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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

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

Plaintiff,

vs.

THE GOODMAN GROUP LLC, an unknown business entity; MONTE VISTA LODGE LP, an unknown business entity; MONTE VISTA VILLAGE, an unknown business entity; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2021-00014215-CU-OE-CTL

Honorable Timothy Taylor
Department C-72

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Janardana Burns); Declaration of Proposed Class Representative (Joseph Ocasio); and [Proposed] Order filed concurrently herewith]

Date:	December 2, 2022
Time:	1:30 p.m.
Department:	C-72
Complaint Filed:	April 1, 2021
FAC Filed:	May 21, 2021
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on December 2, 2022, at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Timothy Taylor in Department C-72 of the Superior Court of California for the County of San Diego, located at Hall of Justice, 330 West Broadway, San Diego, California 92101, Plaintiff Joseph Ocasio ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Janardana Burns, including but not limited to, the means of allocation and distribution of funds, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Payment to Plaintiff, and Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Joseph Ocasio as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT 1**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Janardana Burns) and Proposed Class Representative (Joseph Ocasio) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: November 2, 2022 **LAWYERS *for* JUSTICE, PC**

By: ______________________________
Janardana Burns
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Joseph Ocasio ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants The Goodman Group, LLC and Monte Vista Lodge Limited Partnership (erroneously named as "Monte Vista Lodge, LP" and "Monte Vista Village") (together, "Defendants"), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the "Parties") have agreed to settle this lawsuit for a Maximum Settlement Amount of one million two hundred thousand dollars and no cents ($1,200,000.00).[1] The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Settlement Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Enhancement Payment of seven thousand five hundred dollars and no cents ($7,500.00) to Plaintiff[3]; (3) the Attorneys' Fees and Litigation Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or $420,000.00, and reimbursement of litigation costs and expenses not to exceed twenty-five thousand dollars and no cents ($25,000.00)[4]; (4) the Administration Costs to the Settlement Administrator in an amount estimated to be no more than twelve thousand dollars and no cents ($12,000.00);[5] and (5) the amount of one hundred thousand dollars and no cents ($100,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA Penalties"), of which 75% (i.e., $75,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $25,000.00) will be distributed to all current and former hourly-paid

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Janardana Burns ("Burns Decl."), § I.R. If the actual number of Workweeks during the period April 1, 2017 through August 1, 2022 is 10% higher than 73,732, i.e., there are more than 81,106 Workweeks for the referenced time period ("Workweeks Threshold"), the Maximum Settlement Amount will increase on a *pro rata* basis to the extent the Workweeks Threshold is exceeded. *See id.*, § VIII.B.
[2] *Id.*, § I.M.
[3] *Id.*, § XV.
[4] *Id.*, § XIV.
[5] *Id.*, § IX.

or non-exempt employees who worked for Defendants within the State of California at any time during the PAGA Period ("PAGA Group Members").[6]

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

> All current and former hourly-paid or non-exempt employees who worked for The Goodman Group, LLC and KTLA Properties Limited Partnership, at facilities known as Alamitos West Health & Rehabilitation and/or at Katella Senior Living Community, at any time during the period April 1, 2017 through August 31, 2022, or who worked for Monte Vista Lodge Limited Partnership at any time during the period April 1, 2017 through April 29, 2021, in the State of California, at facilities known as Monte Vista Lodge and Monte Vista Village (collectively referred to as the "Class" or "Class Members").[7]

Based on information provided by Defendants, as of August 3, 2022, the Class is estimated to consist of approximately nine hundred seventy-one (971) individuals.[8]

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement ("Participating Settlement Class Members") will receive a share of the Net Settlement Amount ("Individual Settlement Payment") on a *pro rata* basis based upon the number of weeks each Participating Settlement Class Member worked for Defendants at facilities known as Alamitos West Health & Rehabilitation, Monte Vista Lodge, Monte Vista Village, and/or Katella Senior Living Community as an hourly-paid or non-exempt employee in California during the Class Period ("Workweeks").[9]

The Settlement resolves the Released Class Claims of Participating Settlement Class Members and the Released PAGA Claims of the State of California and PAGA Group Members, against the Released Parties.[10]

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[6] Settlement Agreement, §§ I.J & XVII. "PAGA Period" means the following periods: for the PAGA Group Members employed by The Goodman Group (as defined in the Settlement Agreement), the period from March 17, 2020 through August 31, 2022; for the PAGA Group Members employed by Monte Vista Lodge Limited Partnership, the period from March 17, 2020 through April 29, 2021. *See id*., § I.V.

[7] *Id*., § I.C. "Class Period" means the following periods: for the Class Members employed by The Goodman Group (as defined in the Settlement Agreement), the period from April 1, 2017, through August 31, 2022; for the Class Members employed by Monte Vista Lodge Limited Partnership, the period from April 1, 2017, to April 29, 2021. *See id*., § I.T.

[8] Burns Decl., ¶ 9.

[9] Settlement Agreement, §§ I.M, I.S, & I.Y.

[10] See *id.* at § VII.A, for the full scope of the "Released Class Claims," *id*. at § VII.B for the full scope of the "Released PAGA Claims," and *id*. § VII.A for the definition of the "Released Parties."

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants manage private residential and health care properties throughout the United States. Plaintiff Joseph Ocasio is a former employee of Defendants.

On March 17, 2021, Plaintiff sent a letter to the LWDA and Defendants, pursuant to California Labor Code section 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq*., for Defendants' alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001 and 5-2001 ("LWDA Letter").

On April 1, 2021, Plaintiff filed a Class Action Complaint for Damages, Case No. 37-2021-00014215-CU-OE-CTL, in San Diego County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On May 21, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint" or "First Amended Complaint"), in the Action, adding a representative cause of action under the Private Attorneys General Act, California Labor Code section 2698, *et seq*. ("PAGA") against Defendants.

Plaintiff's core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and

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thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On June 24, 2021, Defendants filed an Answer to Plaintiff's First Amended Complaint.

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

On July 19, 2022, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Requests for Admission, (Set One); Special Interrogatories, (Sets One & Two); and Form Interrogatories, (Set One), on Defendants, and noticed the depositions of Defendants' Person Most Knowledgeable designees, with accompanying requests for production of documents.

The Parties have actively litigated the Action since it was commenced on April 1, 2021. On August 4, 2022, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. <u>SUMMARY OF THE SETTLEMENT TERMS</u>

Under the terms of the Settlement, Defendants will pay a Maximum Settlement Amount to resolve the Released Class Claims of Participating Settlement Class Members and Released PAGA Claims of the State of California and PAGA Group Members, with respect to the Released Parties.[11] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees in an amount not to exceed four hundred twenty thousand dollars and no cents ($420,000.00) (i.e., up to 35% of the Maximum Settlement Amount) ("Attorneys' Fees") and

[11] Settlement Agreement, § VIII.A.

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reimbursement of costs and expenses in an amount not to exceed twenty-five thousand dollars and no cents ($25,000.00) ("Litigation Costs") to Class Counsel; (2) settlement administration costs, which are currently estimated not to exceed twelve thousand dollars and no cents ($12,000.00) to the Settlement Administrator ("Administration Costs"); (3) payment in the amount of $100,000.00 for penalties under the Private Attorneys General Act, California Labor Code § 2698 *et seq.*, of which seventy-five percent (75%) will be paid to the LWDA (the "LWDA Payment"), and twenty-five percent (25%) will be distributed to the PAGA Group Members (the "Employee PAGA Amount"); and (4) payment in the amount of up to seven thousand five hundred dollars and no cents ($7,500.00) to Plaintiff Joseph Ocasio ("Enhancement Payment").[12] The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Participating Settlement Class Member's share of the available Net Settlement Amount (i.e., Individual Settlement Payment), in accordance with the Settlement Agreement and as follows:

> The Settlement Administrator will divide the Net Settlement Amount by the total number of Workweeks of all Participating Settlement Class Members ("Class Workweek Point Value"), and each Participating Settlement Class Member's individual Workweeks will be multiplied by the Class Workweek Point Value to arrive at his or her Individual Settlement Payment.[13]

The Parties have agreed that the Settlement Administrator will determine each PAGA Group Member's share of the available Employee PAGA Amount (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement and as follows:

> The Settlement Administrator will divide the Employee PAGA Amount by the total number of PAGA Workweeks of all PAGA Group Members ("PAGA Workweek Point Value"), and each PAGA Group Member's individual PAGA Workweeks will be multiplied by the PAGA Workweek Point Value to arrive at his or her Individual PAGA Payment.[14]

Each Participating Settlement Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage

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[12] Settlement Agreement, §§ I.A, I.K, IX, XIV, XV, & XVII.
[13] *Id.*, § XII.A.1.
[14] *Id.*, § XII.B.

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damages, which will be reported on an IRS Form 1099.[15] Participating Settlement Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.[16] The Individual PAGA Payments will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable).[17] Defendants will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Payments ("Employer Taxes") in addition to the Maximum Settlement Amount.[18]

The Individual Settlement Payment checks issued to Participating Settlement Class Members and Individual PAGA Payment checks issued to PAGA Group Members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and thereafter, will be cancelled.[19] The funds associated with such cancelled checks will be sent to the Legal Aid Society of San Diego after the Court enters an order approving the parties' stipulation to amend the judgment, which Parties shall prepare and file in accordance with California Code of Civil Procedure section 384.5, *et seq*.[20] The Parties do not have any financial interest in the Legal Aid Society of San Diego or otherwise have a relationship with this entity that could create a conflict of interest.[21]

Class Members who wish to be excluded from the Class Settlement (i.e., to validly opt out of the Class Settlement) must submit a written request for exclusion ("Request for Exclusion") to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice ("Response Deadline").[22] A Request for Exclusion must: (i) contain the case name and number of the Action; (ii) contain the

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[15] Settlement Agreement, § XVI.B.
[16] *Id.*, § XVI.A.
[17] *Id.*, § XVI.B.
[18] *Id.*, §§ VIII.A & XVI.D.
[19] *Id.*, § XII.C.4. The Settlement Administrator may, at its discretion, distribute the Individual Settlement Payment and Individual PAGA Payment by way of a single check that combines both payments (if applicable). *See id.*, § XII.C.3.
[20] *Ibid.*
[21] *Ibid.*
[22] *Id.*, §§ X.A.5 & X.C.1.

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Class Member's full name, address, telephone number, and last four digits of their Social Security number; (iii) be signed by the Class Member or their authorized representative; (iv) contain a clear statement that the Class Member requests to be excluded from the Class Settlement; and (v) be sent to the Settlement Administrator, postmarked by no later than the Response Deadline.[23] Class Members who submit a valid and timely Request for Exclusion will not be bound by the Class Settlement.[24] Any Class Member who is also a PAGA Group Member and who opts out of the Class Settlement will still be bound by the PAGA Settlement and issued their Individual PAGA Payment.[25]

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Participating Settlement Class Members) have standing to object to the Class Settlement.[26] Participating Settlement Class Members who wish to object to the Class Settlement must provide the Settlement Administrator with a written objection on or before the Response Deadline.[27] The written objection must: (i) contain the case name and number of the Action; (ii) contain the Participating Settlement Class Member's full name, address, telephone number, signature, and last four digits of their Social Security number; (iii) clearly state the grounds for the objection to the Class Settlement; (iv) state whether the Participating Settlement Class Member intends to appear at the Final Approval Hearing; and (v) be mailed to the Settlement Administrator, postmarked no later than the Response Deadline.[28] Participating Settlement Class Members who have not objected in writing may still appear and object orally at the Final Approval Hearing.[29]

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by submitting a written dispute ("Workweeks Dispute") to the Settlement Administrator on or before the Response Deadline.[30] The Workweeks Dispute must:

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[23] Settlement Agreement, § X.C.1.
[24] *Id.*, § X.C.3.
[25] *Id.*, § X.C.4.
[26] *Id.*, § X.B.1.
[27] *Ibid.*
[28] *Ibid.*
[29] *Ibid.*
[30] *Id.*, § XI.A.

(i) contain the case name and number of the Action; (ii) contain the Class Member's full name, address, telephone number, signature, and last four digits of their Social Security number; (iii) contain a statement setting forth the number of Workweeks during the Class Period and/or PAGA Period that they contend is correct and attach any relevant documentation in support thereof; and (iv) be submitted to the Settlement Administrator by mail, postmarked no later than the Response Deadline.[31]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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[31] Settlement Agreement, § XI.A.

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

A. <u>The Settlement Resulted from Arm's Length Negotiations Based Upon Extensive Investigation and Discovery.</u>

The Parties actively litigated the Action since it was commenced on April 1, 2021. Both sides used the pre-mediation period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.[32]

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents, information, and data produced by Defendants.[33] The volume of data and documents that Class Counsel reviewed and analyzed included, but was not limited to: employment records of Plaintiff, a detailed sampling of Class Members' time and pay data, company policy acknowledgements (including, but not limited to, Receipt and Acknowledgment of Monte Vista Lodge Employee Manual and Acknowledgment of Employee Policy and Benefits Handbook), job descriptions, operations and employment practices, forms (including, but not limited to, Wage Payment Election and Consent Form and Labor Code section 2810.5 Notice to Employee), procedures, and policies (including but not limited to the Employee Policy Handbook which contains policies regarding entering and leaving the premises, expense reimbursement, gifts, tips, and gratuities, grievances, payroll advances, wage and salary, and work schedule), among other information and documents.[34] Class Counsel interviewed Plaintiff and conducted investigations to gather facts and to identify

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[32] Burns Decl., ¶¶ 11-13.
[33] *Id.*, ¶ 12.
[34] *Ibid.*

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potential witnesses.[35] Class Counsel propounded multiple sets of formal written discovery requests on Defendants, and noticed the depositions of Defendants' Person Most Knowledgeable designees along with accompanying requests for production of documents.[36] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.[37] Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[38]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[39] Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[40] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[41] Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[42] After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal

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[35] Burns Decl., ¶ 12.
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*
[39] *Id.*, ¶ 11.
[40] *Ibid.*
[41] *Ibid.*
[42] *Id.*, ¶¶ 11, 16-18.

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issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[43]

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

B. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for a Maximum Settlement Amount of one million two hundred thousand dollars and no cents ($1,200,000.00), represents a fair, adequate, and reasonable resolution of the matter.[48] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[49] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[50] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[51]

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[43] Burns Decl., ¶¶ 11, 16-18.
[44] *Ibid.*
[45] *Ibid.*
[46] Burns Decl., ¶¶ 11-13 & 16-18.
[47] *Id.*, ¶¶ 6-7.
[48] *Id.*, ¶¶ 11, 13, 14 & 23.
[49] *Id.*, ¶¶ 11-13.
[50] *Id.*, ¶¶ 16-18.
[51] *Id.*, ¶¶ 11, 13, & 23.

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Assuming that the Attorneys' Fees and Litigation Costs, Enhancement Payment, PAGA Penalties, and Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be six hundred thirty-five thousand five hundred dollars and no cents ($635,500.00).[52] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Participating Settlement Class Member's Individual Settlement Payment will be calculated based on their Workweeks during the Class Period and the amount of each PAGA Group Member's Individual PAGA Payment will be calculated and apportioned from the Employee PAGA Amount based on their Workweeks during the PAGA Period.[53] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA Group Members, and the State of California.[54] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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[52] Burns Decl., ¶ 14.

[53] Settlement Agreement, §§ XII.A.1. and XII.B.

[54] Burns Decl., ¶¶ 11, 13, & 23.

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C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[55] The discovery and information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.[56] As outlined in the Declaration of Janardana Burns, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[57]

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[58] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

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

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[55] Burns Decl., ¶¶ 11-13 & 18.
[56] *Id.*, ¶ 18.
[57] *Id.*, ¶¶ 11-13 & 16-18.
[58] Settlement Agreement, § IV.B.

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means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately nine hundred seventy-one (971) individuals.[59] This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

[59] Burns Decl., ¶ 9.

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

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

Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.[62] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.[63]

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

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[60] Burns Decl., ¶ 16.
[61] *Ibid.*
[62] *Ibid.*
[63] *Ibid.*

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VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND LITIGATION COSTS

Class Counsel was actively preparing the matter for class certification and trial.[64] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendants. Class Counsel also noticed the depositions of Defendants' Person Most Knowledgeable designees. Class Counsel reviewed a large volume of documents and data[65] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[66] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[67]

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

The Settlement establishes a Maximum Settlement Amount of one million two hundred thousand dollars and no cents ($1,200,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Litigation Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., $420,000.00) and an amount not to exceed twenty-five thousand dollars and no cents ($25,000.00) for costs and expenses.[69] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class

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[64] Burns Decl., ¶¶ 11-13.
[65] *Id.*, ¶ 12.
[66] *Ibid.*
[67] *Id.*, ¶ 11.
[68] *Id.*, ¶¶ 6-7.
[69] Settlement Agreement, § XIV.

Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Litigation Costs, and that an award of the Attorneys' Fees and Litigation Costs will be sought, as provided for by the Settlement.[70]

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

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

[70] Settlement Agreement, Exh. A.

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

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

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

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[71] Burns Decl., ¶ 19.

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The proposed Class Notice[72] describes the Settlement, the deadlines and procedures to submit a written objection to the Class Settlement, Request for Exclusion, and/or Workweeks Dispute, and the date and time set for the Final Approval Hearing.[73]

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

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

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.[77] Any undeliverable Class Notice that is returned to the Settlement Administrator within thirty (30) calendar days after the initial mailing, with a forwarding

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[72] Settlement Agreement, Exh. A.
[73] *Ibid.*
[74] *Ibid.*
[75] *Ibid.*
[76] *Ibid.*
[77] *Id.*, § X.A.2.

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address, will be re-mailed to the forwarding address affixed thereto within three (3) business days of receipt.[78] With respect to any undeliverable Class Notice returned within thirty (30) calendar days without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member within three (3) business days of receipt.[79] The Response Deadline to submit a Request for Exclusion, written objection to the Class Settlement, or Workweeks Disputes for Class Members to whom a Class Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be extended an additional fifteen (15) calendar days from the original Response Deadline.[80] The Settlement Administrator will receive and process Requests for Exclusion, written objections to the Class Settlement, and Workweeks Disputes.[81]

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to Participating Settlement Class Members and Individual PAGA Payments to PAGA Group Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Litigation Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[82] The Administration Costs are currently estimated to be no more than twelve thousand dollars and no cents ($12,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.[83]

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[78] Settlement Agreement, § X.A.4.
[79] *Ibid.*
[80] *Id.*, § X.A.5.
[81] *Id.*, §§ X.B.1, X.C.1, & XI.A.
[82] *Id.*, § IX.; Burns Decl., ¶ 15.
[83] Settlement Agreement, § IX.

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.[84]

Within twenty-one (21) calendar days after the date on which the Court enters an order granting preliminary approval of the Settlement, Defendants will provide the Settlement Administrator with the following information for each Class Member: (i) full name; (ii) last known address; (iii) last known telephone number; (iv) the total number of Workweeks worked during the applicable Class Period; (v) number of Workweeks during the PAGA Period; (vi) total number of Workweeks during the period April 1, 2017 through August 1, 2022; (vii) Social Security number; and (viii) last known email address (collectively, "Class List").[85]

Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.[86] If a Class Notice is returned to the Settlement Administrator within thirty (30) calendar days after the initial mailing with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address affixed thereto within three (3) business days of receipt.[87] If a Class Notice is returned to the Settlement Administrator within thirty (30) calendar days with no forwarding address, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member within three (3) business days of receipt.[88] Class Members

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[84] Settlement Agreement, § X.A.2.
[85] *Id.*, § X.A.1.
[86] *Id.*, § X.A.2.
[87] *Id.*, § X.A.4.
[88] *Ibid.*

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will have until the applicable Response Deadline to submit a Request for Exclusion, Workweeks Dispute, and/or written objection.[89]

Within twenty-one (21) calendar days following the Effective Date, Defendants will fully fund the Maximum Settlement Amount and Employer Taxes into an interest-bearing account to be established by the Settlement Administrator for administration of the Settlement.[90] Within fourteen (14) calendar days of receipt of the Maximum Settlement Amount and Employer Taxes, the Settlement Administrator will distribute: (i) the Individual Settlement Payments to Participating Settlement Class Members; (ii) the Individual PAGA Payments to PAGA Group Members; (iii) the Court-approved Enhancement Payment to Plaintiff; (iv) the Court-approved Attorneys' Fees and Litigation Costs to Class Counsel; (v) the LWDA Payment to the LWDA; and (vi) the Court-approved Administration Costs to itself.[91]

The Individual Settlement Payment and Individual PAGA Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance, and thereafter, will be cancelled.[92] The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Legal Aid Society of San Diego.[93]

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Joseph Ocasio respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to seven thousand five hundred dollars and no cents ($7,500.00) to Plaintiff.[94] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in

[89] Settlement Agreement, §§ X.B.1, X.C.1, & XI.A.
[90] *Id.*, § XII.C.1.
[91] *Id.*, § XII.C.2.
[92] *Id.*, § XII.C.4.
[93] *Ibid.*
[94] *Id.*, § XV.

commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[95] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.[96] Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class, in addition to his Individual Settlement Payment.

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[95] Burns Decl., ¶ 20; Declaration of Joseph Ocasio in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Ocasio Decl."), ¶ 4.

[96] Burns Decl., ¶ 20; Ocasio Decl., ¶¶ 3-5.

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XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Joseph Ocasio as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Litigation Costs, Enhancement Payment, PAGA Penalties, and Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately one hundred fifty (150) calendar days; and permit the filing of a memorandum that exceeds the page limit.

Dated: November 2, 2022

LAWYERS *for* JUSTICE, PC

By: ______________________________

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