.

9 Additionally, any Class member who is still currently employed by Defendant and whose Class
10 Notice is returned as undeliverable shall be contacted directly by the Settlement Administrator with
11 appropriate contact information provided by Defendant. *Id.*

12 Checks will be sent to all Settlement Class members, including those whom the Notice Packets
13 were returned as undelivered.

14 **VII. RESPONSES TO SETTLEMENT NOTICE**

15 **A. REQUESTS FOR EXCLUSION**

16 The Request for Exclusion must: (1) contain the name, address, telephone number and the last
17 four digits of the Social Security number of the Settlement Class member; (2) contain a statement that
18 the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement
19 Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement
20 Administrator at the address specified in the Class Notice. The Request for Exclusion may alternatively
21 be faxed or emailed to Simpluris. Settlement, ¶ 10.C.i.

22 If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be
23 deemed valid for exclusion from the Settlement, unless the Settlement Administrator can ascertain the
24 identity of the Class member and that he or she indeed desires to be excluded from the Settlement. *Id.*

25 The Parties agree there is no right for any PAGA Employee to opt out or otherwise exclude
26 himself or herself from the PAGA portion of the Settlement. A Settlement Class member/PAGA
27 Employee who submits a valid and timely Request for Exclusion shall still receive his or her
28 proportionate share of the PAGA Amount. Settlement, ¶ 10.C.ii.

1 **B. RE-MAILED NOTICES**

2 Settlement Class members to whom Notice Packets are re-mailed after having been returned as
3 undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of
4 re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for
5 Exclusion, Objection, or dispute. Settlement, ¶ 10.F.

6 **C. OBJECTION PROCEDURES**

7 Any written objection must: (1) contain the objecting Settlement Class member's full name and
8 current address, as well as contact information for any attorney representing the objecting Settlement
9 Class member for purposes of the objection; (2) include all objections and the factual and legal bases
10 for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other
11 evidence, if any; and (4) be postmarked and mailed to the Settlement Administrator no later than the
12 Response Deadline. Notwithstanding the foregoing, even if the information above is not all contained
13 in a written objection, it will be deemed valid if Simpluris can ascertain the identity of the Class member
14 and that he or she indeed desires to object. The written Objection may alternatively be faxed or emailed
15 to the Settlement Administrator. Settlement Class Members may also object to the Settlement by
16 appearing at the Final Approval Hearing irrespective of whether they submitted any written objections.
17 Neither a written objection nor a notice of appearance is required in order for a Class member to appear
18 at the hearing on the Motion for Final Approval and object. Settlement, ¶ 10.D.

18 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

19 Each member of the Settlement Class who receives a Settlement Award must cash the check(s)
20 within 180 days from the date the Settlement Administrator mails it/them. Any funds not negotiated
21 within 180 days after mailing will escheat to the California Secretary of State - Unclaimed Property
22 Fund in the name of the Settlement Class member. Settlement ¶ 5.F. As all settlement funds will be
23 distributed to the Settlement Class members, there will be no residue and it is unnecessary to designate
24 *cy pres* recipients. The void date of all class checks will be stated on the checks. Settlement, ¶ 5.D.

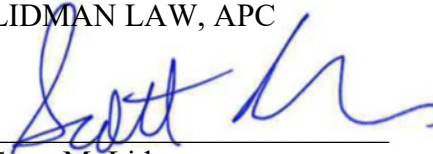
25 **IX. CONCLUSION**

26 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve
27 the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order
28 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

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2
3 Dated: April 21, 2022
4

Respectfully submitted,
LIDMAN LAW, APC

5 By:



6 Scott M. Lidman
7 Attorney for Plaintiff
8 JAIME BARAJAS
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