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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JOSE CERON, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

SEVEN NINETY-TWO COMPANY,
INC., an unknown business entity; IHOP
#792, an unknown business entity; and
DOES 1 through 100, inclusive,

Defendants.

JOSE CERON, individually, and on
behalf of other aggrieved employees
pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

SEVEN NINETY-TWO COMPANY,
INC., an unknown business entity; IHOP
#792, an unknown business entity; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV05360 (lead)
(Consolidated with Case No.
21TRCV00365)

Honorable William F. Highberger
Department SSC10

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
(Brian J. St. John); Declaration of
Proposed Class Representative (Jose
Ceron); and [Proposed] Order filed
concurrently herewith]

Date: March 14, 2024
Time: 11:30 a.m.
Department: SSC10

Class Action Filed: February 10, 2021
PAGA Action Filed: May 17, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on March 14, 2024 at 11:30 a.m. or as soon thereafter as the matter may be heard before the Honorable William F. Highberger in Department SSC10 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Jose Ceron (“Plaintiff” or “Class Representative”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation and Agreement for Class and Representative Action Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT A**” to the Declaration of Brian J. St. John, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Expenses to Class Counsel, Service Award to Plaintiff, and Administration Expenses to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Jose Ceron as Class Representative;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Brian J. St. John of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Proposed Class Action Settlement and Hearing Date for Court Approval (“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

- 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 Expenses to Class Counsel, Service Award to Plaintiff, and Administration Expenses 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 provide for approval by the Court the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes, and permits 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 Declaration of Proposed Class Counsel (Brian J. St. John) and Proposed Class Representative (Jose Ceron) 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: February 16, 2024

LAWYERS for JUSTICE, PC

By: _____


Brian J. St. John
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jose Ceron (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation and Agreement for Class and Representative Action Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Seven Ninety Two Company, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of Six Hundred Ninety-Five Thousand Dollars and Zero Cents (\$695,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Service Award of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00)³; (3) the Attorneys’ Fees and Expenses to Class Counsel, consisting of attorneys’ fees in the amount of one-third (1/3) of the Gross Settlement Amount, or \$231,666.67, and reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)⁴; (4) the Administration Expenses to the Settlement Administrator in the amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00)⁵; and (5) PAGA Payment of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), 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

¹ Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Brian J. St. John (“St. John Decl.”), ¶ 1.16. If the actual number of Workweeks encompassed within the Class Period exceeds 11,444 by more than 13% (i.e., 12,932), then, Defendant at its exclusive discretion may agree to increase the Gross Settlement Amount proportionately for any excess increase in the total number of Workweeks. See *id.*, ¶ 7.3.

² *Id.*, ¶ 1.26.

³ *Id.*, ¶ 1.40.

⁴ *Id.*, ¶ 4.3; although the Settlement Agreement provides for Attorneys’ Fees up to 35% of the Gross Settlement Amount, Class Counsel only seeks fees equal to one-third of the Gross Settlement Amount.

⁵ *Id.*, ¶ 4.4.

1 and former non-exempt or hourly-paid employees who worked for Defendant in the State of
2 California at any time during the PAGA Period (“Aggrieved Employees”).⁶

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

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

7 Based on information provided by Defendant, as of January 14, 2022, the Class is
8 estimated to consist of approximately one hundred ninety (190) individuals.⁸

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

14 All Aggrieved Employees will receive a *pro rata* share of the 25% portion of the PAGA
15 Penalties (“Individual PAGA Amount”) based on the number of pay periods each Aggrieved
16 Employee worked for Defendant as a non-exempt or hourly-paid employee in California during
17 the PAGA Period (“Pay Periods”).

18 The Settlement, if granted preliminary and final approval by the Court, will operate to
19 resolve the Released Class Claims of Plaintiff and Settlement Class Members and the Released
20 PAGA Claims of the State of California and Aggrieved Employees, against the Released
21 Parties.¹⁰

22 In order to efficiently present the Court with adequate information to determine whether
23 to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the
24 filing of this single consolidated memorandum, although it exceeds the page limit established

25 ⁶ Settlement Agreement, ¶ 1.3 “PAGA Period” is defined as the period from March 11, 2020 up to and including
the May 15, 2022. *See id.*, ¶ 1.29.

26 ⁷ *Id.*, ¶ 1.5 “Class Period” is defined as the period from February 10, 2017 up to and including May 15, 2022. *See*
id., ¶ 1.7.

27 ⁸ St. John Decl., ¶ 8.

28 ⁹ Settlement Agreement, ¶ 1.47.

¹⁰ *Id.*, at ¶ 1.19. *See id.* at ¶ 1.35 for the full scope of the “Released Class Claims,” *id.* at ¶ 1.36 for the full scope of
the “Released PAGA Claims,” and *id.* at ¶ 1.37 for the definition of the “Released Parties.”

by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Seven Ninety Two Company, Inc. operates IHOP #792, a well-known family-style franchisee restaurant of International House of Pancake, serving pancakes, along with other breakfast, lunch, and dinner options. Plaintiff Jose Ceron is a former employee of Defendant.

On February 10, 2021, Plaintiff filed a Class Action Complaint for Damages against Defendant Seven Ninety-Two Company, Inc. in the Los Angeles County Superior Court (“Court”), Case No. 21STCV05360, thereby commencing the above-captioned lawsuit (“Class Action”).

On March 11, 2021, Plaintiff provided written notice by certified mail to the LWDA and by online submission to Defendant of the specific provisions of the California Labor Code that were allegedly violated by Defendant (“LWDA Notice”).

On May 17, 2021, Plaintiff filed a complaint for civil penalties and Enforcement under the Private Attorneys General Act, California Labor Code §2698, *Et Seq.* in the Los Angeles County Superior Court, Case No. 21TRCV00365, thereby commencing a PAGA representative action (“PAGA Action”) (the PAGA Action and Class Action are collectively referred to as the “Actions”).

Plaintiff’s core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff 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.

///

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

Prior to reaching Settlement, Class Counsel conducted significant investigation into the facts of the case and engaged in informal discovery and review and analysis of a large volume of information, documents, and data obtained from Plaintiff, Defendant, and other sources.

The Parties have actively litigated the Actions since the Class Action was commenced on February 10, 2021 and the PAGA Action was commenced on May 17, 2021. On January 14, 2022, the Parties participated in a formal, full-day mediation conducted by Eve Wagner, Esq. (the “Mediator”), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the Mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount (\$695,000.00) to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement (i.e., Settlement Class Members) and the Released PAGA Claims of the State of California and the Aggrieved Employees 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 Gross Settlement Amount: (1) attorneys’ fees in an amount not to exceed one-third of the Gross Settlement Amount¹² (i.e., \$231,666.67) and reimbursement of costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to Class Counsel (“Attorneys’ Fees and Expenses”); (2) settlement administration costs, which are currently estimated not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) to the Settlement Administrator (“Administration Expenses”); (3) One Hundred Thousand Dollars and Zero Cents

¹¹ Settlement Agreement, ¶ 1.26.

¹² See n.4, *supra*.

1 (\$100,000.00) allocated to penalties under PAGA (“PAGA Payment”); and (4) payment in the
2 amount of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff
3 (“Service Award”).¹³ The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or
4 “Settlement Administrator”) to handle the notice and settlement administration process.

5 The Parties have agreed that the Settlement Administrator will determine each
6 Settlement Class Member’s *pro rata* share of the available Net Settlement Amount (i.e.,
7 Individual Settlement Amount), in accordance with the Settlement Agreement and as follows:
8 the Settlement Administrator shall divide the Net Settlement Amount by the total number of
9 Workweeks to determine the amount each Settlement Class Member is entitled to for each
10 Workweek (the “Weekly Amount”). The Settlement Administrator will multiply the Weekly
11 Amount by the total number of Workweeks that each Settlement Class Member is credited with
12 to arrive at his or her Individual Settlement Amount.¹⁴

13 The Parties have agreed that the Settlement Administrator will determine each
14 Aggrieved Employee’s *pro rata* share of the twenty-five percent (25%) portion of the PAGA
15 Penalties (i.e., Individual PAGA Payment) in accordance with the Settlement Agreement and as
16 follows: The Settlement Administrator shall divide the Aggrieved Employee Amount by the
17 total number of Pay Periods to determine the amount each Aggrieved Employee is entitled to
18 for each Pay Period (the “Weekly PAGA Amount”). The Settlement Administrator will
19 multiply the Weekly PAGA Amount by the total number of Pay Periods that each Aggrieved
20 Employee is credited with to arrive at his or her Individual PAGA Payment.¹⁵

21 Each Settlement Class Member’s Individual Class Payment will be allocated as follows:
22 10% shall be reported as wages on IRS Form W-2 and its state and local equivalents, and 90%
23 shall be reported as interest, penalties, and non-wage damages on IRS Form 1099 and its state
24 and local equivalents.¹⁶ Each Settlement Class Member will be issued payment of his or her
25 Individual Settlement Amount and the net payment is referred to as an “Individual Settlement
26

27 ¹³ Settlement Agreement., ¶¶ 1.28, 1.40, 4.3, & 4.4.

28 ¹⁴ *Id.*, ¶ 6.2.

¹⁵ *Ibid.*

¹⁶ *Id.*, ¶ 6.3.

1 Payment.”¹⁷ Defendant will pay the employer’s share of payroll taxes and contributions with
2 respect to the Wage Portion of Individual Class Payments in addition to the Gross Settlement
3 Amount.¹⁸ Each Individual PAGA Payment will be allocated as one hundred percent (100%)
4 penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement
5 Administrator.¹⁹

6 The Individual Settlement Payment and Individual PAGA Payment checks will be
7 negotiable for one hundred eighty (180) calendar days after the date of mailing, and thereafter,
8 will be canceled.²⁰ The funds associated with such canceled checks will be transmitted by the
9 Settlement Administrator to the *cy pres* recipient Bet Tzedek, an organization that provides legal
10 aid to low-income individuals and families including related to employment issues.²¹

11 Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must
12 submit a written request signed by the Class Member (“Request for Exclusion”) to the
13 Settlement Administrator, by e-mail or mail, postmarked on or before the date that is forty-five
14 (45) calendar days after the Settlement Administrator mails the Class Notice to Class Members
15 and Aggrieved Employees (“Response Deadline”).²² A Request for Exclusion must contain: (1)
16 contain the Class Member’s full name, address, telephone number, last four digits of Social
17 Security number, and signature; (2) contain the case name and number of the *Ceron* Class
18 Action; (3) contain a statement indicating that he or she wishes to be excluded from the Class
19 Settlement; and (4) be submitted by mail to the Settlement Administrator at the specified
20 address, postmarked on or before the Response Deadline.²³ Any Class Member who opts out
21 of the Class Settlement will not be bound by the terms of the Class Settlement, will not receive
22 an Individual Class Payment, and will not have the right to object to the Class Settlement.²⁴
23 However, Class Members who are considered Aggrieved Employees will still receive an
24

25 ¹⁷ Settlement Agreement, ¶ 6.2.

26 ¹⁸ *Id.*, ¶ 1.15.

27 ¹⁹ *Id.*, ¶ 6.3.

28 ²⁰ *Id.*, ¶ 6.5.

²¹ *Ibid.*

²² *Id.*, ¶ 1.38.

²³ *Id.*, ¶ 7.5.1.

²⁴ *Id.* ¶ 5.6.

Individual PAGA Payment, release the Released PAGA Claims and will be bound to the PAGA Settlement, regardless of whether they submit a valid and timely Request for Exclusion.²⁵

To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) may submit a timely and complete written objection to the Class Settlement to the Settlement Administrator, by e-mail or mail, on or before the Response Deadline.²⁶ The written objection must: (1) contain the Settlement Class Member's full name, address, telephone number, last four digits of Social Security number, and signature; (2) contain the case name and number of the *Ceron* Class Action; (3) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (4) contain copies of any papers, briefs, or other documents upon which the objection is based; (5) identify any counsel representing the Settlement Class Member in connection with the Objection; and (6) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁷ As an alternative to or in addition to submitting a written objection, Settlement Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.²⁸

A Class Member who wishes to dispute the number of Workweeks which have been credited to him or her, as reflected in his or her Class Notice, may do so by submitting a written letter to the Settlement Administrator, by e-mail or mail, on or before the Response Deadline.²⁹ The written challenge must: (1) contain the full name, address, telephone number, last four digits of the Social Security number, and signature of the disputing Class Member; (2) contain the case name and number of the *Ceron* Class Action; (3) clearly state that the Class Member disputes the number of Workweeks credited to him or her and states what number(s) of Workweeks he or she contends should be credited to him or her; (4) include information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends

²⁵ Settlement Agreement, ¶ 5.6.

²⁶ *Id.*, ¶ 5.5.

²⁷ *Id.*, ¶ 1.27.

²⁸ *Id.*, ¶ 5.5.

²⁹ *Id.*, ¶ 1.48.

should be credited to him or her are correct; and (5) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³⁰

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.

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).

³⁰ Settlement Agreement, ¶ 1.48.

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

9 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

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

22 The proponent of the settlement has the burden to show that it is fair and reasonable.
23 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the
24 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
26 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
28 1151.

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

3 The Parties have actively litigated the Actions since it was commenced on February 10,
4 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and
5 scope of the claims, and Class Counsel was actively preparing the matter for class certification
6 and trial.³¹

7 Prior to engaging in mediation, Class Counsel conducted significant investigation and
8 formal and informal discovery regarding the facts of the cases, including and not limited to, the
9 exchange, review, and analysis of a large volume of information, documents, and data obtained
10 from Defendant, Plaintiff, and other sources.³² The volume of information, data, and documents
11 that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s
12 employment records, a detailed sampling of Plaintiff’s and other Class Members’ time data and
13 pay records, Defendant’s Employee Handbook, Defendant’s operations and employment
14 practices, forms, procedures, and policies (including, and not limited to, Compensation Policy,
15 Confidentiality Agreement, Timekeeping Policy, Rest and Meal Periods policy, and Meal Period
16 Waiver), among other information and documents.³³ Class Counsel had the opportunity to
17 interview Plaintiff and other Class Members to gather information regarding the facts and
18 circumstances surrounding Plaintiff’s and putative class members’ employment and to identify
19 potential witnesses.³⁴ Counsel for the Parties met and conferred on numerous occasions, e.g.,
20 to discuss issues relating to the pleadings, discovery, and the production of documents and data
21 prior to the mediation.³⁵ Class Counsel drafted Plaintiff’s mediation brief and prepared for and
22 attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁶

23 The Parties engaged in extensive settlement negotiations and participated in a formal,
24 full-day mediation conducted by Eve Wagner, Esq., a well-respected mediator experienced in
25

26 ³¹ St. John Decl., ¶¶ 11-13.

27 ³² *Id.*, ¶ 12.

28 ³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

mediating complex labor and employment matters.³⁷ Prior to and in during the mediation and settlement discussions, the Parties exchanged class information and engaged in intensive discussion regarding their evaluations of the cases and various aspects of the cases, 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, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁸ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁹ Arriving at a settlement that was acceptable to all Parties was not easy. Defendant 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.⁴⁰ After conducting investigations, informal discovery, exchange of information, and 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 issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴¹

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.⁴² The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴³ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' and Aggrieved Employees' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement,

³⁷ St. John Decl., ¶ 11.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ *Id.*, ¶¶ 11, 16-18.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁴ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁵

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

The Settlement, which provides for a Gross Settlement Amount of Six Hundred Ninety-Five Thousand Dollars and Zero Cents (\$695,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁶ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁷ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.⁴⁸ Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁹

Assuming that the Attorneys' Fees and Expenses, Service Award, PAGA Payment, and Administration Expenses 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 Three Hundred Twenty Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$320,833.33).⁵⁰ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Amount will be calculated based on his or her Workweeks during the Class Period, and the amount of each Aggrieved Employees' Individual PAGA Payment will be calculated based on his or her Pay Periods during the PAGA Period.⁵¹ There is no reason to doubt the fairness of the

⁴⁴ St. John Decl., ¶¶ 12-14 & 17-19.

⁴⁵ *Id.*, ¶ 6.

⁴⁶ *Id.*, ¶¶ 11, 13, 14 & 22.

⁴⁷ *Id.*, ¶¶ 11-13.

⁴⁸ *Id.*, ¶¶ 16-18.

⁴⁹ *Id.*, ¶¶ 11, 13, & 22.

⁵⁰ *Id.*, ¶ 14.

⁵¹ Settlement Agreement, ¶¶ 1.18 & 1.31.

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 believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵² Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵³ The discovery and information that Class Counsel obtained from Defendant 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 Defendant’s defenses thereto.⁵⁴ As outlined in the Declaration of Brian J. St. John, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁵

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.⁵⁶ California Code of Civil Procedure Section 382 “authorizes class actions when the question is

⁵² St. John Decl., ¶¶ 11, 13, & 22.

⁵³ *Id.*, ¶¶ 11-13 & 18.

⁵⁴ *Id.*, ¶ 18.

⁵⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁶ Settlement Agreement, ¶ 1.22.

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This matter involves a class of approximately one hundred ninety (190) individuals.⁵⁷ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment

⁵⁷ St. John Decl., ¶ 8.

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).

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 Complaints. Based on the documents and information obtained through formal and informal discovery and exchange of information in the cases, 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.⁵⁸ Plaintiff’s claims arise from Defendant’s 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

⁵⁸ St. John Decl., ¶ 15.

compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁵⁹

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁰ As a result, Plaintiff claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶¹

Plaintiff maintains that the outcome of this litigation would be determined by Defendant's 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.

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

Class Counsel have litigated the matter for over three (3) years, and were actively preparing the matter for class certification and trial.⁶² 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 cases and informal discovery. Class Counsel reviewed a large volume of documents and data⁶³ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁴ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁵

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⁵⁹ St. John Decl., ¶ 15.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² *Id.*, ¶¶ 11-13.

⁶³ *Id.*, ¶ 12.

⁶⁴ Ibid.

⁶⁵ *Id.*, ¶ 11.

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁶

The Settlement establishes a Gross Settlement Amount of Six Hundred Ninety-Five Thousand Dollars and Zero Cents (\$695,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Expenses, consisting of attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (i.e., \$231,666.67⁶⁷) and an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) for litigation costs and expenses.⁶⁸ The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel have shown, (4) the results that Class Counsel have achieved throughout the litigation, (5) the value of the Settlement that Class Counsel have achieved for the Class Members, Aggrieved Employees, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward Attorneys' Fees and Expenses, and that an award of the Attorneys' Fees and Expenses will be sought, as provided for by the Settlement.⁶⁹

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

⁶⁶ St. John Decl., ¶¶ 5-6.

⁶⁷ See n.4, *supra*.

⁶⁸ Settlement Agreement, ¶ 4.3.

⁶⁹ *Id.*, Exh. A.

1 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
2 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
3 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
4 settlement fund and the settlement agreement provides that the defendant agrees to paying the
5 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

24 Class Counsel have borne all of the risks and costs of litigation and will not receive any
25 compensation until recovery is obtained.⁷⁰

26 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
27 and further argument at the time of filing Plaintiff’s motion for final approval of the Settlement
28

⁷⁰ St. John Decl., ¶ 20.

and application for the Attorneys' Fees and Expenses 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).

The proposed Class Notice⁷¹ describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or submit Workweek Disputes, and the date and time set for the Final Approval Hearing.⁷²

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.⁷³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Class Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks credited to them.⁷⁵

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

⁷¹ Settlement Agreement, Exh. A.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

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, Inc. to administer the Settlement.

No later than thirty (30) calendar days after the Preliminary Approval Date, the Settlement Administrator will mail the Class Notice to each Class Member and Aggrieved Employee by First-Class United States Postal Service (“USPS”) mail in English, Spanish, and Vietnamese.⁷⁶ No later than three (3) business days after the Settlement Administrator’s receipt of any Class Notice returned by the USPS as undelivered on or before the Response Deadline, the Settlement Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.⁷⁷ If the USPS does not provide a forwarding address, the Settlement Administrator shall conduct a Class Member Address Search⁷⁸, and re-mail the Class Notice to the most current address obtained.⁷⁹ For all Class Members whose Class Notice is re-mailed, the deadlines for Class Members’ written objections to the Class Settlement, disputes regarding Workweeks, and Requests for Exclusion will be extended an additional ten (10) calendar days from the original Response Deadline provided in the Class Notice.⁸⁰ The Settlement Administrator will receive and process Requests for Exclusions, Objections, and any Workweek Disputes.⁸¹

The Settlement Administrator will calculate the amounts of the Individual Settlement Amount, Individual Settlement Payments, and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the Wage Portion of Individual Class Payments; mail the Individual Settlement Payment checks to Settlement Class Members and

⁷⁶ Settlement Agreement, ¶ 5.1.

⁷⁷ *Id.*, ¶ 5.2.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Id.*, ¶ 5.

Individual PAGA Payments to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Expenses, Service Award, and PAGA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸² The Administration Expenses Payment is currently estimated to be Ten Thousand Dollars and Zero Cents (\$10,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸³

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 and Aggrieved Employees 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 Defendant's records.⁸⁴

Not later than fifteen (15) business days after the Court grants preliminary approval of the Settlement, Defendant will deliver a list to the Settlement Administrator, in an electronically usable format, for the Settlement Administrator containing for each Class Member, to the extent Defendant has such information, the following: the first, last, and middle name; Last Known Address; last known phone numbers; Social Security numbers; Workweeks; Pay Periods; and any other information required to effectuate the Settlement ("Class List").⁸⁵

No later than thirty (30) calendar days after the Preliminary Approval Date, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁶ Not later than three (3) business days after the Settlement Administrator's receipt of any Class Notice returned, on or before the Response Deadline, by the USPS as undelivered, the

⁸² Settlement Agreement, ¶ 5; St. John Decl., ¶ 15.

⁸³ Settlement Agreement, ¶ 4.4.

⁸⁴ *Id.*, ¶ 5.3.

⁸⁵ *Id.*, ¶ 5.2.b.

⁸⁶ *Id.*, ¶ 5.1.

1 Settlement Administrator shall re-mail the Class Notice using any forwarding address provided
2 by the USPS.⁸⁷ If the USPS does not provide a forwarding address, the Settlement Administrator
3 shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current
4 address obtained.⁸⁸ The Settlement Administrator has no obligation to make further attempts to
5 locate or send the Class Notice to Class Members whose Class Notice is returned by the USPS
6 a second time.⁸⁹ Class Members will have until the applicable Response Deadline to submit a
7 Request for Exclusion from the Class Settlement, challenge to Workweeks, and/or objection to
8 the Class Settlement.⁹⁰

9 Within thirty (30) calendar days after the Effective Date, Defendant shall deposit the
10 Gross Settlement Amount to a qualified settlement account established by the Settlement
11 Administrator.⁹¹

12 No later than ten (10) calendar days after Defendant depositis the Gross Settlement
13 Amount to the qualified settlement account established by the Settlement Administrator, the
14 Settlement Administrator shall distribute the following payments: Individual Settlement
15 Payments to Settlement Class Members, Individual PAGA Payments to Aggrieved Employees,
16 Service Award to Class Representative, Attorneys' Fees and Expenses to Class Counsel, LWDA
17 Payment to the LWDA, and Administration Expenses to itself, all in the Court-approved
18 amounts.⁹²

19 Individual Settlement Payment and Individual PAGA Payment checks will remain valid
20 and negotiable for one hundred and eighty (180) calendar days from the date of their mailing.⁹³
21 Checks that are not negotiated within the 180-day period will be canceled.⁹⁴ The Settlement
22 Administrator shall transmit the funds associated with such canceled checks to Bet Tzedek, an
23 organization that provides legal aid to low-income individuals and families including related to
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25 ⁸⁷ Settlement Agreement, ¶ 5.2.

26 ⁸⁸ Ibid.

27 ⁸⁹ *Id.*, ¶ 5.2.e.

28 ⁹⁰ *Id.*, ¶ 1.39.

⁹¹ *Id.*, ¶ 6.4.

⁹² Ibid.

⁹³ *Id.*, ¶ 6.5.

⁹⁴ Ibid.

employment issues.⁹⁵

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENTS

Plaintiff Jose Ceron respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Service Award in an amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff.⁹⁶ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Service Award 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.⁹⁷ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹⁸ Accordingly, it is appropriate and just for Plaintiff to receive a Service Award for their services on behalf of the Class, the Aggrieved Employees, and the State of California, in addition to their individual settlement payments.

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; preliminarily appoint and designate Arby Aiwasian, Joanna Ghosh, and Brian J. St. John of Lawyers for

⁹⁵ Settlement Agreement, ¶ 6.5.

⁹⁶ *Id.*, ¶ 1.40.

⁹⁷ St. John Decl., ¶ 20; Declaration of Jose Ceron in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Ceron Decl."), ¶ 4.

⁹⁸ St. John Decl., ¶ 20; Ceron Decl., ¶¶ 3-6.

Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Jose Ceron as Class Representative; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Expenses, Service Award, PAGA Payment, and Administration Expenses; 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 six months; and permit the filing of a memorandum that exceeds the page limit.

Dated: February 16, 2024

LAWYERS for JUSTICE, PC

By:



Brian J. St. John
Attorneys for Plaintiff