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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

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

Plaintiff,

vs.

MED-DATA, INCORPORATED, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: RIC1901865

Honorable Sunshine S. Sykes
Department 6

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
(Edwin Aiwazian); Declaration of
Proposed Class Representative (Samuel
Elliott); Declaration of Proposed
Administrator (Eric Springer);
Declaration of Proposed Cy Pres
Recipient (Heather Tiffie); Compliance
Chart; and [Proposed] Order filed con-
currently herewith]

Reservation No. 006997607479
Date: December 1, 2021
Time: 8:30 a.m.
Department: 6

Complaint Filed: March 13, 2019
FAC Filed: September 9, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on December 1, 2021 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Sunshine S. Sykes in Department 6 of the Superior Court of California for the County of Riverside, located at 4050 Main Street, Riverside California 92501, Plaintiff Samuel Elliott (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwasian in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, 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 Award to Plaintiff, and Settlement Administration Costs to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Samuel Elliott as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), Objection Form, and Exclusion Form (together, “Notice Packet”), attached as “**EXHIBIT A**”, “**EXHIBIT B**”, “**EXHIBIT C**” 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 Administrator; and

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

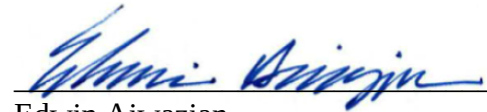
This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian), Proposed Class Representative (Samuel Elliott), Proposed Administrator (Eric Springer), and Proposed *Cy Pres* Recipient (Heather Tiffie) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: November 4, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff

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28

TABLE OF CONTENTS

I. SUMMARY OF MOTION.....1

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

III. SUMMARY OF THE SETTLEMENT TERMS4

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

**V. THE COURT SHOULD PRELIMINARILY APPROVE THE
SETTLEMENT9**

**A. The Settlement Resulted from Arm’s-Length Negotiations Based
Upon Extensive Investigation and Discovery.9**

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

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

VI. 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....15

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.18

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE ADMINISTRATOR.....20

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS20

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION
FOR ENHANCEMENT AWARD22**

XII. CONCLUSION23

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 14, 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	8
<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	7, 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	8
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	14

1	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	13, 14, 15
2	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	7
3	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	22
4	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	7, 9
5	Statutes	
6	Cal. Code Civ. Proc. § 1781.....	18
7	Cal. Code Civ. Proc. § 1781(f).....	7
8	Other Authorities	
9	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	8
10	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	20
11	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	13
12	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	18
13	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	19
14	Conte & Newberg, Newberg on Class Actions § 8.29 (4th Ed.)	19
15	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	19
16	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	19
17	Rules	
18	Fed. R. Civ. P. 23(c)(2)	19
19	Fed. R. Civ. P. 23(e).....	18

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Samuel Elliott (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“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 Med-Data, Inc. (“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 Settlement Sum of one million five hundred sixty-five thousand dollars and no cents (\$1,565,000.00).¹ The Settlement Sum includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Sum²; (2) the Enhancement Award of ten thousand dollars and no cents (\$10,000.00) 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 Settlement Sum, or \$547,750.00, and reimbursement of litigation costs and expenses not to exceed twenty-five thousand dollars and no cents (\$25,000.00)⁴; (4) the Settlement Administration Costs to the Administrator in the amount not to exceed twenty-five thousand dollars and no cents (\$25,000.00);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 Settlement Class Members as a part of the Net Settlement Sum.⁶

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

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¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 3.

² *Id.*, § 3.f.

³ *Id.*, § 3.a.

⁴ *Id.*, § 3.d.

⁵ *Id.*, § 3.b.

⁶ *Id.*, § 3.c.

All current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time during the Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately four hundred thirty-nine (439) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Members”) will receive a share of the Net Settlement Sum (“Individual Settlement Share”) on a *pro rata* basis based upon the number of workweeks each Settlement Class Member worked for Defendant during the Class Period (“Workweeks”).⁹

The Settlement resolves the Released Claims of Plaintiff and Settlement Class Members, against the Released Parties.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides financial account management, patient collection, and revenue cycle management services for hospitals and medical organizations. Plaintiff Samuel Elliott is a former employee of Defendant.

On March 13, 2019, Plaintiff filed a Class Action Complaint for Damages in the Riverside County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On June 7, 2019, Defendant filed an Answer to Plaintiff’s Unverified Class Action Complaint, and thereafter, on July 7, 2019, Defendant filed a First Amended Answer to Plaintiff’s Unverified Class Action Complaint.

⁷ Settlement Agreement, § 7.a. “Class Period” is defined as the period of time from March 13, 2015 and August 19, 2020. *See id.*, § RECITALS.

⁸ Aiwazian Decl., ¶ 9;

⁹ Settlement Agreement, §§ 3.f & 7.b.

¹⁰ *See id.* at § 4.c, for the full scope of the “Released Claims,” and *id.* at § 4.a, “Released Parties” are defined as Defendant and Defendant’s directors, officers, agents, and employees; MEDNAX Services, Inc. and any affiliates or subsidiaries, and their officers, directors, officers, agents, and employees; Cardon Healthcare Network, LLC and Cardon Healthcare Network, LLC’s directors, officers, agents, and employees; Alegis Revenue Group, LLC and Alegis Revenue Group, LLC’s directors, officers, agents and employees; and Diversified Healthcare Services, LLC and Diversified Healthcare Services, LLC’s directors, officers agents, and employees. MEDNAX Services, Inc. is included in the definition of Released Parties as the former parent company of Defendant. Cardon Healthcare Network, LLC, Alegis Revenue Group, LLC and Diversified Healthcare Services, LLC are entities that employed potential Class Members in California, and are currently direct or indirect subsidiaries of Defendant.

1 On September 9, 2021 Plaintiff filed a First Amended Class Action Complaint for
2 Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698,
3 *Et Seq.* (“Operative Complaint”). On October 8, 2021 Defendant filed a Second Amended
4 Answer to Plaintiff’s First Unverified Class Action Complaint.

5 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
6 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
7 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
8 and rest periods and associated premium pay, failing to timely pay wages during employment
9 and upon termination of employment, failing to provide compliant wage statements, failing to
10 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
11 thereby engaged in unfair business practices in violation of California Business and Professions
12 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff
13 contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
14 (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

15 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
16 associated with any of the allegations in the Action, and further denies that the Action is
17 appropriate for class treatment or representative adjudication for any purpose other than for
18 settlement purposes only. More specifically, Defendant asserts that the proposed class lacks a
19 well-defined community of interest, requiring individualized questions and proof. Defendant
20 further points out that the Company policies at issue in this case are, on their face, compliant
21 with California state law. Defendant also pointed to the lack of evidence of any meal and/or
22 rest periods that were not provided. Furthermore, Defendant asserts that its payroll systems
23 ensure compliance with the specific overtime requirements for California. In addition,
24 Defendant raised the issue that after a diligent search, Med-Data was unable to locate any
25 instances or evidence of any employee not receiving reimbursement for any expense requests
26 submitted by the employee. Finally, Defendants assert that Plaintiff’s PAGA claim is not
27 manageable pursuant to *Wesson v. Staples the Office Superstore, LLC*.

28 The Parties have actively litigated the Action since it was commenced on March 13,

2019. On February 28, 2020 and August 18, 2020, the Parties participated in two formal, full-day mediations conducted by Hon. Michael Latin (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. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Settlement Sum 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 Sum will be calculated by deducting the following amounts from the Settlement Sum: (1) attorneys' fees in an amount not to exceed five hundred forty-seven thousand seven hundred fifty dollars and no cents (\$547,750.00) (i.e., up to 35% of the Settlement Sum) and reimbursement of costs and expenses in an amount up to twenty-five thousand dollars and no cents (\$25,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are up to twenty-five thousand dollars and no cents (\$25,000.00) to the Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Allocation (i.e., \$75,000.00 out of \$100,000.00) ("LWDA Payment"); and (4) payment in the amount of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Samuel Elliott ("Enhancement Award").¹² The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Administrator will determine each Settlement Class Member's share of the available Net Settlement Sum ("Individual Settlement Share"), in accordance with the Settlement Agreement and as follows: The Administrator will divide the number of Workweeks each individual Settlement Class Member worked during the Class

¹¹ Settlement Agreement, § 3.

¹² Settlement Agreement, §§ 3.a, 3.b, 3.c, 3.d, & 3.f.

Period by the total number of Workweeks Settlement Class Members worked during the Class Period and multiply the resulting figure by the Net Settlement Sum.¹³

Each Individual Settlement Share will be allocated as follows: one-third (1/3) as wages, which will be reported on an IRS Form W-2 and the two-thirds (2/3) as interest, penalties, and non-wage damages, which will be reported on an IRS Form 1099.¹⁴ The Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Share net of these taxes and withholdings.¹⁵ The employee's and employer's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares (i.e., payroll taxes) is included in the Settlement Sum.¹⁶ Given the size of the Gross Settlement Amount, the Parties submit the taxes and withholdings being included in the Settlement Sum is appropriate and will still adequately compensate the Settlement Class Members.¹⁷

Settlement Class Members shall have one hundred and twenty (120) calendar days to cash their respective settlement checks.¹⁸ Any checks not negotiated within the 120-day period will be voided and will not be reissued.¹⁹ Within one hundred thirty (130) calendar days after the Administrator mails Settlement Class Members payment of their Individual Settlement Share, any unclaimed funds, including funds from uncashed settlement checks will be paid out in accordance with California Code of Civil Procedure section 384(b) to Capital Pro Bono (formerly known as "Voluntary Legal Services Program") located in Sacramento, California as the *cy pres* beneficiary.²⁰ California Code of Civil Procedure section 384(b) provides that uncashed funds be paid "to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the

¹³ Settlement Agreement., § 3.f.

¹⁴ *Id.*, § 3.e.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Id.*, § 3.l.

¹⁹ *Ibid.*

²⁰ *Id.*, § 3.m.

objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.” Capital Pro Bono is a nonprofit organization that provides legal services to low-income people in many areas of civil legal areas, including employment law. Capital Pro Bono was chosen as the *cy pres* recipient because of the employment advice and assistance it offers to low-income individuals. The purpose of Plaintiff’s underlying action was to protect employee rights and otherwise assist individuals in employment matters. Therefore, assignment of uncashed funds to this organization would serve the purposes of the underlying action and, given its focus on low-income individuals, would promote justice. Capital Pro Bono satisfies the requirements for a *cy pres* recipient under Section 384.

Any Class Member wishing to be excluded from the Settlement must submit a timely and complete Exclusion Form or a written letter indicating a request to be excluded from the Settlement (together, “Request for Exclusion”) to the Administrator by mail, postmarked on or before forty-five (45) calendar days from the date of mailing the Class Notice, Objection Form, and Exclusion Form (together, “Notice Packet”) (“Response Deadline”), or in the case of a re-mailed Notice Packet, an additional fourteen (14) calendar days (“Extended Response Deadline”).²¹ To be valid, an Exclusion Form must be complete and a written Request for Exclusion must: (a) contain the case name and number of the Action, (b) be signed by the Class Member, (c) contain the full name, address, telephone number, and the last four digits of the Social Security number of the Class Member requesting exclusion, and (d) clearly state that the Class Member does not wish to be included in the Settlement. The proposed Exclusion Form that is attached as “EXHIBIT C” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement includes this information. Any Class Member who validly requests to be excluded from the Settlement will no longer be a Class Member and will not have any right to object, appeal, or comment on the Settlement.²²

²¹ Settlement Agreement., §§ 7.f & 7.h.

²² *Id.*, § 7.h.

To object to the Settlement, a Class Member who does not opt out of the Settlement (i.e., Settlement Class Member) must submit a complete and timely Objection Form or a written objection (together, “Objection”) to the Administrator on or before the Response Deadline, or in the case of a re-mailed Notice Packet, the Extended Response Deadline.²³ To be valid, an Objection Form must be complete and a written objection to the Settlement must be in writing and 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 the employee’s Social Security number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based.²⁴ The proposed Objection Form is attached as “EXHIBIT B” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement includes this information.

Class Members will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notices.²⁵ In order to dispute Workweeks, Class Members must submit a written letter to the Administrator that: (a) contains the case name and number of the Action, (b) is signed by the Class Member, (c) contains the full name, address, telephone number, and the last four digits of the Social Security number of the disputing Class Member, (d) clearly states 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, (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct, and (f) is returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline, or in the case of a re-mailed Notice Packet, the Extended Response Deadline.²⁶

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²³ Settlement Agreement., § 7.g.

²⁴ *Id.*, § 7.g.

²⁵ *Id.*, § 7.i.

²⁶ *Ibid*

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).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495

F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

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

The Parties actively litigated the Action since it was commenced on March 13, 2019.

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.²⁷

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.²⁸ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff and other Class Members' employment records, a detailed sampling of Class Members' time and pay data (including, but not limited to, Timecard Reports, Check Vouchers, and Wage and Tax Reports), Carbon Outreach's The Guide, multiple iterations of Diversified Healthcare Resources' Employee Handbook and MedData Employee Handbook, company policy acknowledgements (including, but not limited to, MedData Employee Handbook's Acknowledgement of Receipt and Review and Diversified Healthcare Resources' Handbook Acknowledgement), job descriptions, Defendant's operations and employment practices, forms (including, but not limited to, MedData Meal Break Waiver – Employee Shift 6 Hours or Less), and policies (including, but not limited to, Carbon Outreach's Travel & Expense Reimbursement Policies and Procedures, MedData National Travel & Expense Reimbursement Policies and Procedures, and Rest and Meal Breaks policies), among other information and documents.²⁹ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁰ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, and the production of documents and data prior to the mediation.³¹ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³²

²⁷ Aiwazian Decl., ¶¶ 11-13.

²⁸ *Id.*, ¶ 12.

²⁹ Aiwazian Decl., ¶ 12.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

The Parties engaged in extensive settlement negotiations and participated in two formal, full-day mediations conducted by Hon. Michael Latin (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters.³³ Prior to and during the mediations and settlement discussion, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁴ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁵ 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.³⁶ 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.³⁷

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.³⁸ The Parties have had the opportunity to interview and obtain information from their respective witnesses.³⁹ 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

³³ Aiwazian Decl., ¶ 11.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Id.*, ¶¶ 11, 16-18.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁰ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴¹

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

The Settlement, which provides for a Settlement Sum of one million five hundred sixty-five thousand dollars and no cents (\$1,565,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴² The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴³ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁴ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁵

Assuming that the Attorneys' Fees and Costs, Enhancement Award, LWDA Payment, 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 Sum that is currently estimated to be eight hundred eighty-two thousand two hundred fifty dollars and no cents (\$882,250.00).⁴⁶ As discussed in Part III, *supra*, the entire Net Settlement Sum 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 Share will be calculated based on his or her Workweeks.⁴⁷ 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

⁴⁰ Aiwazian Decl., ¶¶ 11-13 & 16-18.

⁴¹ *Id.*, ¶¶ 6-7.

⁴² *Id.*, ¶¶ 11, 13, 14 & 83.

⁴³ *Id.*, ¶¶ 11-13.

⁴⁴ *Id.*, ¶¶ 16-18.

⁴⁵ *Id.*, ¶¶ 11, 13, & 83.

⁴⁶ *Id.*, ¶ 14.

⁴⁷ Settlement Agreement, § 3.f.

1 approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant
2 approval], particularly if recommended by experienced and competent class counsel.” *In re*
3 *American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d
4 418, 429-30.

5 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
6 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁴⁸
7 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
8 the recommendations into account, particularly if Class Counsel appears to be competent, and
9 has experience with this type of litigation, and investigation have been completed, as is the case
10 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
11 Settlement.

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

13 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
14 conducted significant informal discovery and exchanged thousands of pages of documents, data,
15 and information prior to mediation.⁴⁹ The discovery and information that Class Counsel
16 obtained from Defendant and through other sources allowed Class Counsel to develop valuation
17 models in order to evaluate the potential value and merit of the claims, and perform a complete
18 evaluation of Defendant’s defenses thereto.⁵⁰ As outlined in the Declaration of Edwin Aiwazian,
19 Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior
20 to entering into the Settlement.⁵¹

21 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.**

22 For settlement purposes, the requisites for establishing class certification are met, and
23 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵²
24 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
25 one of a common or general interest, of many persons, or when the Parties are numerous, and it

26 ⁴⁸ Aiwazian Decl., ¶¶ 11, 13, & 83.

27 ⁴⁹ *Id.*, ¶¶ 11-13 & 18.

28 ⁵⁰ *Id.*, ¶ 18.

⁵¹ *Id.*, ¶¶ 11-13 & 16-18.

⁵² Settlement Agreement, § RECITALS.

1 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
2 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
3 “both [1] an ascertainable class and [2] a well-defined community of interest among class
4 members.” *Id.*

5 The Class is ascertainable and numerous as to make it impracticable to join all Class
6 Members, and there are common questions of law and fact that predominate over any questions
7 affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of
8 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
9 Class. Finally, prosecution of separate actions by individual Class Members would create the
10 risk of inconsistent or varying adjudications, and a class action is superior to other available
11 means for the fair and efficient adjudication of the case. The Class is amenable to class
12 certification for settlement purposes as discussed below.

13 **A. The Class Is Ascertainable and Sufficiently Numerous.**

14 “Ascertainability is required in order to give notice to putative class members as to whom
15 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
16 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
17 by describing a set of common characteristics sufficient to allow a member of that group to
18 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
19 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
20 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

21 This action involves a class of approximately four hundred thirty-nine (439)
22 individuals.⁵³ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
23 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
24 requirement as joinder is not practical at that point). Further, all Class Members can and will
25 be identified by Defendant to the Administrator through a review of Defendant’s employment
26 records regarding hourly-paid or non-exempt employees in California during the Class Period.
27 As such, the Class is ascertainable and sufficiently numerous.

28

⁵³ Aiwazian Decl., ¶ 9.

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

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

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

16 Here, common issues of fact and law predominate as to each of the claims alleged and
17 asserted in the Operative Complaint. Based on the documents and information obtained through
18 informal discovery and exchange of information in this case, Plaintiff contends that Class
19 Members were subject to the same or similar job duties and uniform operations and employment
20 practices, policies, and procedures during the time period at issue.⁵⁴ Plaintiff’s claims arise from
21 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
22 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
23 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
24 to timely pay wages during employment and upon termination of employment, failing to provide
25 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
26 necessary business-related expenses.⁵⁵

27
28 ⁵⁴ Aiwazian Decl., ¶ 16.

⁵⁵ *Ibid.*

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.⁵⁶ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁵⁷

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 its 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 COSTS

Class Counsel has litigated the matter for over two years, and was actively preparing the matter for class certification and trial.⁵⁸ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery. Class Counsel reviewed thousands of pages of documents and data⁵⁹ 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 and the production of documents and data prior to mediation.⁶⁰ Counsel for the Parties also undertook extensive settlement discussions, which included participating in two formal, full-day mediations.⁶¹

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶²

The Settlement establishes a Settlement Sum of one million five hundred sixty-five thousand dollars and no cents (\$1,565,000.00), and provides for Class Counsel to apply to the

⁵⁶ Aiwazian Decl., ¶ 16.

⁵⁷ *Ibid.*

⁵⁸ Aiwazian Decl., ¶¶ 11-13.

⁵⁹ *Id.*, ¶ 12.

⁶⁰ *Ibid.*

⁶¹ *Id.*, ¶ 11.

⁶² *Id.*, ¶¶ 6-7.

1 Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed
2 thirty-five percent (35%) of the Settlement Sum (i.e., \$547,750.00) and an amount not to exceed
3 twenty-five thousand dollars and no cents (\$25,000.00) for costs and expenses.⁶³ The attorneys'
4 fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took
5 in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel
6 dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the
7 results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement
8 that Class Counsel has achieved for the Class Members, and (6) the other cases that Class
9 Counsel had to turn down in order to devote their time and efforts to this matter. The proposed
10 Class Notice provides Class Members with information about the amount allocated toward the
11 Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought,
12 as provided for by the Settlement.⁶⁴

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

26 The propriety of calculating and awarding attorneys' fees as a percentage of a settlement
27

28 ⁶³ Settlement Agreement, §§ 3 & 3.d.

⁶⁴ Settlement Agreement, Exh. A.

that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]” and “[t]he percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁵

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. *See* Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50

⁶⁵ Aiwazian Decl., ¶ 19.

1 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject
2 matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623
3 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

4 The proposed Class Notice⁶⁶ describes the Settlement, the deadlines and procedures to
5 submit an Objection, a Request for Exclusion, and/or a dispute regarding Workweeks, and the
6 date and time set for the Final Approval Hearing.⁶⁷

7 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
8 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
9 members to make an informed decision about their participation.” *Manual for Complex*
10 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
11 proceedings to date and the terms and conditions of the Settlement in an informative and
12 coherent manner.⁶⁸ The proposed Class Notice recognizes that the Court has not yet granted
13 final approval of the settlement.⁶⁹ The proposed Class Notice also apprises the Class Members
14 of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks
15 credited to them.⁷⁰

16 The proposed Class Notice satisfies all due process requirements and complies with the
17 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
18 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The
19 essentials of due process of law in class suits would appear to be afforded by fair representation
20 in the assertion of claims of class members against the opposing parties in any lawsuit, and
21 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

22 ///

23 ///

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25 ///

26 ⁶⁶ Settlement Agreement, Exh. A.

27 ⁶⁷ *Ibid.*.

28 ⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

1 **IX. APPOINTMENT OF SIMPLURIS, INC. AS THE ADMINISTRATOR**

2 The Parties have selected Simpluris to administer the Settlement.

3 The Administrator will mail the Notice Packet in English to each Class Member by First-
4 Class U.S. mail.⁷¹ The Administrator will receive and process Requests for Exclusion,
5 Objections, and any disputes regarding Workweeks.⁷²

6 The Administrator will calculate the amounts of the Individual Settlement Shares; deduct
7 and transmit applicable state and/or federal taxes in connection with the wage portion of
8 Individual Settlement Shares; mail the Individual Settlement Share checks to Settlement Class
9 Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs,
10 Enhancement Award, and LWDA Payment; and perform such other tasks necessary to effectuate
11 the terms of the Settlement Agreement.⁷³ The Settlement Administration Costs are currently
12 estimated to be twenty-five thousand dollars and no cents (\$25,000.00) and will be paid out of
13 the Settlement Sum, subject to approval by the Court.⁷⁴

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

18 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

19 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
20 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
21 entails mailing of the Class Notice, in the form approved by the Court, to all known and
22 reasonably ascertainable Class Members based on Defendant's records.⁷⁵

23 Within seven (7) calendar days after the date that the Court grants preliminary approval
24 of the Agreement, Defendant shall provide a list of all Class Members and all necessary
25 information to the Administrator to locate Class Members and process payments, including, but

26 ⁷¹ Settlement Agreement, § 7.b.

27 ⁷² *Id.*, § 7.g, 7.h, 7.i.

28 ⁷³ *Id.*, 3.e., 3.f., 7.l, &7.n; Aiwazian Decl., ¶ 15.

⁷⁴ Settlement Agreement, § 3.b.

⁷⁵ *Id.*, § 7.b.

not limited to, Class Member Workweeks or dates of employment, last known addresses, Social Security numbers, and any other information required to effectuate the Agreement (“Class List”).⁷⁶

Within twenty-one (21) calendar days from the date the Court preliminary approves the Agreement, the Administrator will perform a National Change of Address (“NCOA”) check for Class Members’ most current addresses based on the information provided by Defendant and will mail the Court-approved Notice Packet to the Class Members.⁷⁷ For any Notice Packets that are returned as undeliverable or notifying the Administrator that the Class Member is no longer at the address, the Administrator shall perform a skip-trace on that individual and re-mail the Notice Packet within three (3) business days of receiving information that the mailing was undeliverable or the Class Member was no longer at the address to the new address found in under the skip-trace.⁷⁸ Class Members will have until the Response Deadline, or the Extended Response Deadline in the case of a re-mailed Notice Packet, to either contest the number of Workweeks allocated to them, request to opt out of the Settlement, or object to the Settlement.⁷⁹

Within fourteen (14) calendar days after the Effective Date, Defendant shall deposit the Settlement Sum (\$1,565,000.00) in a Qualified Settlement Fund account established by the Administrator.⁸⁰ Within seven (7) calendar days after the Settlement Sum is transmitted to the Administrator, subject to the Parties’ approval of the final distribution amounts, the Administrator will distribute the Individual Settlement Shares to Settlement Class Members, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, Settlement Administration Costs to the Administrator, and LWDA Payment to the LWDA.⁸¹

Settlement Class Members shall have one hundred and twenty (120) calendar days to cash their respective settlement checks under the Agreement.⁸² Any checks not negotiated

⁷⁶ Settlement Agreement, § 7.c.

⁷⁷ *Id.*, § 7.f.

⁷⁸ Settlement Agreement, § 7.f.

⁷⁹ *Ibid.*

⁸⁰ *Id.*, 2.g.

⁸¹ *Id.*, §§ 7.l & 7.n.

⁸² *Id.*, § 7.l

within the 120-day period will be voided and will not be reissued.⁸³ Within one hundred thirty (130) calendar days after the Administrator mails Settlement Class Members payment of their Individual Settlement Share, any unclaimed funds, including funds from uncashed settlement checks will be paid out in accordance with California Code of Civil Procedure section 384(b) to the Voluntary Legal Services Program – Employment Law Clinic located in Sacramento, California as the *cy pres* beneficiary.⁸⁴

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT AWARD

Plaintiff Samuel Elliott respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Award in an amount up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Samuel Elliot.⁸⁵ 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 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.⁸⁶ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁸⁷ Accordingly, it is appropriate and just for Plaintiff to receive an

⁸³ Settlement Agreement, § 7.l.

⁸⁴ *Id.*, § 7.m; The declaration of Heather Tiffée, the Managing Attorney of the proposed *cy pres* recipient Voluntary Legal Services Program – Employment Law Clinic, is being filed concurrently herewith.

⁸⁵ Settlement Agreement., § 3.a.

⁸⁶ Aiwazian Decl., ¶ 20; Declaration of Samuel Elliott in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Elliott Decl.”), ¶ 4.

⁸⁷ Aiwazian Decl., ¶ 20; Elliott Decl., ¶¶ 3-6

Enhancement Award for his services on behalf of the Class, in addition to his Individual Settlement Share.

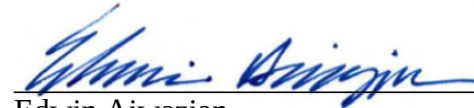
XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyer *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Samuel Elliott as Class Representative; appoint Simpluris, Inc. as Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Award, LWDA Payment, and Settlement Administration Costs; approve the proposed Class Notice, Exclusion Form, Objection Form and direct the mailing of the Notice Packet to the Class; approve the manner and method for Class Members to request exclusion from the Settlement and object to the Settlement as contained herein and within the Notice Packet; 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: November 4, 2021

LAWYERS *for* JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff