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10 *and the Putative Class*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**
13

14 **SIMIN BORJKHANI**, individually and on
behalf of all others similarly situated,

15
16 Plaintiff,

17 vs.

18 **PARLUX FRAGRANCES, INC., PARLUX**
FRAGRANCES, LLC, and RANDSTAD HR
19 **SOLUTIONS OF DELAWARE, LLC d/b/a**
20 **RANDSTAD SOURCERIGHT**, jointly and
severally,

21 Defendants.
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Case No.: 19STCV07372

**DECLARATION OF TRENTON R.
KASHIMA IN SUPPORT OF MOTION TO
FILE THE FIRST AMENDED
COMPLAINT; CLASS CERTIFICATION;
AND PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Judge: Daniel J. Buckley
Dept: 001
Date: June 7, 2021
Time: 10:30 a.m.

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1. I am a Shareholder in the law firm of Sommers Schwartz P.C., attorneys for Plaintiff Simin Borjkhani and proposed plaintiff Eva Lopez Acevedo (collectively, "Plaintiffs"). I have personal knowledge of the matters set forth herein, based on my active participation in all material aspects of this litigation, including personal involvement in the negotiation of the Settlement. If called upon, I could and would testify competently to the facts herein based upon my personal involvement in this case. This declaration is being submitted in support of Plaintiffs' motion for leave to file the first amended complaint, class certification, and preliminary approval of class action settlement.

2. Sommers Schwartz, P.C. is a firm that primarily represents plaintiffs in complex employment, business, and personal injury litigation, bringing to bear decades of experience prosecuting class actions in both federal and state venues nationwide. Our litigation experience includes prosecuting cases against large corporate defendants, and we have extensive knowledge of the laws and regulations applicable to this case. Our firm is committed to practicing law in an ethical and professional manner that ensures the best possible outcome for our clients and the classes we represent. Attached hereto as **Exhibit A** is a true and correct copy of the firm's resume of Sommers Schwartz, P.C.

3. On March 4, 2019, Sommers Schwartz, P.C. filed a class action complaint on behalf of Ms. Borjkhani and other individuals who worked as Sales Assistants for Defendants Parlux Fragrances, LLC (“Parlux”) and Randstad HR Solutions of Delaware, LLC (“Randstad,” collectively “Defendants”). The putative class asserted in the Complaint was defined as “[a]ll current and former hourly Sales Assistants who worked for Defendants in California at any time during the four years preceding the filing of this Complaint up through and including the judgment.”

4. Defendant Parlux is a cosmetic company that designs, manufactures, distributes and sells fragrances and other beauty related products. On the other hand, Defendant Randstad is a staffing company that provides temporary, temporary-to-hire, and permanent placement services. Defendants

collectively employed Sales Assistants, including Plaintiff, at specialty stores, national department stores (including Macy's, Niemen Marcus, Nordstrom, and Saks Fifth Avenue), and perfumeries throughout the United States, including California, in order to market and sell Parlux's fragrances and beauty related products.

5. Ms. Borjkhani alleged that Defendants typically schedule their Sales Assistants on a part-time schedule, consisting of two to five shifts per week and four to eight hours per shift, depending upon the season. Complaint, at ¶ 25. Ms. Borjkhani asserted that Defendants, however, pressure their Sales Assistants to work beyond their scheduled work hours and instructs these employees not to record their additional hours, resulting in unpaid regular and overtime wages. *Id.*, at ¶¶ 26-27. Ms. Borjkhani further alleged that Defendant did not provide their Sales Assistants with meal and rest period, as required by California law, and illegally deducted 15 minutes of pay for the rest periods that were not taken. *Id.*, at ¶¶ 41-55. The Complaint asserts the following causes of action: Count I (Violation of California Labor Code §§ 510, 1194, 1198 and IWC Wage Order 4 –Failure to Pay Overtime); Count II (Violation of California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1198, and IWC Wage Order 4 –Failure to Pay Minimum Wage); Count III (Violation of California Labor Code §§ 221 and 223 –Unlawful Deductions); Count IV (Violation of California Labor Code §§ 226 and 1174 –Failure to Provide Accurate Wage Statements); Count V (Violation of California Labor Code §§ 201, 202, and 203 –Failure to Timely Pay Wages Upon Discharge); and Count VI (Violation of California Labor Code §§ 226.7, 512 and IWC Wage Order 4 –Failure to Provide Meal Periods); Count VII Violation of California Labor Code §§ 226.7 and IWC Wage Order 4 –Failure to Provide Rest Periods); Count VIII (Violation of Business and Professions Code § 17200, et seq, Unfair, Unlawful and/or Fraudulent Business Practices).

6. After filing the Complaint, the parties discussed the continued participation of Defendant Parlux Fragrances, Inc. Parlux Fragrances, Inc. had previously merged into Parlux Fragrances, LLC, another defendant in this dispute. The merger occurred on April 18, 2012, before the allegations of the Complaint. Therefore, the parties agreed that Parlux Fragrances, Inc. was improperly named as a defendant and stipulated to its dismissal.

7. The parties also discussed potential settlement of the dispute. The parties eventually

1 agreed that private mediation represented the best method of resolving the parties' claims. Therefore,
2 the parties elected to mediate with Barbara A. Reeves, Esq., of JAMS, a well-respected mediator with
3 considerable experience in mediating wage and hour class actions.

4 8. In preparation for the parties' settlement negotiations, Class Counsel requested that
5 Defendants provide Class Counsel with information regarding putative members of the Class,
6 including their employment dates, payroll records, and time clock entries. The parties agreed to
7 exchange payroll and time records for ninety-two members of the putative class. These ninety-two
8 individuals purportedly represent all Sales Assistants, who worked for Defendants during the relevant
9 time period and did not sign an arbitration agreement. After this exchange of information, however,
10 Defendants informed Class Counsel that they had located arbitration agreements for thirty additional
11 employees, reducing the Class to sixty-two individuals. Unfortunately, Class Counsel had already
12 based its damaging modeling on the ninety-two person putative Class.

13 9. After reviewing the payroll and timeclock information provided, Class Counsel noted
14 that there were some deficiencies in the dataset. Nonetheless, Class Counsel was able to extrapolate
15 existing data in their damages model for the individuals with incomplete records. Such information
16 was examined by both Class Counsel and its expert witness Eric Lietzow. Mr. Lietzow is a senior
17 Manager with Desmond, Marcello & Amster, LLC and specializes in the calculation of economic
18 damages in connection with various types of litigation, including wage and hour class actions. Mr.
19 Lietzow is a Certified Public Accountant in the State of California. He is also a member of numerous
20 professional affiliations including the American Institute of Certified Public Accountants, the
21 California Society of CPAs, and the Association of Certified Fraud Examiners. Mr. Lietzow created
22 the damages modeling that Class Counsel used throughout this case.

23 10. Additionally, Ms. Borjkhani and additional Sales Assistants, including Ms. Lopez
24 Acevedo, provided information to Class Counsel regarding their employment experiences and the
25 experiences of their fellow employees. The interviews with these Sales Assistants were instrumental
26 in calculating the putative Class's damages, as well as providing Plaintiffs with valuable insight into
27 Defendants' business practices at different retail locations. Additionally, information from Plaintiffs
28 allowed Class Counsel to gauge the veracity of Defendants' factual allegations and allowed Class

1 Counsel to rebut many of Defendants' assertions at mediation.

2 11. Both Ms. Borjkhani and Ms. Lopez Acevedo also made themselves available
3 throughout the Settlement negotiations. Information from Plaintiffs allowed Class Counsel to gauge
4 the veracity of Defendants' factual allegations and allowed Class Counsel to rebut many of
5 Defendants' assertions at mediation and subsequent calls with Defendants and the mediator.

6 12. The information from Defendants and Sales Assistants was combined to allowed Class
7 Counsel to estimate Defendants compliance (or lack thereof) with federal and state labor law.
8 Accordingly, Class Counsel developed several classwide damages models to arrive at an informed
9 estimate of Defendants' maximum liability exposure at issue.

10 13. The payroll records provided indicated that the 85 employees whose complete records
11 were provided worked 13,903 workdays (approximately 4,687 workweeks). On average, each Sales
12 Assistant worked 163.6 workdays during their tenure. The average hourly rate for these employees
13 was \$21.81. Class Counsel was able to examine these records for missing meal break and the unpaid
14 15 minute breaks. Class Counsel was further able to determine the hours reportedly worked by Sales
15 Assistants.

16 14. As noted above, Plaintiff alleged that Defendants' time records may not be accurate
17 due to underreporting of hours worked. Accordingly, to ensure all potential contingencies were
18 addressed, Class Counsel developed several damages models which estimate that putative Class
19 members worked between 10 minutes to 80 minutes per work day without compensation. Class
20 Counsel categorized the unpaid wages at regular, overtime, or double time rates based on the total
21 hours previously reported in the workday. Class Counsel's damages models also included: (1) waiting
22 time penalties pursuant to California Labor Code, section 203, for employees terminated after May 5,
23 2016; (2) wage statement penalties pursuant to California Labor Code, section 226(e); (3) damages
24 resulting from missing meal and rest periods; and (4) interest at 10% simple annual rate through April
25 23, 2020.

26 15. Based on Class Counsel's modeling, it is conservatively estimated that Defendants'
27 liable at between \$1,170,744.55 and \$1,913,994.36 in damages for a ninety-two person class:
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Damages model with 20 minutes unpaid time per work day				
	Violations/Hrs	Damages	Interest	Total
<u>Damages</u>				
Unpaid Meal Break Premiums	3,795	\$ 83,251.55	\$ 29,519.20	\$ 112,770.75
Unpaid Rest Break Premiums	17,569	\$ 390,116.00	\$ 141,424.99	\$ 531,540.99
Unpaid Rest Break Time	83.94	\$ 1,945.47	\$ 727.30	\$ 2,672.77
Unpaid Off-Clock Damages - 20 minutes	6,339.52	\$ 153,592.88	\$ 55,522.32	\$ 209,115.20
Total Damages		\$ 628,905.90	\$ 227,193.81	\$ 856,099.71
<u>Statutory Penalties</u>				
Waiting Time Penalties (LC 203)	73	\$ 380,841.60	N/A	\$ 380,841.60
Wage Statement Penalties (LC 226e)	369	\$ 35,200.00	N/A	\$ 35,200.00
Total Statutory Penalties		\$ 416,041.60	\$ -	\$ 416,041.60
Total Liability		\$1,044,947.50	\$ 227,193.81	\$1,272,141.31
Damages model with 40 minutes unpaid time per work day				
	Violations/Hrs	Damages	Interest	Total
<u>Damages</u>				
Unpaid Meal Break Premiums	3,795	\$ 83,251.55	\$ 29,519.20	\$ 112,770.75
Unpaid Rest Break Premiums	17,569	\$ 390,116.00	\$ 141,424.99	\$ 531,540.99
Unpaid Rest Break Time	83.94	\$ 1,945.47	\$ 727.30	\$ 2,672.77
Unpaid Off-Clock Damages - 40 minutes	12,871.15	\$ 311,934.42	\$ 112,757.21	\$ 424,691.63
Total Damages		\$ 787,247.44	\$ 284,428.70	\$1,071,676.14
<u>Statutory Penalties</u>				
Waiting Time Penalties (LC 203)	73	\$ 380,841.60	N/A	\$ 380,841.60
Wage Statement Penalties (LC 226e)	369	\$ 35,200.00	N/A	\$ 35,200.00
Total Statutory Penalties		\$ 416,041.60	\$ -	\$ 416,041.60
Total Liability		\$1,203,289.04	\$ 284,428.70	\$1,487,717.74
Damages model with 80 minutes unpaid time per work day				
	Violations/Hrs	Damages	Interest	Total
<u>Damages</u>				
Unpaid Meal Break Premiums	3,795	\$ 83,251.55	\$ 29,519.20	\$ 112,770.75
Unpaid Rest Break Premiums	17,569	\$ 390,116.00	\$ 141,424.99	\$ 531,540.99
Unpaid Rest Break Time	83.94	\$ 1,945.47	\$ 727.30	\$ 2,672.77
Unpaid Off-Clock Damages - 80 minutes	25,550.20	\$ 625,005.19	\$ 225,963.06	\$ 850,968.25
Total Damages		\$1,100,318.21	\$ 397,634.55	\$1,497,952.76
<u>Statutory Penalties</u>				
Waiting Time Penalties (LC 203)	73	\$ 380,841.60	N/A	\$ 380,841.60
Wage Statement Penalties (LC 226e)	369	\$ 35,200.00	N/A	\$ 35,200.00
Total Statutory Penalties		\$ 416,041.60	\$ -	\$ 416,041.60
Total Liability		\$1,516,359.81	\$ 397,634.55	\$1,913,994.36

This represents an average total liability of between **\$12,725.48 and \$20,804.28 per employee**, or between **\$249.78 and \$408.36 per pay period**.

16. But when accounting for the smaller sixty-two member Class, Class Counsel's aggregate damages modeling would likely be reduced by 32.61 percent (a reduction of 30 individuals out of the 92 member class). Accordingly, the total estimated damages for would be **\$788,979.75** and **\$1,289,865.80** for the putative Class or, when itemized, approximately:

- Unpaid Meal Periods: \$75,996.21
- Unpaid Rest Periods: \$358,205.47
- Unpaid Rest Time: \$1,801.18
- Unpaid Off-the-Clock Damages (between 10 and 80 minutes): \$72,591.46 to \$573,467.50
- Waiting Time Penalties: \$256, 649.15
- Wage Statement Penalties: \$23,721.28

Additionally, it is estimated that Private Attorneys' General Act ("PAGA") penalties would at least another **\$35,200** dollars in liability, assuming no stacking of PAGA violations. Accordingly, the total liability at trial, assuming Plaintiff was successful on all counts, would be **\$824,179.75** and **\$1,325,065.80**.

17. Class Counsel, however, recognizes that these estimates represent the best case scenario at trial. Class Counsel remains confident in Plaintiff's claims. Nevertheless, class action trials are exceedingly rare and notably complex. The outcome of any class action trial, regardless of the perceived merits of the claims, is far from certain. This is particularly true of this case, where key legal and factual issues remain unsettled. Indeed, in this case, Defendants have consistently denied Plaintiff's claims. So nothing is guaranteed at trial.

18. Moreover, a class has not yet been certified in this case. Class Counsel are fully aware of the difficulty in maintaining an employment case as a class action, given the number of individualized damage calculations, which generally require extensive expert testimony. *Compare Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011) (finding that individual issue predominate in an employment case); *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013) (same) *with Levya v. Medline Indus. Inc.*, 716 F.3d 510 (9th Cir. 2013) (In a California wage and hour case, the Court held that

1 certification is still appropriate where “the amount of pay owed” is the only individualized issue.).
2 Defendants have further asserted that, due to disparities in the experiences of the putative class,
3 Plaintiffs’ claims are not suited for class or collective treatment, other than in the context of this
4 proposed settlements. While Plaintiff believes that class treatment is proper given Defendants’
5 common employment procedures and uniform time keeping policies, Defendants noted that employees
6 worked at different locations and were supervised by different sets of managers, which would lead to
7 significantly different employment experiences across the putative Class. Certifying and maintaining
8 this lawsuit as a class action over the duration of the case would prove difficult.

9 19. Realistically, it would likely take another two years before the parties were in a position
10 to try this case, and there is a real risk that the putative class could recover nothing at the end of this
11 process. Class Counsel understands that the post-trial appellate process poses its own risk and can
12 significantly delay any relief recovered. Indeed, undersigned counsel recently argued *Heckart v. A-1*
13 *Self-Storage, Inc.*, Case No. S23232, before the California Supreme Court. This appeal took
14 approximately four years and ultimately ended in an opinion in favor of the defendants. Similarly,
15 counsel successfully overturned an adverse judgment before the Court of Appeal, Second Appellate
16 District, in *Hansen, et al. v. Newegg.com Americas, Inc.*, Case No. B271477. But even a successfully
17 litigated appeal, to an appellate court of first instance, required two years and was froth with numerous
18 perils. Plaintiff fully expect that any judgment for the putative Class would be appealed by
19 Defendants.

20 20. Finally, even if Plaintiff was successful at trial, business realities created uncertainty in
21 Plaintiff’s ability to recover their hard-fought judgment. Potential exposure for the Settlement Class’s
22 claims could exceed \$900,000. Plaintiff was concerned that Defendants would not be able to absorb
23 a large judgment in this case. This is particularly true given that since the filing of this complaint, the
24 California retail industry has been greatly affected by the current COVID-19 pandemic. Accordingly,
25 many retailers and related industries have experienced significantly decreased revenue in 2020.

26 21. It was this informal discovery and the above cited risks that informed the parties’
27 settlement discussions.

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1 **III. THE PARTIES' SETTLEMENT NEGOTIATIONS**

2 22. The parties had discussed possible settlement of their claims throughout the litigation.
3 Nonetheless, settlement discussion did not begin in earnest until the parties' mediation with Ms.
4 Reeves on April 28, 2020. The mediation was conducted remotely due to the continuing COVID-19
5 pandemic and related state health orders. To ensure that the mediation remain productive, the parties
6 also held separate pre-mediation conferences with Ms. Reeves and prepared extensive mediation
7 briefs.

8 23. During the April 28, 2020 mediation, the parties engaged in a frank discussion with
9 each other regarding their respective claims and defenses. Additionally, each party exchanged
10 information regarding their various damages calculations (assuming that Plaintiffs were able to prove
11 some level of liability), including expert damages estimates. These discussions were also complicated
12 by the fact that there were multiple defendants with different potential exposure and defenses.

13 24. While the parties were well prepared for mediation and negotiated in good faith, the
14 parties were unable to resolve their claims at the April 28, 2020 Mediation. Even so, the parties
15 continued their settlement discussion through Ms. Reeves. Over the next few weeks, Class Counsel
16 held several conference calls with Ms. Reeves to discuss various aspects of the parties' respective
17 claims, provide additional evidence, and explore further settlement options.

18 25. But Plaintiffs also moved forward with litigation. Plaintiffs served Defendants with
19 their initial set of discovery on May 15, 2020, including Requests for the Production of Documents
20 and Special Interrogatories. Plaintiffs also discussed amending Plaintiff's Complaint to add PAGA
21 and the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. section 201 *et seq* ("FLSA") claims
22 on behalf of Ms. Lopez Acevedo in June 2020. These efforts would be mooted by the parties'
23 settlement.

24 26. Through Ms. Reeves' efforts, the parties were ultimately able to reach agreement on
25 certain material terms of the Settlement on May 22, 2020. Yet, the parties still had to finalize the
26 settlement agreement and engage a claims administrator. This process was complicated by the
27 continuing COVID-19 pandemic. Ultimately, the parties agreed to a Memorandum of Understanding
28 on August 19, 2020. But the parties did not finalize the terms of the Settlement Agreement until

November 5, 2020 and the Stipulation of Class Action Settlement was only executed on November 12, 2020.

27. The parties filed this proposed Stipulation of Class Action Settlement with the Court on November 20, 2020 for preliminary approval. However, due to the COVID-19 pandemic, The Court was not able to hear Plaintiff's Motion for Preliminary Approval on April 23, 2021. The Court issued a tentative ruling, continuing the hearing on Preliminary Approval so that the parties could address the following concerns:

- File the FAC as a stand alone document.
- Kullar analysis: Counsel provides a total for the estimated exposure in this matter without providing a breakdown as to the exposure for each claim asserted.
- Response Procedures:
 - Opt out Procedures: Are Class members able to "opt-out" of the PAGA portion of this settlement? (*See Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476.) If yes, then why is this appropriate? If no, this needs to be set out clearly within the settlement and notice.
 - Will Settlement Class Members who opt out still receive a check for PAGA Penalties? (*See Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476.) If no, then why is this appropriate? If yes, this needs to be set out clearly within the settlement and notice.
 - What is the deadline to submit workweek disputes (§II.16.c)?
 - Class members do not need use specific language to request exclusion. Revise §II.16.e accordingly.
 - Any Class Member may appear at final approval and object without first submitting a written objection or providing a notice of intent to appear. Revise §II.16.f accordingly.
- Release:
 - The releases for claims for PAGA seem to be overbroad. Absent class members should only release PAGA Claims limited to claims for penalties under PAGA as disclosed in the LWDA letter and alleged in the Complaint. If counsel did not both allege the claims for penalties in both the letter and the complaint, the class members should not release claims for said penalties. Counsel to provide a copy of the PAGA Letter to the Court for review.
 - The Release should provide an explanation that released claims include all PAGA claims that could have been premised on the facts alleged in the Complaint and that class members and aggrieved employees will release PAGA claims even if class members request exclusion from the class.
 - Will Settlement Class Members who opt out still release PAGA Claims? (*See Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476.) If no, then why is this appropriate? If yes, this needs to be set out clearly within the settlement and notice.

- 1 o Release Effective Date: Indicate the point in time at which the release will be deemed
2 effective as to the absent class members. If the release will be effective before
3 settlement funds are paid, explain why this is in the best interest of the class.

3 • Class Certification:

- 4 o Adequacy: Provide information by which the Court can ascertain adequacy of class
5 representative, supported by competent declaration. Plaintiffs should provide
6 declarations evidencing that he/she understands the obligations of being an adequate
7 class representative, the details of what he/she has done or will do to demonstrate the
8 adequacy of his representative, and the substantial burden he/she will undertake in
9 order to represent the putative class in this case. (See Soderstedt v. CBIZ Southern
10 California, LLC (2011) 197 Cal.App.4th 133, 155-156; Jones v. Farmers Ins. Exchange
11 (2013) 221 Cal.App.4th 986, 998-999).
- 12 o How will the class receive notice of the final judgment?
- 13 o Make sure the notice contains the court's most recent social distancing guidelines.
- 14 o Provide Proof of service of the Settlement to the LWDA.
- 15 o Why is the presumption in paragraph 16.a regarding notices not returned within 15 days
16 appropriate?

17 Additionally, the Court ordered that if the Settlement Agreement is modified pursuant to this checklist,
18 please submit both a red-lined copy showing changes made as well as a final version signed by all
19 parties.

20 28. Following the Tentative Ruling, the Parties met and conferred regarding the concerns
21 identified therein. The parties executed the Amended Stipulation of Class Action Settlement in late
22 May, 2021. Attached hereto as **Exhibit B** is a true and correct copy of the Executed Amended
23 Stipulation of Class Action Settlement and attached hereto as **Exhibit C** is a true and correct copy of
24 the redline document noting the changes between the Stipulation of Class Action Settlement and
25 Amended Stipulation of Class Action Settlement.

26 **IV. THE PURPOSED SETTLEMENT**

27 29. In order to effectuate the Settlement, the parties agreed that Plaintiffs would seek leave
28 of the Court to amend the Complaint. The First Amended complaint will add the claims of Ms. Lopez
29 Acevedo, as well as the PAGA and FLSA causes of action. This will allow the parties to address all
30 claims that could extend from the complaint. This amendment was contemplated prior to the parties'
31 agreement to settle their claims.

32 30. Pursuant to the proposed Settlement, Defendant will pay a total of Two Hundred

1 Seventy Five Thousand Dollars (\$275,000) to satisfy the legal claims of the Settlement Class (the
2 “Gross Settlement Fund”) arising from the First Amended Complaint. Settlement Agreement at ¶1(U).
3 This amount will satisfy the payments to the Settlement Class, PAGA penalties, administrative costs,
4 incentive award to Plaintiffs, litigation costs, and Plaintiffs’ attorneys’ fees. The Settlement Class is
5 defined as “all persons who worked as Sales Assistants for Parlux in the State of California or jobs
6 with similar titles and who were issued paystubs from Randstad from March 5, 2015 through the date
7 of preliminary approval of the settlement,” “who do not timely and properly opt out of the settlement
8 provided for in this settlement with respect to the state law claims and all Class Members with respect
9 to claims under the Fair Labor Standards Act (“FLSA”).” *Id.*, at ¶1(G), (TT), (UU).

10 31. The Gross Settlement Fund will be first distributed to satisfy the PAGA penalties due
11 to the State (“LWDA Payment”), the settlement administration costs, any incentive award to Plaintiffs
12 (“Class Representative Service Awards”), and any Plaintiffs’ attorneys’ fees and litigation costs
13 awarded. *Id.*, at ¶17.

14 32. Sixteen Thousand and no dollars (\$16,000) will be allocated from the Gross Settlement
15 Fund for settlement of claims for civil penalties under PAGA and various other provisions of the
16 California Labor Code (“PAGA Settlement”). *Id.*, at ¶17(c). Consistent with California Labor Code,
17 section 2699(i), seventy-five percent (75%), or \$12,000, of the PAGA Settlement will be paid to the
18 California LWDA and the remaining twenty-five (25%), or \$4,000, will be allocated back for
19 distribution to the Settlement Class. *Id.*

20 33. Class Counsel further project that the cost of settlement administration will be
21 approximately \$10,000 to be paid to Simpluris, Inc. *Id.*, at ¶17(g). Class Counsel has experience with
22 Simpluris and have found it to be a competent settlement administrator. Class Counsel also found that
23 \$10,000 to be a reasonable estimated of settlement administration costs for the Settlement Class.

24 34. Plaintiffs intend to request incentive awards of \$5,000 for each of the named Plaintiffs
25 (\$10,000 total), litigation costs not to exceed \$16,000, and attorneys’ fees not to exceed \$91,666.67.
26 *Id.*, at ¶17(e), (f). No portion of the Gross Settlement Fund will revert to the Defendant. *Id.*, at ¶17.

27 35. To calculate the Settlement Class’s *pro-rata* share of the Settlement Fund (“Individual
28

Class Settlement Payment”), the Net Class Settlement Amount (estimated at \$131,333.33)¹ will be divided by the total number of Qualifying Class Workweeks weeks for all Settlement Class Members, resulting in the “Payment Ratio.” *Id.*, at ¶¶1(I), (V), (LL), 17(b). The Settlement Class Member’s payment will be determined by multiplying the Payment Ratio by the number of Qualifying Class Workweeks worked by the Settlement Class Member during the Class Period. *Id.*, at ¶17(b).

36. For tax purposes, Class Individual Settlement Payments will be allocated 90% will be allocated as 1099 income and 10% will be allocated as W-2 income and subject to withholding. *Id.*, at ¶17(a). Each Class Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.) for each Settlement Class Member. *Id.*, at ¶17(b).

37. Class members will have 45 days after mailing of Notice Packets (Settlement Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended ten days) to provide a written object or opt out of the Class Individual Settlement. *Id.*, at ¶¶1(PP), 16(b). Any Class Member may appear and be heard at final approval and object without first submitting a written objection or providing a notice of intent to appear. *Id.*, at ¶16(f). Class members do not need use specific language to request exclusion. *Id.*, at ¶16(e).

38. In exchange for the Class Individual Settlement Payments, Class Members will release their individual legal claims. *Id.*, at ¶16(b).

39. The PAGA Payment to each individual Settlement Class Member will be determined in the same manner. The portion of the PAGA Payment payable to the Settlement Class (\$4,000 or the “PAGA Net Settlement Amount”) will be calculated taking the total Qualifying PAGA Workweeks divided by the PAGA Net Settlement Amount to determine the PAGA Payment Ratio. *Id.*, at ¶¶1 (W), (EE), (MM), ¶17(c), (d). Qualifying PAGA Workweeks are those worked in the PAGA Settlement Period, meaning the period from March 5, 2018 until the Preliminary Approval Date. *Id.*, at ¶1(DD), (GG), (MM). The PAGA Group Member’s payment will be determined by multiplying the PAGA Payment Ratio by the number of PAGA Qualifying Class Workweeks worked by the PAGA Group

¹ The Gross Settlement Fund (\$275,000), less the estimated settlement administration costs (\$10,000), incentive awards (\$10,000), litigation costs (\$16,000), attorneys’ fees (\$91,666.67), and LWDA Payment (\$16,000).

1 Member during the PAGA Settlement Period. *Id.*, at ¶17(d).

2 40. PAGA Individual Settlement Payments will be allocated as follows: 100% will be
3 allocated to 1099 income. *Id.*, at ¶17(a). PAGA Group Members' payment will be automatically pay
4 to each PAGA Group Member. PAGA Group Members may not opt out of the PAGA Payment as
5 such payments are individual in nature, instead are paid to release claims to the State of California.
6 *See Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476.

7 41. If Class Members wish to dispute the workweek provided to the Settlement
8 Administrator, they will have until the Response Deadline to do so (45 days after mailing of Notice
9 Packets [Settlement Class Members who received a re-mailed Notice Packet shall have their Response
10 Deadline extended ten days]). Settlement Agreement at ¶16(c).

11 42. In exchange for the PAGA Payment, the State of California will release only those
12 claims found in the First Amended Complaint and corresponding notice to the LWDA. *Id.*, at
13 ¶1(NN)(b). A limited LWDA notice was provided, noting the provisional nature of the Settlement,
14 was submitted on April 28, 2021 (LWDA Case No. LWDA-CM-830652-21). Attached as **Exhibit D**
15 is a copy of the LWDA Notice, with the First Amended Complaint, and Confirmation. A copy of the
16 proposed settlement, including the briefing on Plaintiff's Motion for Preliminary Approval, was
17 submitted to the LWDA concurrently with the filing of this Motion. Attached as **Exhibit E** is a copy
18 of the LWDA Settlement Notice Confirmation.

19 43. Accordingly, assuming that there are sixty-two Settlement Class Members, who
20 worked 3,158 weeks², Plaintiffs estimated each Settlement Class Member will be paid approximately
21 **\$41.59 per week worked** (the \$135,333.33 net value of the Settlement—or the Net Class Settlement
22 Amount estimated at \$131,333.33 plus the PAGA Payment at \$4,000—divided by 3,158 workweeks)
23 and approximately **\$2,182.80 per worker** (the net value of the settlement (\$135,333.33) divided
24 between the 62 Settlement Class Members). This Settlement is substantial and reflects a reasonable
25 and fair compromise of the parties' claims and defenses. Settlement benefit of \$275,000 represents
26 **between 20.75% and 33.37%** of the full verdict value of the claims being released, assuming that
27

28 ² Class Counsel estimated 4,687 workweeks for the ninety-two member putative Class. When
reduced by 32.61 percent (a reduction of 30 individuals out of the 92 member class), Class Counsel
estimated that approximately 3,158 workweeks were worked by the reduced Settlement Class.

1 Plaintiffs were successful at trial (\$824,179.75 and \$1,325,065.80).

2 **V. REASONABLENESS OF SETTLEMENT**

3 44. I can attest to the numerous complications that arose in determining how to structure
4 and value this Settlement during the parties' settlement discussions. I can further attest to the level of
5 effort, expertise, dedication and creativeness of both Plaintiffs' and Defendants' counsel in making
6 sure that the current settlement was fair, reasonable and adequate to both sides. The extent of the
7 Defendants' liability was the subject of extensive deliberation and negotiation.

8 45. Class Counsel only negotiated this Settlement after sufficient informal discovery was
9 taken, and having fully explored the value of the putative Class's claims through a damages expert.
10 The proposed release by the Settlement Class was extensively scrutinized and negotiated by the
11 attorneys involved in this litigation.

12 46. The class representatives have all consented to the release, as well as the Settlement
13 Agreement and have been afforded full access to Plaintiffs' counsel, and have signed the Settlement
14 Agreement.

15 47. In preparing this declaration, I have reviewed the time and expense records maintained
16 by Sommers Schwartz, P.C. in this case, and I am fully aware of the work performed and money spent
17 on costs and expenses in this litigation over the past year. Other attorneys from my office that assisted
18 me in reaching this settlement include: Kevin Stoops (Senior Partner); Charles Robert Ash (Junior
19 Partner); and Rod Johnston (Associate). Each of the attorneys from my office that assisted us in
20 obtaining this settlement has substantial experience in class action wage and hour claims.

21 48. Based on my review of all the time and expense records, I can confirm that the time
22 and expenses incurred in procuring this settlement were reasonable and necessary.

23 49. Based on Sommers Schwartz P.C.'s experience, this firm advocates for the Court's
24 approval of this settlement. Sommers Schwartz P.C. evaluated the Settlement, on behalf of the Class,
25 and concluded that it was a fair and reasonable compromise of the Class's claims given the inherent
26 risk of the litigation in bring this case to trial (as well as any possible subsequent appeals). Clearly the
27 goal of this litigation, to obtain payment for Defendants' wage and hour violations, has been met.
28

1 **VI. APPROPRIATE SERVICE AWARDS FOR THE REPRESENTATIVES**

2 50. Plaintiffs are requesting that the Court approve a modest service award of \$5,000 for
3 each Plaintiff (\$10,000 total). Based on my personal experience representing these Plaintiffs during
4 the course of the litigation, I believe that each one is deserving of the requested award.

5 51. Indeed, each Plaintiff has spent substantial amounts of time and energy assisting Class
6 Counsel in the prosecution of this action. Plaintiffs provided Class Counsel with vital assistance in
7 gathering facts relevant to their and other Class Members' potential claims. In particular, they each
8 were interviewed on their job duties and experiences. They were counseled on the rights and
9 responsibilities of serving as class representatives, and I can confirm that they understood their rights
10 and responsibilities. Additionally, Plaintiffs reviewed the complaints, made themselves available for
11 consultation during settlement negotiations, and generally kept themselves apprised on the status of
12 the case. This included phone conversations with Class Counsel and Ms. Reeves.

13 52. Furthermore, I can confirm that none of the class representatives have any conflict of
14 interest with the members of the class, as it pertains to this settlement or their employment by
15 Defendants.

16 53. It is my strong belief that the Settlement Class would not have obtained the outstanding
17 results discussed above without the consistent and vigorous efforts provided by Plaintiffs in this action.
18 At no small risk to themselves, Plaintiffs engaged themselves at the forefront of a class litigation not
19 merely to obtain a lost wages, but —more importantly—to right a wrong and obtain a far greater
20 remedy than the one to which they themselves were entitled. The substantial remedy obtained
21 Plaintiffs accrues to the benefit of, at least, hundreds of their prior co-workers. Their efforts are worthy
22 of recognition.

23 54. The requested amounts for incentive awards are commensurate with other incentive or
24 enhancement awards I have had approved as fair and reasonable in similar wage and hour matters.
25 Furthermore, the proposed allocation of the incentive awards is also fair and reasonable.

26 55. I have spoken to Plaintiffs throughout the litigation, and specifically during the
27 mediation, about the case and the settlement. Any and all questions were answered and they approve
28 of the settlement.

1 **VII. CONCLUSION**

2 56. I was one of the negotiators of the settlement. I will personally attend the hearing for
3 approval of the Settlement. The details of the claims, risks involved, and the settlement are addressed
4 more fully in the Motion for Preliminary Approval; however, I will be present to answer or clarify any
5 questions of the Court should a hearing be necessary.

6 57. In my professional experience as a wage and hour class action attorney, this Settlement
7 represents a fair compromise of a contested class claim and represents an arm's length negotiated
8 settlement that should be approved by this Court.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct.

11 Executed on June 1, 2021 in San Diego, California.



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15 Trenton R. Kashima
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