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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ARNOLD SAURIN 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.

VALLEY PRESBYTERIAN HOSPITAL, A
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21STCV22597

Honorable William F. Highberger
Department SSC10

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Brian J. St. John); Declarations of
Proposed Class Representatives (Arnold
Saurin and Ajayzeau Brown); and
[Proposed] Order filed concurrently
herewith]

Date: June 7, 2023
Time: 10:30 a.m.
Department: SSC10

Complaint Filed: June 15, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on June 7, 2023 or as soon thereafter as the matter may be heard before the Honorable William F. Highberger in Department SSC10 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Arnold Saurin and Proposed Plaintiff Ajayzeau Brown (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting leave to file the [Proposed] First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“First Amended Complaint”) which is attached as “**EXHIBIT A**” 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 Class, Collective, and Representative Action Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Brian J. St. John, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Arnold Saurin and Proposed Plaintiff Ajayzeau Brown as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT B**” 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 Payments for Plaintiffs, 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 the settlement of a putative class action 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 (Brian J. St. John) and Proposed Class Representatives (Arnold Saurin and Ajayzeau Brown) 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: April 14, 2023

LAWYERS for JUSTICE, PC

By:



Brian J. St. John
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Arnold Saurin and Proposed Plaintiff Ajayzeau Brown (“Plaintiffs” or “Class Representatives”) seeks preliminary approval of the Class, Collective, and Representative Action Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Valley Presbyterian Hospital (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Total Settlement Amount of four million seven hundred sixty thousand dollars and no cents (\$4,760,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Class Settlement Payments to Settlement Class Members which will be distributed from the Class Settlement Fund²; (2) the Enhancement Payments of ten thousand dollars and no cents (\$10,000.00) to Plaintiff Saurin and seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff Brown (for a combined total of \$17,500.00)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-eight percent (38%) of the Total Settlement Amount, or \$1,808,800.00 if the Total Settlement Amount is \$4,760,000.00, and reimbursement of litigation costs and expenses not to exceed forty-five thousand dollars and no cents (\$45,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed twenty-two thousand dollars and no cents (\$22,000.00);⁵ and (5) the amount of five hundred thousand dollars and no cents (\$500,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$375,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$125,000.00) will be distributed to all persons who were employed by Defendant as non-exempt

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Brian J. St. John (“St. John Decl.”), § V.A.

² Ibid.

³ *Id.*, § I.10.

⁴ *Id.*, § V.B.1.

⁵ *Id.*, § V.E.

employees in California at any time during the PAGA Settlement Period (“PAGA Group Members”).⁶

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

All persons who were employed by Defendant as non-exempt employees in California at any time during the period from June 15, 2017, through the date the Court grants preliminary approval of the settlement (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately three thousand one hundred eighty (3,180) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e, Settlement Class Members) will receive a share of the Class Settlement Fund (“Individual Class Payment”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member worked for Defendant during the Class Settlement Period as a non-exempt employees in California (“Class Workweeks”).⁹

The Settlement resolves the Released Class Claims of Plaintiffs and Settlement Class Members and the Released PAGA Claims of the State of California (with respect to the PAGA Group Employees) and PAGA Group Employees, against the Releasees.¹⁰

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiffs also move 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.

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⁶ Settlement Agreement, §§ I.14 & V.D; “PAGA Settlement Period” is defined as the period from April 5, 2020 through the date the Court grants preliminary approval of the Settlement. *See id.*, § I.17.

⁷ *Id.*, § I.3. “Class Settlement Period” is defined as the period of time from June 15, 2017 through the date the Court grants preliminary approval of the settlement. *See id.*, § I.7.

⁸ St. John Decl., ¶ 9.

⁹ Settlement Agreement, § I.7.

¹⁰ *See id.* at § VI.A.1, for the full scope of the “Released Class Claims,” *id.* at § VI.B, for the full scope of the “Released PAGA Claims,” and *id.* at § I.20 for the definition of the “Releasees.” Only those Settlement Class Members who cash or deposit their Individual Settlement Payment check shall be deemed to opt-in to the Settlement and release of Released Class Claims that arise under the Fair Labor Standards Act. *See id.*, § VI.A.2.

1 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

2 Defendant Valley Presbyterian Hospital is a full-service hospital serving the San
3 Fernando Valley region. Plaintiff Arnold Saurin and Proposed Plaintiff Ajayzeau Brown are
4 former employees of Defendant.

5 On April 5, 2021, notice was provided on behalf of Plaintiff Saurin to the Labor and
6 Workforce Development Agency and Defendant of Plaintiff Saurin's intent to pursue civil
7 penalties against Defendant, under the Private Attorneys General Act, for its alleged violations
8 of the California Labor Code and Industrial Welfare Commission Wage Orders.

9 On June 15, 2021, Plaintiff Saurin filed a Class Action Complaint for Damages and
10 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698., *et seq.*
11 in the Los Angeles County Superior Court ("Court"), thereby commencing the above-captioned
12 lawsuit ("Action").

13 The Parties have agreed that Plaintiff Saurin will seek leave to file Plaintiffs' First
14 Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys
15 General Act, California Labor Code § 2698, *Et Seq.* ("Operative Complaint"), adding Proposed
16 Plaintiff Ajayzeau Brown as a named plaintiff and claims for violations of the Fair Labor
17 Standards Act.

18 Plaintiffs' core allegation is that Defendant has violated the California Labor Code and
19 Fair Labor Standards Act ("FLSA") by, *inter alia*, failing to pay all overtime and minimum
20 wages, failing to provide compliant meal and rest periods and associated premium pay, failing
21 to timely pay wages during employment and upon termination of employment, failing to provide
22 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse
23 necessary business expenses, and thereby engaged in unfair business practices in violation of
24 California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to
25 penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled
26 to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to
27 PAGA), and attorneys' fees.

28 ///

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.

On May 16, 2022, Plaintiff Saurin propounded multiple sets of discovery including Requests for Admission, (Set One); Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One), on Defendant.

The Parties have actively litigated the Action since it was commenced on June 15, 2021. On May 6, 2022, the Parties participated in a formal, full-day mediation conducted by Tripper Ortman, 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 FIRST 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 Saurin to file an amended complaint in order to, *inter alia*, add Proposed Plaintiff Ajayzeau Brown as a named plaintiff and add claims for violations of the Fair Labor Standards Act. As such, Plaintiff Saurin respectfully requests leave to file the First Amended Complaint (i.e, the Operative Complaint), attached "Exhibit A" 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 Total Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Members) and the Released PAGA Claims of the State of California (with respect to the PAGA Group

Employees) and PAGA Group Employees, with respect to the Releasees.¹¹ Subject to approval by the Court, the Class Settlement Fund will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys’ fees in an amount not to exceed 38% of the Total Settlement Amount (i.e., \$1,808,800.00 if the Total Settlement Amount is \$4,760,000.00) and reimbursement of costs and expenses in an amount not to exceed forty five thousand dollars and no cents (\$45,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs, which are currently estimated not to exceed twenty-two thousand dollars and no cents (\$22,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) payment in the amount of one hundred seventy-five thousand dollars and no cents (\$500,000.00) allocated to penalties under PAGA (“PAGA Fund”), 75% of which will be distributed to the LWDA (“LWDA Payment”) and the remaining 25% of which will be distributed to PAGA Group Members (“PAGA Settlement Fund”); and (4) payment in the amount of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Saurin and seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff Brown and (for a combined total of \$17,500.00) (“Enhancement Payments”).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 *pro rata* share of the available Class Settlement Fund (“Individual Class Settlement Share”), in accordance with the Settlement Agreement and as follows:

- a. Each eligible Settlement Class Member’s Individual Class Settlement Share will be determined based on their number of Class Workweeks Class Members who are separated from employment with Defendant as of the date the Court grant preliminary approval of the Settlement (“Separated Settlement Class Members”) will have their Class Workweeks adjusted upward using a multiplier of 1.2 to account for the release of claims under California Labor Code sections 201-203. The Class Workweeks calculations inclusive of the multiplier for Separated Settlement Class Members is referred to as the “Enhanced Class Workweeks.”¹³
- b. Individual Class Settlement Shares shall be determined by dividing the Class Settlement Fund by the total number of Workweeks for all Settlement Class Members (inclusive of Enhanced Workweeks for Separated Settlement Class Members), to

¹¹ Settlement Agreement, §§ V.A, VI.A.1, & VI.B. See n.10, *supra*.

¹² *Id.*, §§ V.A-E and V.G.

¹³ *Id.*, §§ VIII.B.1-2.

arrive at a value per Class Workweek (“Class Workweek Value”), and then multiplying each Settlement Class Member’s individual Class Workweeks (inclusive of the Enhanced Workweeks for Separated Settlement Class Members) by the Class Workweek Value.¹⁴

The Parties have agreed that the Settlement Administrator will determine each PAGA Group Members *pro rata* share of the PAGA Settlement Fund (“Individual PAGA Settlement Share”), in accordance with the Settlement Agreement and as follows:

- a. Each PAGA Group Member’s Individual PAGA Settlement Share will be determined based on their workweeks worked for Defendant during the PAGA Settlement Period (“PAGA Workweeks”).¹⁵
- b. Individual PAGA Settlement Shares shall be determined by dividing the PAGA Settlement Fund by the total number of PAGA Workweeks for all PAGA Group Members, to arrive at a value per PAGA Workweek (“PAGA Workweek Value”), and then multiplying each PAGA Group Member’s individual PAGA Workweeks by the PAGA Workweek Value.¹⁶

Each Settlement Class Member’s Individual Class Share will be allocated as follows: thirty percent (30%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining seventy percent (70%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁷ Settlement Class Members will be issued payment of their Individual Class Payment subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Class Payment (the net payment is referred to as an “Individual Class 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 Total Settlement Amount.¹⁹ Each PAGA Group Member’s Individual PAGA Settlement Share will be allocated as one hundred percent (100%) non-wages.²⁰

The Individual Class Settlement Payment checks issued to Settlement Class Members and Individual PAGA Settlement Share checks issued to PAGA Group Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.²¹ Settlement

¹⁴ Settlement Agreement, § VIII.B.3.

¹⁵ *Id.*, §§ I.18 & VIII.C.1.

¹⁶ *Id.*, § VIII.C.2.

¹⁷ *Id.*, § VIII.D.5.

¹⁸ *Id.*, § VIII.D.6.

¹⁹ *Id.*, § V.F.

²⁰ *Id.*, § VIII.D.5.

²¹ *Id.*, § VIII.D.3.

Class Members who cash, deposit, or otherwise negotiate their Individual Settlement Payment checks will be deemed to have opted in for purposes of the FLSA and thereby release the Released Parties from the Released Claims which arise under the FLSA.²² Individual Class Settlement Payment and Individual PAGA Settlement Share checks that are not negotiated within the 180-day period will be cancelled.²³ 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 Mid Valley Family YMCA.²⁴ The Parties and their counsel each represent that they do not have any financial interest in Mid Valley Family YMCA or otherwise have a relationship with Mid Valley Family YMCA that could create a conflict of interest.²⁵

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.²⁶ 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”).²⁷ A Request for Exclusion must: (a) contain the case name and number of the Action (*Arnold Saurin v. Valley Presbyterian Hospital*, Los Angeles County Superior Court Case No. 21STCV22597); (b) contain the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the Class Member requesting exclusion from the Class Settlement; and (c) clearly state that the Class Member does not wish to be included in the Class Settlement.²⁸ Class Members who submit a valid and timely request for exclusion will not be bound by the terms of the Class Settlement and will not be issued an Individual Class Settlement Share.²⁹ All PAGA

²² Settlement Agreement, § VIII.D.2.

²³ *Id.*, § VIII.D.3.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Id.*, § IX.B.

²⁷ *Id.*, § I.19.

²⁸ *Id.*, § IX.B.1.

²⁹ *Id.*, § IX.B.3.

Group Members will be issued an Individual PAGA Settlement Share and will be bound to the PAGA Settlement, irrespective of whether they participate in or opt out of the Class Settlement.³⁰

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.³¹ Settlement Class Members who wish to object to the Settlement must mail a notice of objection to the Settlement Administrator on or before the Response Deadline.³² A written objection must: (a) contain the case name and number of the Action (*Arnold Saurin v. Valley Presbyterian Hospital*, Los Angeles County Superior Court Case No. 21STCV22597); (b) contain the objector's full name, signature, address, telephone number, and the last four (4) digits of his or her Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) include copies of any papers, briefs, or other documents upon which the objection is based; and (e) state whether the objector is represented by counsel and provide said counsel's name, law firm, and address.³³ Settlement Class Members may also appear at the Final Approval Hearing to present any objections to the Class Settlement regardless of whether they have submitted a written objection.³⁴

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award

³⁰ Settlement Agreement, § IX.B.3.

³¹ *Id.*, § IX.B.2.

³² *Id.* § IX.A.1.

³³ *Ibid.*

³⁴ *Id.* § IX.A.2.

1 was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s
2 decision to approve a class action settlement may be reversed only upon a strong showing of
3 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
4 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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

26 The trial court has broad powers to determine whether a proposed settlement is fair under
27 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
28 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 June 15, 2021. 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.³⁵

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data obtained from Defendant, Plaintiffs, and other sources.³⁶ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of

³⁵ St. John Decl., ¶¶ 11-13.

³⁶ *Id.*, ¶ 12.

1 Plaintiffs and other Class Members, a detailed sampling of Class Members' time and pay data,
2 company policy acknowledgements, internal memoranda, job descriptions, new hire orientation
3 checklists, operations and employment practices, forms, procedures, and policies (including but
4 not limited to General Orientation 2016 Quiz, New Hire Worksheet, Release Authorization and
5 Fair Credit Reporting Act Disclosure, Occupational Health Release Form, Meal Waiver for
6 Employees in the Healthcare Industry, Six-Hour Meal Period Waiver, Summary of Meal and
7 Rest Period Policy, Confidentiality Agreement, Compliance Hotline Acknowledgement,
8 Electronic Handbook Acknowledgement, Code of Conduct Receipt, and Agreement for Twelve-
9 Hour Shift), among other information and documents.³⁷ Class Counsel interviewed Plaintiffs to
10 gather facts and to identify potential witnesses.³⁸ Class Counsel propounded multiple sets of
11 formal written discovery requests on Defendant.³⁹ Counsel for the Parties also met and
12 conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and
13 the production of documents and data prior to the mediation.⁴⁰ Class Counsel also drafted
14 Plaintiff Saurin's mediation brief and prepared for and attended court proceedings, settlement
15 negotiations, and the mediation, among other tasks.⁴¹

16 The Parties engaged in extensive settlement negotiations and participated in a formal,
17 full-day mediation conducted by Tripper Ortman, a well-respected mediator experienced in
18 mediating complex labor and employment matters.⁴² In the course of litigation and in
19 connection with mediation and settlement negotiations, the Parties exchanged class information
20 and engaged in an intensive discussion regarding their evaluations of the case and various
21 aspects of the case, including but not limited to, the risks and delays of further litigation, the
22 risks to the Parties of proceeding with class certification and/or representative adjudication, the
23 law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, FLSA,
24 and PAGA representative claims, as well as the evidence produced and analyzed, and the
25

26 ³⁷ St. John Decl., ¶ 12.

27 ³⁸ Ibid.

28 ³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² *Id.*, ¶ 11.

possibility of appeals, among other things.⁴³ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁴ 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 Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁵ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁶

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.⁴⁷ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁸ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendant and performed significant research into the applicable law, which is constantly evolving as it relates to class certification, FLSA actions, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims and damages, and Defendant's defenses thereto, as well as facts discovered.⁴⁹ 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.⁵⁰

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

The Settlement, which provides for a Total Settlement Amount of four million seven hundred sixty thousand dollars and no cents (\$4,760,000.00), represents a fair, adequate, and

⁴³ St. John Decl., ¶ 11.

⁴⁴ Ibid.

⁴⁵ *Id.*, ¶¶ 11, 16-18.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁰ *Id.*, ¶¶ 6-7.

reasonable resolution of the matter.⁵¹ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁵² The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵³ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, PAGA Group Members, and the State of California.⁵⁴

Assuming that the Attorneys' Fees and Costs, Enhancement Payments, PAGA Fund, 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 Class Settlement Fund that is currently estimated to be two million three hundred sixty-six thousand seven hundred dollars and no cents (\$2,366,700.00).⁵⁵ As discussed in Part III, *supra*, the entire Class Settlement Fund 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 Class Settlement Payment will be calculated based on his or her Class Workweeks and the amount of each PAGA Group Member's Individual PAGA Settlement Share will be based on his or her PAGA Workweeks.⁵⁶ There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members and PAGA Group Members.⁵⁷ Although the recommendations of Class Counsel are not conclusive,

⁵¹ St. John Decl., ¶¶ 11, 13, 14 & 21.

⁵² *Id.*, ¶¶ 11-13.

⁵³ *Id.*, ¶¶ 16-18.

⁵⁴ *Id.*, ¶¶ 11, 13, & 21.

⁵⁵ *Id.*, ¶ 14.

⁵⁶ Settlement Agreement, § VIII.B.1.

⁵⁷ St. John Decl., ¶¶ 11, 13, & 21.

the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted formal and informal discovery and exchanged a large volume of documents, data, and information in the course of litigation and in connection with mediation and settlement negotiations.⁵⁸ The discovery and information that Class Counsel obtained from Defendant, Plaintiffs, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁹ As outlined in the Declaration of Brian J. St. John, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁶⁰

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶¹ California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions

⁵⁸ St. John Decl., ¶¶ 11-13 & 18.

⁵⁹ *Id.*, ¶ 18.

⁶⁰ *Id.*, ¶¶ 11-13 & 16-18.

⁶¹ Settlement Agreement, § IV.

1 affecting any individual Class Member. Further, Plaintiffs' claims are typical of the claims of
2 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
3 Class. Finally, prosecution of separate actions by individual Class Members would create the
4 risk of inconsistent or varying adjudications, and a class action is superior to other available
5 means for the fair and efficient adjudication of the case. The Class is amenable to class
6 certification for settlement purposes as discussed below.

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

8 "Ascertainability is required in order to give notice to putative class members as to whom
9 the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001)
10 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs
11 by describing a set of common characteristics sufficient to allow a member of that group to
12 identify himself or herself as having a right to recover based on the description." *Bartold v.*
13 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
14 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

15 This action involves a class of approximately three thousand one hundred eighty (3,180)
16 individuals.⁶² This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
17 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
18 requirement as joinder is not practical at that point). Further, all Class Members can and will
19 be identified by Defendant to the Settlement Administrator through a review of Defendant's
20 employment records regarding non-exempt employees in California during the Class Period. As
21 such, the Class is ascertainable and sufficiently numerous.

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

23 The community of interest requirement "embodies three factors: (1) predominant
24 common questions of law or fact; (2) class representative with claims or defenses typical of the
25 class; and (3) class representative who can adequately represent the class." *Sav-On, supra*, 34
26 Cal.4th at 326. "[T]he community of interest requirement for certification *does not mandate*
27 *that class members have uniform or identical claims.*" *Capitol People First v. Dep't of*

28 ⁶² St. John Decl., ¶ 9.

1 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
2 focus on the Defendant's internal policies and "pattern and practice . . . in order to assess whether
3 that common behavior toward similarly situated plaintiff renders class certification appropriate."
4 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

10 Here, common issues of fact and law predominate as to each of the claims alleged and
11 asserted in the Operative Complaint. Based on the documents and information obtained through
12 formal and informal discovery and exchange of information in this case, Plaintiffs contend that
13 Class Members were subject to the same or similar job duties and uniform operations and
14 employment practices, policies, and procedures during the time period at issue.⁶³ Plaintiffs'
15 claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to
16 Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
17 wages for all hours worked, failing to provide compliant meal and rest periods and associated
18 premium pay, failing to timely pay wages during employment and upon termination of
19 employment, failing to provide complaint wage statements, failing to keep requisite payroll
20 records, and failing to reimburse necessary business-related expenses.⁶⁴

21 Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect
22 to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁵
23 As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all
24 compensation due to them from Defendant during the time period at issue.⁶⁶

25 ///

26
27 ⁶³ St. John Decl., ¶ 16.

28 ⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

Plaintiffs maintain that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its 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 one and half years, and was actively preparing the matter for class certification and trial.⁶⁷ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel reviewed a large volume of documents and data⁶⁸ and also interviewed and obtained information from Plaintiffs, researched applicable law, undertook damages and penalties valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁹ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷⁰

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷¹

The Settlement establishes a Total Settlement Amount of four million seven hundred sixty thousand dollars and no cents (\$4,760,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Total Settlement Amount (i.e., \$1,808,800.00) and an amount not to exceed forty five thousand dollars and no cents (\$45,000.00) for costs and expenses.⁷²

⁶⁷ St. John Decl., ¶¶ 11-13.

⁶⁸ *Id.*, ¶ 12.

⁶⁹ *Ibid.*

⁷⁰ *Id.*, ¶ 11.

⁷¹ *Id.*, ¶¶ 6-7.

⁷² Settlement Agreement, § V.B.1.

The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class 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, PAGA Group Members, and the State of California, 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.⁷³

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

⁷³ Settlement Agreement, Exh. A.

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.⁷⁴

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs’ 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 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

⁷⁴ St. John Decl., ¶ 19.

1 The proposed Class Notice⁷⁵ describes the Settlement, the deadlines and procedures to
2 object to the Settlement or mail a request for exclusion from the Settlement, and the date and
3 time set for the Final Approval Hearing.⁷⁶

4 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
5 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
6 members to make an informed decision about their participation.” *Manual for Complex*
7 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
8 proceedings to date and the terms and conditions of the Settlement in an informative and
9 coherent manner.⁷⁷ The proposed Class Notice recognizes that the Court has not yet granted
10 final approval of the settlement.⁷⁸ The proposed Class Notice also apprises the Class Members
11 of, *inter alia*, how their Individual Class Settlement Payment and Individual PAGA Settlement
12 Share is calculated and the number of Class Workweeks and PAGA Workweeks credited to
13 them.⁷⁹

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

20 **IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT**

21 **ADMINISTRATOR**

22 The Parties have selected Simpluris to administer the Settlement.

23 The Settlement Administrator will mail the Class Notice to each Class Member by First-
24 Class U.S. mail.⁸⁰ Any undeliverable Class Notice that is returned to the Settlement
25

26 ⁷⁵ Settlement Agreement, Exh. A.

27 ⁷⁶ *Ibid.*

28 ⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Id.*, § VII.B.

1 Administrator with a forwarding address on or before the Response Deadline, will be re-mailed
2 to the forwarding address.⁸¹ With respect to any undeliverable Class Notice returned on or
3 before the Response Deadline without a forwarding address, the Settlement Administrator will
4 make reasonable efforts to obtain an updated mailing address, including but not limited to
5 conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁸² The Response
6 Deadline to submit a request for exclusion or objection for Class Members to whom a Class
7 Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator,
8 will be extended fifteen (15) calendar days.⁸³ The Settlement Administrator will receive and
9 process requests for exclusion or objections.⁸⁴

10 The Settlement Administrator will calculate the amounts of the Individual Class
11 Settlement Payments and Individual PAGA Settlement Shares; deduct and transmit applicable
12 state and/or federal taxes in connection with the wage portion of Individual Class Settlement
13 Payments; mail the Individual Settlement Payment checks to Settlement Class Members; issue
14 W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement
15 Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms
16 of the Settlement Agreement.⁸⁵ The Settlement Administration Costs are currently estimated to
17 be twenty-two thousand dollars and no cents (\$22,000.00) and will be paid out of the Total
18 Settlement Amount, subject to approval by the Court.⁸⁶

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

23 ///

24 ///

25
26 ⁸¹ Settlement Agreement, § VII.C.

27 ⁸² Ibid.

28 ⁸³ *Id.*, § I.21.

⁸⁴ *Id.*, §§ IX.A-C.

⁸⁵ St. John Decl., ¶ 15.

⁸⁶ Settlement Agreement, § V.E.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁷

Within thirty (30) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) last known address; (3) Social Security number; (4) number of Class Workweeks and PAGA Workweeks; and (5) employee identification number (collectively, "Class Data").⁸⁸

Within twenty-one (21) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁹ 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.⁹⁰ 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.⁹¹ Class Members will have until the applicable Response Deadline to mail a request for exclusion and/or objection.⁹²

Defendant will make a one-time deposit of the Total Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be established by the Settlement Administrator, within thirty (30) calendar days after the Effective Date.⁹³ Within fifteen (15) business days of the Effective Date, the Settlement Administrator will distribute: (1) the Individual Class Settlement Payments to Settlement Class Members; (2) the Individual PAGA Settlement Shares to PAGA Group Members; the Court-approved

⁸⁷ Settlement Agreement, § VII.

⁸⁸ *Id.*, § VII.A.

⁸⁹ *Id.*, § VII.B.

⁹⁰ *Id.*, § VII.C.

⁹¹ *Ibid.*

⁹² *Id.*, §§ IX.A-B.

⁹³ *Id.*, § VIII.A.2.

Enhancement Payments to Plaintiffs; (3) the Court-approved Attorneys' Fees and Costs to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁹⁴

The Individual Class Settlement Payment and Individual PAGA Settlement Share checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹⁵ Checks that are not negotiated within the 180-day period will be cancelled.⁹⁶ The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Mid Valley Family YMCA.⁹⁷

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT PAYMENTS

Plaintiff Arnold Saurin and Proposed Plaintiff Ajayzeau Brown respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Payments in an amount up to ten thousand dollars and no cents to Plaintiff Saurin and up to seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff Brown (for a combined total of \$17,500).⁹⁸ 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 Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and

⁹⁴ Settlement Agreement., § VIII.D.1.

⁹⁵ *Id.*, § VIII.D.3.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Id.*, § V.C.

1 providing the facts and evidence necessary to attempt to prove the allegations.⁹⁹ Plaintiffs were
2 available whenever Class Counsel needed them and actively tried to obtain and provide
3 information that would facilitate the pursuit of class and PAGA claims.¹⁰⁰ Accordingly, it is
4 appropriate and just for Plaintiffs to each receive an Enhancement Payment, in addition to their
5 Individual Class Settlement Payments and Individual PAGA Settlement Shares, for their
6 services on behalf of the Class, PAGA Group Members, and the State of California.

7 **XII. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
9 approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary
10 appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and
11 designate Plaintiff Arnold Saurin and Proposed Plaintiff Ajayzeau Brown as Class
12 Representatives; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the
13 allocations for Attorneys' Fees and Costs, Enhancement Payments, PAGA Fund, and Settlement
14 Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator
15 to undertake the notice and settlement administration process in conformity with the deadlines
16 and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to
17 take place in approximately five (5) months; and permit the filing of a memorandum that exceeds
18 the page limit.

19
20 Dated: April 14, 2023

LAWYERS for JUSTICE, PC

21
22 By:



Brian J. St. John
Attorneys for Plaintiff

23
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25
26
27 ⁹⁹ St. John Decl., ¶ 20; Declaration of Arnold Saurin in Support of Plaintiffs' Motion for Preliminary Approval of
28 Class Action Settlement ("Saurin Decl."), ¶ 4; Declaration of Ajayzeau Brown in Support of Plaintiffs' Motion for
Preliminary Approval of Class Action Settlement ("Brown Decl."), ¶ 4.

¹⁰⁰ St. John Decl., ¶ 20; Saurin Decl., ¶¶ 3-6; Brown Decl., ¶¶ 3-6.