

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Annabel Blanchard (SBN 258135)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MARTIN ACELIO, 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,

v.

GREEN PERSPECTIVES, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 37-2021-00009515-CU-OE-
CTL

Honorable Timothy Taylor
Department C-72

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Annabel Blanchard); Declaration of
Proposed Class Representative (Martin
Acelio); and [Proposed] Order filed
concurrently herewith]

Date: October 28, 2022
Time: 1:30 p.m.
Department: C-72

Complaint Filed: March 4, 2021
FAC Filed: May 7, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 28, 2022 at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Timothy Taylor in Department C-72 of the Superior Court of California for the County of San Diego, located at Hall of Justice, 330 W. Broadway, San Diego, California 92101, Plaintiff Martin Acelio (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting Plaintiff leave to file the [Proposed] Second Amended Class Action Complaint for Damages and Enforcement under the Private Attorneys’ General Act, Cal. Labor Code § 2698 Et Seq. (“Second Amended Complaint” or, upon filing “Operative Complaint”) which is attached as **“EXHIBIT 1”** to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as **“EXHIBIT A”** to the Declaration of Annabel Blanchard, 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 Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Martin Acelio as Class Representative;
- Preliminarily appointing Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as **“EXHIBIT 2”** 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 Costs to Class Counsel, Enhancement Payment for Plaintiff, PAGA Allocation, and Settlement Administration Costs to 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 of a class action settlement and allows the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Annabel Blanchard) and Proposed Class Representative (Martin Acelio) 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: September 16, 2022

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. SUMMARY OF MOTION..... 1

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND..... 2

III. REQUEST FOR LEAVE TO FILE SECOND AMENDED COMPLAINT 4

IV. SUMMARY OF THE SETTLEMENT TERMS 4

**V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENTS..... 8**

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

**A. The Settlement Resulted from Arm’s-Length Negotiations Based
Upon Extensive Investigation and Discovery. 10**

B. The Settlement Is Fair, Reasonable, and Adequate..... 12

C. The Settlement Is of Significant Value..... 13

VII. CERTIFICATION OF THE CLASS IS APPROPRIATE 13

A. The Class Is Ascertainable and Sufficiently Numerous. 14

B. The Class Members Share a Well-Defined Community of Interest..... 14

**VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR
ATTORNEYS’ FEES AND COSTS 16**

IX. THE PROPOSED CLASS NOTICE IS ADEQUATE 18

**X. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT
ADMINISTRATOR..... 19**

XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS 21

**XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION
FOR ENHANCEMENT PAYMENT 22**

XIII. CONCLUSION 23

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	9
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	14
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	18
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 ..	15
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	18, 19
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	18
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	9
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 9
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	18
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	8, 9
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	14
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	12
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	18
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	13
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	17
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	17
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	14
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	18
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	18
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	9
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	14
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	13, 15

1	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	8
2	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	23
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	8, 9
4	Statutes	
5	Cal. Code Civ. Proc. § 1781.....	18
6	Cal. Code Civ. Proc. § 1781(f).....	8
7	Other Authorities	
8	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	9
9	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	21
10	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	13
11	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	18
12	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	19
13	Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	19
14	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	19
15	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	19
16	Rules	
17	Fed. R. Civ. P. 23(c)(2)	19
18	Fed. R. Civ. P. 23(e).....	19
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Martin Acelio (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA 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 Green Perspectives (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of six hundred thousand dollars and no cents (\$600,000.00).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of Attorneys’ fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or \$210,000.00, and reimbursement of litigation costs and expenses not to exceed thirty thousand dollars and no cents (\$30,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed twelve thousand dollars and no cents (\$12,000.00)⁵; and (5) the amount of one hundred thousand dollars and no cents (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to all current and former non-exempt employees of Defendant who worked in California during the period from March 4, 2020 through February 28, 2022 (“PAGA Members”) on a *pro rata* basis based on their Workweeks during the period from March 4, 2020 through February 28, 2022 (“PAGA Period”).⁶

¹ Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Annabel Blanchard (“Blanchard Decl.”), § 6(v).

² *Id.*, § 6(v).

³ *Id.*, § 11.

⁴ *Id.*, § 10.

⁵ *Id.*, § 12.

⁶ *Id.*, § 13.

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

All current and former non-exempt employees of Defendant who worked in the State of California at any time during the period from March 4, 2017 through February 28, 2022 (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately four hundred twenty (420) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendant in California in a non-exempt position during the period from March 4, 2017 through February 28, 2022 (“Workweeks”).⁹

The Settlement, if granted preliminary and final approval by the Court, will resolve the Class Released Claims of Plaintiff and Settlement Class Members and the PAGA Released Claims of Plaintiff, the State of California (with Respect to PAGA Members), and PAGA Members, against the Released Parties.¹⁰

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is an organization offering various landscaping services to office buildings, apartment complexes, retail centers, homeowner associations and schools, operating throughout California in San Diego County, Orange County, and in the San Francisco Bay Area. Plaintiff Martin Acelio is a former employee of Defendant.

///

⁷ Settlement Agreement, § 6(d). “Class Period” is defined as the period of time from March 4, 2017 through February 28, 2022. *See id.*, § 6(f).

⁸ Blanchard Decl., ¶ 9.

⁹ Settlement Agreement, § 13.

¹⁰ *See id.* at § 30, for the full scope of the “Released Claims,” and *id.* at § 6(g) for the definition of the “Released Parties.”

On March 4, 2021, Plaintiff filed a Class Action Complaint for Damages in the San Diego County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On May 7, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“First Amended Complaint”).

On May 10, 2021, Defendant filed an Answer to Plaintiff’s Class Action Complaint for Damages. On June 14, 2021, Defendant filed an Answer to Plaintiff’s First Amended Complaint.

Contemporaneously with this Motion for Preliminary Approval of Class Action Settlement, Plaintiff seeks leave to file a Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Second Amended Complaint” or “Operative Complaint”), and respectfully requests the Court deem the Second Amended Complaint filed at the time of filing this Motion.

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 Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The Parties have actively litigated the Action since it was commenced on March 4, 2021. On November 30, 2021, the Parties participated in a formal, full-day mediation conducted by Hon. S. James Otero (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. REQUEST FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff to file an amended for the purpose of resolution of the Action. As such, Plaintiff respectfully requests leave to file the Second Amended Complaint (i.e., the Operative Complaint), attached as "**EXHIBIT 1**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, so that the operative complaint in this Action formally asserts the causes of action and allegations that have been investigated, litigated, mediated, and ultimately settled, by the Parties, and so that the terms of the Settlement may be effectuated.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Maximum Settlement Amount to resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Member) with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Attorneys' fees in an amount not to exceed two hundred ten thousand dollars and no cents (\$210,000.00) (i.e., up to 35% of the Maximum Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed thirty thousand dollars and no cents (\$30,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed twelve thousand dollars and no cents (\$12,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) the PAGA Allocation and (4) payment in the amount of up to seven thousand five hundred

¹¹ Settlement Agreement, § 31.

dollars and no cents (\$7,500.00) to Plaintiff Martin Acelio (“Enhancement Payment”).¹² The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

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

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will determine the Workweeks of each Class Member, divide the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.¹³
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁴

The Parties have agreed that the Settlement Administrator will determine each PAGA Member’s *pro rata* share of the twenty-five percent (25%) portion of the PAGA Allocation (“PAGA Member Amount”) that an Aggrieved Employee is eligible to receive for the PAGA Settlement (“Individual PAGA Payment”), in accordance with the Settlement Agreement by the PAGA Member Amount by dividing the Workweeks of all PAGA Members during the PAGA Period to yield the Workweek Value, and multiplying each PAGA Member’s individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.¹⁵

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁶ Each PAGA Member’s Individual

¹² Settlement Agreement, 6(v) and 6(w); see also, §§ 10, 11, 12, and 13.

¹³ *Id.*, § 14(a).

¹⁴ *Id.*, § 14(b).

¹⁵ *Id.*, §§ 6(r), 6(aa), & 15.

¹⁶ *Id.*, § 25.

PAGA Payment will be allocated as one hundred percent (100%) penalties.¹⁷ Settlement Class Members will be issued payment of their Individual Settlement Shares subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").¹⁸ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares ("Employer Taxes") in addition to the Maximum Settlement Amount.¹⁹

The Individual Settlement Payment checks issued to Settlement Class Members and Individual PAGA Payment checks issued to PAGA Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.²⁰ Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.²¹ The funds from associated with such cancelled checks will be transmitted by the Settlement Administrator within (10) calendar days after the expiration of the 180-day period, and sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq., in the name of the Settlement Class Member and/or PAGA member whose check is cancelled and in the respective amount of the cancelled check.²² The Settlement Administrator may, at its discretion, distribute the Individual Settlement Payment and Individual PAGA Payment by way of a single check that combines both payments (if applicable).²³

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a letter indicating that they want to exclude themselves.²⁴ To be timely, the Class Member must mail a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice ("Response Deadline").²⁵ A request for must: (a) contain

¹⁷ Settlement Agreement, § 25.

¹⁸ *Ibid.*

¹⁹ *Id.*, § 20.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Id.*, § 21.

²⁵ *Id.*, § 6(jj) .

the case name and number of the Action; (b) contain the full name, signature, address, telephone number, and last four digits of the Social Security Number of the Class Member requesting exclusion; and (c) clearly state that the Class Member does not wish to be included in the Class Settlement. (“Request for Exclusion”)²⁶ Class Members who submit a valid and timely Request for Exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment as it pertains to the Class Settlement.²⁷ If a Class Member is a PAGA member, he or she will be bound to the PAGA settlement and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.²⁸

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.²⁹ Settlement Class Members who wish to object to the Settlement must serve the Settlement Administrator with a Notice of Objection on or before the Response Deadline.³⁰ The Notice of Objection must include: (a) the case name and number of the Action; (b) the objector’s full name, signature, address, telephone number, and last four digits of his or her Social Security Number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) copies of any papers, briefs, or other documents upon which the objection is based (“Notice of Objection”).³¹

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.³² The letter must (a) contain the case name and number of the Action; (b) contain the full name, signature, address, telephone number, and last four digits of the Social Security Number of the disputing Class Member; (c) clearly state that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (d) include information and/or attach documentation

²⁶ Settlement Agreement, § 6(ii).

²⁷ *Id.* § 21.

²⁸ *Ibid.*

²⁹ *Id.*, § 21.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Id.*, § 19.

demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct.³³

V. 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).

³³ Settlement Agreement, § 19.

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 **VI. 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 actively litigated the Action since it was commenced on March 4, 2021.
4 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
5 the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁴

6 Prior to engaging in mediation, Class Counsel conducted significant investigation and
7 informal discovery regarding the facts of the case, including and not limited to, the exchange,
8 review, and analysis of a large volume of documents and data produced by Defendant.³⁵ The
9 volume of data and documents that Class Counsel reviewed and analyzed included and was not
10 limited to: Plaintiff and other Class Members’ employment records, a detailed sampling of Class
11 Members’ time and pay data, Defendant’s Employee Handbook, company policy
12 acknowledgements (including, but not limited to, Acknowledgement of Receipt of Employee
13 Handbook), internal memoranda, job descriptions, Defendant’s operations and employment
14 practices (including, but not limited to, Arbitration Agreements), forms, procedures, and policies
15 (including but not limited to Defendant’s Meal and Rest Period Policy), among other
16 information and documents.³⁶ Class Counsel had the opportunity to interview Plaintiff and other
17 Class Members to gather facts and to identify potential witnesses. Counsel for the Parties also
18 met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings,
19 discovery, and the production of documents and data prior to the mediation.³⁷ Class Counsel
20 also drafted Plaintiff’s mediation brief and prepared for and attended court proceedings,
21 settlement negotiations, and the mediation, among other tasks.³⁸

22 The Parties engaged in extensive settlement negotiations and participated in a formal,
23 full-day mediation conducted by Hon. S. James Otero (Ret.), a well-respected mediator
24 experienced in mediating complex labor and employment matters.³⁹ Prior to and during the
25

26 ³⁴ Blanchard Decl., ¶¶ 11-13.

27 ³⁵ *Id.*, ¶ 12.

28 ³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Id.*, ¶ 11.

mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴¹ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴² After conducting investigations, significant informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴³

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁴ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁵ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with 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, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁶ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive

⁴⁰ Blanchard Decl., ¶ 11.

⁴¹ *Ibid.*

⁴² *Id.*, ¶¶ 11, 16-18.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶¶ 11-13 & 16-18.

experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁷

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

The Settlement, which provides for a Maximum Settlement Amount of six hundred thousand dollars and no cents (\$600,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁸ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵⁰ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵¹

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Allocation, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be two hundred forty thousand five hundred dollars and no cents (\$240,500.00).⁵² As discussed in Part IV, *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 Payment will be calculated based on his or her Workweeks.⁵³ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

⁴⁷ Blanchard Decl., ¶¶ 6-7.

⁴⁸ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁹ *Id.*, ¶¶ 11-13.

⁵⁰ *Id.*, ¶¶ 16-18.

⁵¹ *Id.*, ¶¶ 11, 13, & 21.

⁵² *Id.*, ¶ 14.

⁵³ Settlement Agreement, § 13 and 14.

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

8 **C. The Settlement Is of Significant Value.**

9 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
10 conducted significant informal discovery and exchanged a large volume of documents, data, and
11 information prior to mediation.⁵⁵ The discovery and information that Class Counsel obtained
12 from Defendant, Plaintiff, and other sources allowed Class Counsel to develop valuation models
13 in order to evaluate the potential value and merit of the claims, and perform a complete
14 evaluation of Defendant's defenses thereto.⁵⁶ As outlined in the Declaration of Annabel
15 Blanchard, Class Counsel performed an extensive analysis of each and every claim pursuant to
16 *Kullar* prior to entering into the Settlement.⁵⁷

17 **VII. CERTIFICATION OF THE CLASS IS APPROPRIATE**

18 For settlement purposes, the requisites for establishing class certification are met, and
19 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁸
20 California Code of Civil Procedure Section 382 "authorizes class actions when the question is
21 one of a common or general interest, of many persons, or when the Parties are numerous, and it
22 is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court*
23 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
24 "both [1] an ascertainable class and [2] a well-defined community of interest among class
25 members." *Id.*

26 ⁵⁴ Blanchard Decl., ¶¶ 11, 13, & 21.

27 ⁵⁵ *Id.*, ¶¶ 11-13 & 18.

28 ⁵⁶ *Id.*, ¶ 18.

⁵⁷ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁸ Settlement Agreement, § 32.

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 case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately four hundred twenty (420) individuals.⁵⁹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding 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

⁵⁹ Blanchard Decl., ¶ 9.

1 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate*
2 *that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of*
3 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
4 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether
5 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
6 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

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

23 Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect
24 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶²
25 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
26

27 ⁶⁰ Blanchard Decl., ¶ 16.

28 ⁶¹ *Ibid.*

⁶² *Ibid.*

1 compensation due to them from Defendant during the time period at issue.⁶³

2 Plaintiff maintains that the outcome of this litigation would be determined by
3 Defendant's alleged uniform operations and employment policies and procedures that applied
4 across its non-exempt employees who worked in California during the Class Period.
5 Accordingly, the Court should certify the Class for settlement purposes only.

6 **VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
7 **ATTORNEYS' FEES AND COSTS**

8 Class Counsel has litigated the matter for almost two years, and was actively preparing
9 the matter for class certification and trial.⁶⁴ The ongoing work has been extensive, demanding,
10 and ultimately successful in achieving a substantial settlement resolution. Class Counsel
11 conducted extensive investigations into the facts of the case and informal discovery. Class
12 Counsel reviewed a large volume of documents and data⁶⁵ and also had the opportunity to
13 interview and obtain information from Plaintiff and other Class Members, researched applicable
14 law, undertook damages/valuation calculations, and met and conferred with Defendant's
15 counsel regarding the pleadings, discovery, and the production of documents and data prior to
16 mediation.⁶⁶ Counsel for the Parties also undertook extensive settlement discussions, which
17 included participating in a formal, full-day mediation.⁶⁷

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

20 The Settlement establishes a Maximum Settlement Amount of six hundred thousand
21 dollars and no cents (\$600,000.00), and provides for Class Counsel to apply to the Court for
22 Attorneys' Fees and Costs, consisting of Attorneys' fees in an amount not to exceed thirty-five
23 percent (35%) of the Maximum Settlement Amount (i.e., \$210,000.00) and an amount not to
24 exceed thirty thousand dollars and no cents (\$30,000.00) for litigation costs and expenses.⁶⁹

25 _____
26 ⁶³ Blanchard Decl., ¶ 16.

27 ⁶⁴ *Id.*, ¶¶ 11-13.

28 ⁶⁵ *Id.*, ¶ 12.

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶ 11.

⁶⁸ *Id.*, ¶¶ 6-7.

⁶⁹ Settlement Agreement, §§ 6(v) and 10.

The Attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷⁰

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

The propriety of calculating and awarding Attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check

⁷⁰ Settlement Agreement, Exh. A.

1 and use other means to evaluate the reasonableness of a requested percentage fee[.]” and “[t]he
2 percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

3 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
4 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
5 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding Attorneys’ fees in the amount of 45%
6 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
7 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as
8 Attorneys’ fees). California courts routinely approve class action Attorneys’ fee awards
9 “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
10 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was
11 appropriate in class actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County
12 Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles
13 County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

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

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

21 **IX. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

27
28

⁷¹ Blanchard Decl., ¶ 19.

The proposed Class Notice⁷² describes the Settlement, the deadlines and procedures to serve a Notice of Objection to the Settlement, mail a Request for Exclusion from the Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷³

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

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

**X. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT
ADMINISTRATOR**

The Parties have selected Simpluris, Inc. to administer the Settlement.

The Settlement Administrator will mail the Class Notice in English and Spanish to each Class Member by First-Class U.S. mail.⁷⁷ Any undeliverable Class Notice that is returned to the

⁷² Settlement Agreement, Exh. A.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Id.*, § 18.

1 Settlement Administrator with a forwarding address on or before the Response Deadline, will
2 be re-mailed to the forwarding address.⁷⁸ With respect to any undeliverable Class Notice
3 returned on or before the Response Deadline without a forwarding address, the Settlement
4 Administrator will make reasonable efforts to obtain an updated mailing address, including but
5 not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member
6 within five (5) calendar days.⁷⁹ The Response Deadline to submit a Request for Exclusion,
7 Notice of Objection, or dispute regarding Workweeks for Class Members to whom a Class
8 Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator,
9 will be extended fifteen (15) calendar days from the original sixty (60) calendar day deadline.⁸⁰
10 The Settlement Administrator will receive and process Requests for Exclusion, Notices of
11 Objection, and any disputes regarding Workweeks.⁸¹

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

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

24 ///

25
26 ⁷⁸ Settlement Agreement, § 6(jj).

27 ⁷⁹ *Ibid.*

28 ⁸⁰ *Ibid.*

⁸¹ *Id.*, §§ 6(x), 6(jj), 19, and 21.

⁸² *Ibid.*; Blanchard Decl., ¶ 15.

⁸³ Settlement Agreement, § 12.

XI. 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

Within twenty-one (21) calendar days after the entry of the Court's order granting preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: last-known full name, mailing address, telephone number, Social Security Number, workweeks worked as a non-exempt employee of Defendant in California during the Class Period and PAGA Period (if applicable) (collectively, "Class Data and List").⁸⁵

Within ten (10) business days of receipt of the Class Data and List, the Settlement Administrator will mail the Class Notice in English and Spanish to the Class Members via First-Class U.S. Mail.⁸⁶ If a Class Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address.⁸⁷ If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁸⁸ Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, mail a dispute regarding Workweeks, and/or to serve a Notice of Objection.⁸⁹

On or before November 3, 2022, the Settlement Administrator will establish a qualified settlement account for administration of the Settlement and Defendant will make a deposit for half the Maximum Settlement Amount (i.e., \$300,000), into the qualified settlement account to be established by the Settlement Administrator ("First Installment").⁹⁰

⁸⁴ Settlement Agreement, § 18.

⁸⁵ *Id.*, § 17.

⁸⁶ *Id.*, § 18.

⁸⁷ *Id.*, § 18(b).

⁸⁸ *Ibid.*

⁸⁹ *Id.*, § 6(jj).

⁹⁰ *Id.*, § 9(a).

On or before March 3, 2023, Defendant will make a deposit of the remaining half of the Maximum Settlement Amount (i.e., \$300,000), plus an amount sufficient to pay Employer Taxes, into the qualified settlement account established by the Settlement Administrator (“Second Installment”)⁹¹

After funding of the First Installment and Second Installment, and within seven (7) calendar days after the Effective Date, the Settlement Administrator will issue payments due under the settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) Individual PAGA Payments to PAGA Members; (c) LWDA Payment to the Labor and Workforce Development Agency; (d) Enhancement Payment to Plaintiff; (e) Attorneys’ Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to itself (Settlement Administrator). The Settlement Administrator will also undertake filings and remittances in connection with the employee’s share of taxes on the wages portion of Individual Settlement Shares and the Employer Taxes that are necessary for administration of the Settlement.⁹²

The Individual Settlement Payment and Individual PAGA Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹³ Checks that are not negotiated within the 180-day period will be cancelled.⁹⁴ The funds associated with such cancelled checks will be tendered by the Settlement Administrator within (10) calendar days after the last day of the 180-day period to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq..⁹⁵

XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT PAYMENT

Plaintiff Martin Acelio respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to seven

⁹¹ Settlement Agreement, § 9(b).

⁹² *Id.*, § 9(c).

⁹³ *Id.*, § 20.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff Martin Acelio.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 Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁷ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁹⁸ Accordingly, it is appropriate and just for Plaintiff to each receive an Enhancement Payment for his services on behalf of the Class, the State of California, and PAGA Members, in addition to his Individual Settlement Payment and Individual PAGA Payment.

XIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Martin Acelio as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, PAGA Allocation, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by

⁹⁶ Settlement Agreement, § 11.

⁹⁷ Blanchard Decl., ¶ 20; Declaration of Martin Acelio in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Acelio Decl."), ¶ 4.

⁹⁸ Blanchard Decl., ¶ 20; Acelio Decl., ¶¶ 3-6.

the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: September 16, 2022

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiff