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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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Declaration of Settlement Administrator (Mary Butler); Notice of Motion and Motion for Attorneys' Fees and Costs, and Enhancement Payment; Declaration of Class Counsel (Edwin Aiwazian); Declaration of Class Representative (Joseph Ocasio); [Proposed] Order Awarding Attorneys' Fees and Costs, and Enhancement Payment; and [Proposed] Order Granting Final Approval of Class Action Settlement and Judgment filed concurrently herewith]

Date: April 21, 2023
Time: 1:00 p.m.
Department: C-72

Complaint Filed: April 1, 2021
FAC Filed: May 21, 2021
Trial Date: None Set

PLEASE TAKE NOTICE that on April 21, 2023, at 1:00 p.m. in Department C-72 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff Joseph Ocasio ("Plaintiff") will and hereby does move for an order granting final approval of:

1. The proposed class action settlement described herein and as set forth in the parties' Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") on the grounds that the Settlement is fair, adequate, and reasonable because:

- A Net Settlement Amount of approximately **$637,543.62** will be fully distributed to the Class Members who did not submit a timely and valid Request for Exclusion ("Participating Settlement Class Member");
- **No objections** were submitted to the settlement administrator, Simpluris, Inc. ("Settlement Administrator" or "Simpluris");
- **One Request for Exclusion** was submitted to the Settlement Administrator; and

2. Payment in the amount of **$10,250.00** to the Settlement Administrator, Simpluris, Inc. ("Simpluris"), for Settlement Administration Costs;

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which requires approval by the Court of a class action settlement.

This motion is based upon the following Memorandum of Points and Authorities and the Declaration of Settlement Administrator (Mary Butler of Simpluris) in support thereof; as well as the concurrently-filed Notice of Motion and Motion for Attorneys' Fees and Costs, and Enhancement Payment, and the Declarations of Class Counsel (Edwin Aiwazian) and 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: March 27, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________________
Brian J. St. John
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Joseph Ocasio ("Plaintiff") seeks final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement"), entered into by and between Plaintiff 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") (collectively with Plaintiff, the "Parties").

The Settlement provides for a Maximum Settlement Amount of $1,200,000.00 and seeks relief on behalf of the following Class:

> 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 ("Class" or "Class Members").[1]

Plaintiff moves for final approval of all payments allocated and provided for by the Settlement, to be paid from the Maximum Settlement Amount, including and not limited to, Enhancement Payment in the amount of $7,500.00 to Plaintiff, attorneys' fees in the amount of $420,000.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of $18,406.38 (together, "Attorneys' Fees and Costs")[2] to Lawyers *for* Justice, Settlement Administration Costs in the amount of $10,250.00 to Simpluris, Inc. ("Simpluris" or "Settlement Administrator"), and $100,000.00 allocated to penalties under the Private Attorneys General Act ("PAGA Penalties"), of which $75,000.00 will be paid to the California Labor and Workforce Development Agency ("LWDA") for its portion of the PAGA Penalties ("LWDA Payment"), and $25,000.00 will be distributed to all current and former hourly-paid or non-exempt

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[1] Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"), § 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.

[2] In the interest of judicial efficiency, and in support of the allocations and requests for the Attorneys' Fees and Costs and Enhancement Payment, Plaintiff respectfully refers the Court to Plaintiff's Motion for Attorneys' Fees and Costs, and Enhancement Payment, and papers in support thereof, filed concurrently herewith, on March 27, 2023.

employees who worked for Defendants within the State of California at any time during the PAGA Period ("PAGA Group Members") on a *pro rata* basis ("Employee PAGA Amount").

The Settlement is fair, adequate, and reasonable, and is the product of arm's-length, good-faith negotiations by experienced counsel, presided over by a highly-regarded mediator who is experienced in mediating wage-and-hour class action lawsuits. The Settlement has been well received by the Class – as of the date of this motion, not a single Class Member has objected to the Settlement or only one (1) Class Member submitted a valid letter to be excluded from the Class Settlement ("Request for Exclusion").

Accordingly, the Court should grant final approval of the Settlement, and all payments allocated and provided for by the Settlement Agreement, including and not limited to the Settlement Administration Costs and the PAGA Penalties.

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.

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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 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.

On November 2, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On December 2, 2022, the Court entered an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary

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Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Settlement Administration Costs, and the amount for the PAGA Penalties, and for approval of the requested Attorneys' Fees and Costs and Enhancement Payment, as set forth in the concurrently filed Motion for Attorneys' Fees and Costs, and Enhancement Payment.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants have agreed to pay a Maximum Settlement Amount of $1,200,000.[3] 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 and Costs, consisting of attorneys' fees in the amount of 35% of the Maximum Settlement Amount (equal to $420,000.00) and reimbursement of litigation costs and expenses in the amount of $18,406.38, to Class Counsel; (2) Enhancement Payment in the amount of $7,500.00 to Plaintiff Joseph Ocasio; (3) Settlement Administration Costs in the amount of $10,250.00 to Simpluris; and (4) PAGA Penalties in the amount of $100,000.00.[4]

The Net Settlement Amount, which is estimated to be $637,543.62, will be distributed in accordance with the Settlement Agreement.[5] The Settlement Administrator will calculate each Participating Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Payment"), 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")[6], by dividing the final Net Settlement Amount by the Workweeks of all Participating Settlement Class Members

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[3] Settlement Agreement, § I.R.
[4] *Id.*, §§ I.A, I.K, IX, XIV, XV, & XVII.
[5] This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Mary Butler Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of $25,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only $18,406.38 for reimbursement of litigation costs and expenses, and the difference of $6,593.62 will remain part of the Net Settlement Amount.
[6] Settlement Agreement, §§ I.M, I.S, & I.Y.

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to yield the "Class Workweek Point Value," and multiplying each Participating Settlement Class Member's individual Workweeks by the Class Workweek Point Value to yield his or her Individual Settlement Payment.[7]

The Settlement Administrator will calculate each PAGA Group Member's share of the PAGA Group Member Amount ("Individual PAGA Payment") based on the PAGA Group Member's Workweeks during the PAGA Period[8] by dividing the Employee PAGA Amount by the Workweeks of all PAGA Group Members during the PAGA Period to yield the "PAGA Workweek Point Value," and multiplying each PAGA Group Member's individual Workweeks during the PAGA Period by the PAGA Workweek Point Value to yield his or her Individual PAGA Payment that he or she may be eligible to receive under the PAGA Settlement.[9]

Class Members had forty-five (45) calendar days after the initial mailing of the Class Notice to submit a Request for Exclusion, written objection, and/or dispute of the Workweeks credited to them ("Response Deadline").[10] The Response Deadline was February 24, 2023.[11] As of the date of this motion, the Settlement Administrator has received only one (1) Request for Exclusion and no written objections from Class Members.[12]

Each Individual Settlement Payment will be allocated as twenty percent (20%) wages, to be reported on IRS Form W-2; and eighty percent (80%) penalties, interest, and non-wage damages, to be reported on IRS Form 1099 (if applicable).[13] The Settlement Administrator will withhold (and remit to the appropriate taxing authorities) the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payments, and issue checks to Participating Settlement Class Members for their Individual Settlement Payment (i.e., payment of their Individual Settlement Payment net of these taxes and withholdings).[14] The

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[7] Settlement Agreement, § XII.A.1.
[8] "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.
[9] Settlement Agreement, § XII.B.
[10] *Id*., §§ X.A.5, X.B.1, X.C.1, & XI.A.
[11] Simpluris Decl., ¶ 10.
[12] *Id*., ¶¶ 10 & 11.
[13] Settlement Agreement, § XVI.B.
[14] *Id*., § XVI.A.

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Individual PAGA Payments will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable).[15] 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.[16]

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.[17] 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*.[18] 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.[19]

THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's December 2, 2022, Preliminary Approval Order.

On December 23, 2022, Simpluris received a data file from Defendants' counsel in Microsoft Excel format that contained each Class Member's full name, last known address, last known telephone number, the total number of Workweeks worked during the applicable Class Period, number of Workweeks during the PAGA Period, total number of Workweeks during the period April 1, 2017 through August 1, 2022, Social Security number, and last known email address (collectively, "Class List").[20] The Class List contained information for 1,001 individuals identified as Class Members.[21] Simpluris processed the names and addresses through the National

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[15] Settlement Agreement, § XVI.B.
[16] *Id.*, §§ VIII.A & XVI.D.
[17] *Id.*, § XII.C.4.
[18] Ibid.
[19] Ibid.
[20] Simpluris Decl., ¶ 6.
[21] Ibid.

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Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.[22]

On January 10, 2023, Simpluris mailed the Class Notice via first class mail to 1,001 individuals identified as Class Members in the Class List.[23]

As of the date of this Motion, fifty-nine (59) Class Notices were returned as undeliverable.[24] Simpluris performed a skip-trace search on those that were returned to Simpluris without forwarding addresses, located an updated address for forty-nine (49) Class Members, and promptly re-mailed the Class Notice to the updated addresses.[25] Ultimately, ten (10) Class Notices remain undeliverable because an updated address was not located through skip-tracing.[26]

The Response Deadline was February 24, 2023.[27] As of the date of this Motion, the Settlement Administrator has received only one (1) Request for Exclusion, and no written objections or disputes regarding Workweeks from Class Members.[28]

To date, there are one thousand (1,000) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Participating Settlement Class Members.[29] Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately $637,543.62 will be distributed to Participating Settlement Class Members in accordance with the terms of the Settlement.[30]

The *highest* Individual Settlement Payment is currently estimated to be at least $2,251.20 and the *average* Individual Settlement Payment is currently estimated to be at least $637.25.[31] The *highest* Individual PAGA Payment is currently estimated to be $102.95 and the *average* Individual

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[22] Simpluris Decl., ¶ 7.
[23] *Id.*, ¶ 8.
[24] *Id.*, ¶ 9.
[25] Ibid.
[26] Ibid.
[27] *Id.*, ¶ 10.
[28] *Id.*, ¶¶ 10-11.
[29] *Id.*, ¶ 12.
[30] Ibid; see also, n.5, *supra*.
[31] Ibid. The actual average and highest Individual Settlement Payment will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than $25,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., $6,593.62, will be part of the Net Settlement Amount). See n.5, *supra*.

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PAGA Payment is currently estimated to be $24.98.[32]

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether the settlement is fair and reasonable, courts consider relevant factors such as:

> the strength of plaintiffs' 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 views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 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 v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk, supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(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." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower

[32] Simpluris Decl., ¶ 12.

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than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id*.

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

The Parties actively litigated the case since it was commenced on April 1, 2021. Both sides investigated the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification, representative adjudication, and trial, prior to reaching the Settlement.[33] The Parties conducted significant formal and informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation.[34] Class Counsel also had the opportunity to interview and obtain information from Plaintiff and other Class Members, and reviewed and analyzed a large volume of information, documents and data obtained from Plaintiff, Defendants, and other sources.[35] The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiff's employment records, a sampling of Class Members' time and pay data, Defendants' Employee Handbook, company policy acknowledgements, job descriptions, Defendants' operations and employment practices, forms, procedures, and policies (including but not limited to policies regarding entering and leaving the premises, expense reimbursement, grievances, payroll advances, wage and salary, work schedule, and standards of conduct), among other information and documents.[36] Class Counsel researched applicable law, developed liability, damages, and penalties valuation models in connection with mediation and settlement negotiations, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to pleadings, discovery and the production of information, documents, and data in the course of litigation and mediation and settlement negotiations. Class Counsel also drafted pleadings and the

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[33] Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6 filed concurrently herewith the Motion for Attorneys' Fees, Costs, and Enhancement Payment.
[34] Ibid.
[35] Ibid.
[36] Ibid.

mediation brief, prepared for and attended court proceedings, the mediation, and settlement negotiations, among other tasks.[37]

After conducting significant formal and informal discovery and investigation into the facts of the case, the Parties attended a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.[38] In the course of mediation and settlement discussions, the Parties exchanged information and documents, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, Plaintiff's claims and allegations, and wage-and-hour law and enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.[39] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[40] Arriving at a settlement that was acceptable to the Parties was not easy.[41] Defendants and their counsel felt very strongly about Defendants' ability to prevail on the merits and to avoid class certification and representative adjudication. Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[42] After conducting significant formal and informal discovery and investigation, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the case was well-suited for settlement given the legal issues relating to Plaintiff's principal claims and the factual circumstances, as well as the costs and risks to the Parties 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, trial, and/or appeals. Class Counsel had the opportunity to interview, and obtain information from Plaintiff and other Class Members.[44] Class Counsel also reviewed and analyzed a large volume of information, documents,

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[37] Aiwazian Decl., ¶ 6.
[38] *Id.*, ¶ 8.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] *Id.*, ¶ 6.

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and data obtained from Defendants, Plaintiff, and other sources, and performed significant research into the applicable law, which is constantly evolving as it relates to certification, off-the-clock theory, meal and rest periods, PAGA representative claims, wage-and-hour law and enforcement, Plaintiff's claims and damages, and Defendants' defenses, as well as facts discovered.[45] The Settlement was based on this large volume of facts, evidence, and investigation.[46] Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.[47]

B. <u>The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.</u>

The Settlement, which provides for a Maximum Settlement Amount of $1,200,000, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.[48] The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of preparing for mediation and ongoing settlement negotiations.[49] Had the action not settled, Defendants would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendants contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendants would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendants also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation,

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[45] Aiwazian Decl., ¶ 6.
[46] *Id*., ¶¶ 6 & 8.
[47] *Id*., ¶¶ 15-18.
[48] *Id*., ¶¶ 8 & 21.
[49] *Id*., ¶¶ 5-8.

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the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members and PAGA Group Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain class certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, depositions of Defendants' Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Discovery disputes would have certainly arisen, which would have cost the parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Class here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

It would be grossly inefficient for such a large class of current and former employees to bring individual actions to recover from Defendants for the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that could be obtained by a Class Member would not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members, the State of California, and the PAGA Group Members.

C. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement, which provides for a Maximum Settlement Amount of $1,200,000, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations. The Settlement takes into account the potential risks

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and rewards inherent in any case and, in particular, in this case. Moreover, considering all of the facts in the case, the Maximum Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of $420,000.00, litigation costs and expenses in the amount of $18,406.38, Enhancement Payment in the amount of $7,500.00, and Settlement Administration Costs in the amount of $10,250.00, and the PAGA Penalties in the amount of $100,000.00 from the Maximum Settlement Amount of $1,200,000, as provided for by the Settlement, the Net Settlement Amount is currently estimated to be $637,543.62.[50] Under the Settlement Agreement, the Maximum Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her and each PAGA Group Member will be paid a *pro rata* share of the PAGA Group Member Amount, based on the number of Workweeks during the PAGA Period credited to him or her. To date, there are 471 Participating Settlement Class Members, representing 100% of the Class.[51] The *highest* Individual Settlement Payment to a Participating Settlement Class Member is currently estimated to be at least $2,251.20 and the *average* Individual Settlement Payment is currently estimated to be at least $637.25.[52] The *highest* Individual PAGA Payment is currently estimate to be at least $102.95 and the *average* Individual PAGA Payment is currently estimated to be at least $24.98.[53] These are significant individual recoveries, particularly in light of the risks of litigation.

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. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class

[50] Simpluris Decl., ¶ 15; see n.5, *supra*.
[51] *Id.*, ¶ 14.
[52] *Id.*, ¶ 16; see n.31, *supra*.
[53] *Id.*, ¶ 16

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Members, the State of California, and the PAGA Group Members.[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, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. <u>The Class Was Represented by Competent Counsel.</u>

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.[55] Lawyers *for* Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.[56] Both Parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendants and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. <u>There Are No Notices of Objection to the Settlement.</u>

The Settlement has been well received by the Class – ***not a single Class Member objected to the Settlement.***[57] Specifically, no objections have been made as to the Maximum Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, or the amount for the PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba*, *supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, *supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

Here, the lack of any objections speaks volumes about the fairness, reasonableness, and adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk*, *supra*, 48 Cal.App.4th at 1802.

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[54] Aiwazian Decl., ¶ 21.
[55] *Id*., ¶¶ 15-18.
[56] Ibid.
[57] Simpluris Decl., ¶¶ 11 & 12.

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V. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are $10,250.00.[58] The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members in English and Spanish; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, written objections, and disputes regarding Workweeks (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and Individual PAGA Payments, and preparing the associated tax forms; and transmitting payments, among other things.[59]

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of $10,250.00.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement and the PAGA Penalties, and award Settlement Administration Costs, in their entirety, as sought herein.

Dated: March 27, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________

Brian J. St. John
Attorney for Plaintiff and the Class

[58] Simpluris Decl., ¶ 17.
[59] *Id.*, ¶ 3.

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