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

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

Plaintiff,

v.

FRESH LINK LOGISTICS, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendant.

Case No.: BC719412

Honorable Amy D. Hogue
Department SSC7

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declaration of
Proposed Class Representative (Pedro
German); and [Proposed] Order filed
concurrently herewith]

Date: March 16, 2022
Time: 10:00 a.m.
Department: SSC7

Complaint Filed: August 28, 2018
FAC Filed: January 14, 2019
SAC Filed: October 21, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on March 16, 2022 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Amy D. Hogue in Department SSC7 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiff Pedro German (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Stipulation of Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, 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 Attorney’s Costs to Class Counsel, Service Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Pedro German as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests

1 for the Attorneys' Fees and Attorneys' Costs to Class Counsel, Service Award to
2 Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

3 This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
4 of Court, which provide for approval by the Court of the settlement of a putative class action,
5 allow the Court to preliminarily certify a class for settlement purposes, and permit the Court to
6 extend the page limit for memoranda.

7 This motion is based upon the following memorandum of points and authorities, the
8 Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwarzian) and
9 Proposed Class Representative (Pedro German) in support thereof, the pleadings and other
10 records on file with the Court in this matter, and such evidence and oral argument as may be
11 presented at the hearing on this motion.

12 Dated: November 29, 2021

LAWYERS for JUSTICE, PC

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14 By: 
15 Edwin Aiwarzian
16 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Pedro German (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Stipulation of Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Fresh-Link Logistics, LLC (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Fund Value of four hundred sixty-two thousand five hundred dollars and no cents (\$462,500.00).¹ The Gross Fund Value includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Fund Value²; (2) the Service Award of five thousand dollars and no cents (\$5,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Attorneys’ Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Fund Value, or \$161,875.00, and reimbursement of litigation costs and expenses not to exceed forty thousand dollars and no cents (\$40,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed eight thousand dollars and no cents (\$8,000.00);⁵ and (5) the amount of forty thousand dollars and no cents (\$40,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”) (“PAGA Settlement Amount”), of which 75% (i.e., \$30,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$10,000.00) will be distributed to Settlement Class Members as a part of the Net Fund Value.⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), §§ II.m & III.a.

² *Id.*, §§ III.b & IV.c.

³ *Id.*, §§ II.x & III.d.

⁴ *Id.*, §§ II.a.-b & III.c.

⁵ *Id.*, §§ II.z & IV.b.

⁶ *Id.*, § II.o.

1 All current and former hourly-paid non-exempt employees employed by Defendant
2 Fresh-Link in California at any time during the period August 28, 2014 to June 18,
3 2021 (“Class” or “Class Members”).⁷

4 The Class is estimated to consist of approximately one hundred sixteen (116)
5 individuals.⁸

6 Class Members who do not submit a timely and valid request to be excluded from the
7 Settlement (“Settlement Class Members”) will receive a proportionate share of the Net Fund
8 Value based upon the number of weeks he or she worked for Defendant during the Class Period
9 (“Workweeks”), to be determined by the Settlement Administrator using the work start date or
10 dates and work end date or dates during which the Settlement Class Member worked as an
11 hourly non-exempt employee, based on Defendant Fresh-Link’s records.⁹

12 The Settlement resolves the Released Claims of Plaintiff and Settlement Class Members,
13 against the Released Entities.¹⁰

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

15 Defendant is a premium supplier of time-and-temperature-sensitive transportation
16 services in Southern California. Plaintiff Pedro German is a former employee of Defendant.

17 On August 28, 2018, Plaintiff filed a Class Action Complaint for Damages in the Los
18 Angeles County Superior Court (“Court”) against Defendant and co-defendant Field Fresh
19 Foods, Inc. (“Field Fresh”), thereby commencing the above-captioned lawsuit (“Litigation”).

20 On January 14, 2019, Plaintiff filed a First Amended Class Action Complaint for
21 Damages.

22 On June 14, 2019, Defendant filed an Answer to Plaintiff’s First Amended Class Action
23 Complaint, and thereafter, on June 17, 2019, Defendant filed an Amended Answer to Plaintiff’s
24 First Amended Class Action Complaint.

25 ///

26 ///

27 ⁷ Settlement Agreement, § II.d. “Class Period” is defined as the period of time from August 28, 2014 through June
28 18, 2021. *See id.*, § II.h.

⁸ Aiwasian Decl., ¶ 9.

⁹ Settlement Agreement, §§ II.aa-bb.

¹⁰ *See id.* at § VII.a., for the full scope of the “Released Claims,” and *id.* at § II.w. for the definition of the “Released
Entities.”

1 On October 21, 2021, Plaintiff filed a Second Amended Class Action Complaint for
2 Damages, dismissing Field Fresh from the lawsuit without prejudice and adding a claim for
3 enforcement under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*
4 (“Operative Complaint”).

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

15 On November 4, 2021, Defendant filed an Answer to Plaintiff’s Second Amended
16 Complaint.

17 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
18 associated with any of the allegations in the Litigation, and further denies that the Litigation is
19 appropriate for class treatment or representative adjudication for any purpose other than for
20 settlement purposes only.

21 The Parties have actively litigated the Litigation since it was commenced on August 28,
22 2018. On December 20, 2018, Plaintiff propounded multiple sets of discovery including
23 Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two);
24 and Form Interrogatories, (Set One), on Defendant. Thereafter, on January 23, 2019, April 18,
25 2019, April 24, 2019, May 24, 2019, and June 28, 2019, Defendant provided responses to
26 Plaintiff’s discovery requests. On August 16, 2019, Plaintiff propounded additional sets of
27 Requests for Production of Documents, (Set Two); and Special Interrogatories, (Set Three) on
28

Defendant, and noticed the deposition of Defendant's person most knowledgeable. Thereafter, on September 17, 2019, Defendant provided responses to Plaintiff's additional discovery requests.

On March 5, 2019, Defendant propounded multiple sets of discovery including Requests for Production of Documents, (Set One) and Special Interrogatories, (Set One), on Plaintiff and noticed the deposition of Plaintiff. On April 29, 2019 and June 24, 2019, Plaintiff provided responses to Defendant's discovery requests.

On November 6, 2019, Class Counsel deposed Defendant's persons most knowledgeable and on November 12, 2019 counsel for Defendant deposed Plaintiff.

On February 18, 2021, the Parties participated in a formal, full-day mediation conducted by Eve Wagner, Esq., 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 Litigation in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Fund Value to resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Member) with respect to the Released Entities.¹¹ Subject to approval by the Court, the Net Fund Value will be calculated by deducting the following amounts from the Gross Fund Value: (1) Attorneys' Fees in an amount not to exceed one hundred sixty-one thousand eight hundred seventy-five dollars and no cents (\$161,875.00) (i.e., up to 35% of the Gross Fund Value) and reimbursement of Attorneys' Costs in an amount not to exceed forty thousand dollars and no cents (\$40,000.00) to Class Counsel; (2) settlement administration costs, which are currently estimated not to exceed eight thousand dollars and no cents (\$8,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Settlement Amount (i.e., \$30,000.00 out of \$40,000.00) ("LWDA Payment"); and (4) payment in the amount of up to

¹¹ Settlement Agreement, § III.a.

1 five thousand dollars and no cents (\$5,000.00) to Plaintiff Pedro German (“Service Award”).¹²
2 The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to
3 handle the notice and settlement administration process.¹³

4 The Parties have agreed that the Settlement Administrator will determine each
5 Settlement Class Member’s share of the available Net Fund Value, in accordance with the
6 Settlement Agreement and as follows:

- 7 a. The Settlement Administrator will calculate the total number of Workweeks for the
8 Class Members. This will result in an aggregate number of Workweeks, as well as an
9 individual amount of Workweeks for each of the Class Members.¹⁴
10 b. The Settlement Administrator will divide the Net Fund Value by the total aggregate
11 Workweeks of the Class Members to yield the “Workweek Value.” Each Class
12 Member’s individual number of Workweeks will be multiplied by the Workweek
13 Value to yield the estimated Individual Settlement Payment that he or she may be
14 eligible to receive under the Settlement if they do not opt out of the Settlement.¹⁵

15 Each Settlement Class Member’s proportionate share of the Net Fund Value will be
16 allocated as follows: one-third (1/3) as wages (the “wage portion”), which will be reported on
17 an IRS Form W-2; and the remaining two-thirds (2/3) as penalties and interest, which will be
18 reported on an IRS Form 1099.¹⁶ Settlement Class Members will be issued payment of their
19 proportionate share of the Net Fund Value subject to reduction for the employee’s share of taxes
20 and withholdings with respect to the wage portion of each proportionate share of the Net Fund
21 Value (the net payment is referred to as an “Individual Settlement Payment”).¹⁷ Defendant will
22 pay the employer’s share of payroll taxes and contributions with respect to the wage portion of
23 Individual Settlement Shares (“Employer Taxes”) in addition to the Gross Fund Value.¹⁸

24 The Individual Settlement Payment checks issued to Settlement Class Members will be
25 negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁹ Individual
26 Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.²⁰

27 ¹² Settlement Agreement, § III.b.; see also, §§ II.a., II.b., II.z., II.o. and II.x.

28 ¹³ *Id.*, § IV.b.

¹⁴ *Id.*, § IV.f.

¹⁵ *Ibid.*

¹⁶ *Id.*, § IV.g.

¹⁷ *Ibid.*

¹⁸ *Id.*

¹⁹ *Id.*, § V.e.

²⁰ *Ibid.*

The funds from associated with such cancelled checks will be transmitted to the Alliance for Children's Rights.²¹

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.²² 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").²³ A request for exclusion must: (i) contain the case name and number of the Litigation, as well as the full name, current mailing address, signature, and last four digits of the Social Security number of the person requesting exclusion; (ii) include a statement, or words that are sufficiently similar to the following: "I wish to be excluded from the Settlement of the case entitled *German v. Fresh-Link Logistics, LLC*, Los Angeles Superior Court Case No. BC719412"; and (iii) be submitted by mail to the Settlement Administrator at the specified address set forth on the Class Notice, postmarked on or before the Response Deadline.²⁴ Class Members who submit a valid and timely request for exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment.²⁵

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.²⁶ Settlement Class Members who wish to object to the Settlement may either do so in writing or orally at the Final Approval Hearing.²⁷ The objection must: (i) contain the case name and number of the Litigation and the Class Member's full name, current mailing address, telephone number, signature, and last four digits of his or her Social Security number; (ii) contain a statement of the objection(s), as well as specific reasons, if any, for the objections, and any supporting materials the Class Member wishes to introduce and/or rely upon; (iii) identify any attorney who represents the

²¹ Settlement Agreement, § V.e.

²² *Id.*, § V.b.

²³ *Id.*, §§ IV.e & V.b.

²⁴ *Id.*, § V.b.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Id.*, § V.c.

objector; and (iv) be submitted by mail to the Settlement Administrator, postmarked on or before the Response Deadline. A Settlement Class Member may, as an alternative to a written objection, present an objection orally at the Final Approval Hearing.²⁸

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.²⁹ The dispute must: (i) contain the case name and number of the Litigation, as well as, the full name, current mailing address, signature, and last four digits of the Social Security number of the Class Member; (ii) include an explanation of the number of Workweeks the Class Member contends should be credited to him or her; (iii) attach documentation demonstrating that the number of Workweeks credited to him or her based on Defendant's records is incorrect and that the number he or she proffers is correct; (iv) and be submitted by mail to the Settlement Administrator at the specified address set forth on the Class Notice on or before the Response Deadline.³⁰

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

²⁸ Settlement Agreement, § V.c.

²⁹ *Id.*, § IV.e.

³⁰ *Ibid.*

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

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the

1 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
2 and the court is free to engage in a balancing and weighing of the factors depending on the
3 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
4 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
5 at 1027 (citation omitted).

6 The proponent of the settlement has the burden to show that it is fair and reasonable.
7 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
8 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
9 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
10 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
11 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
12 1151.

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

15 The Parties actively litigated the Litigation since it was commenced on August 28, 2018.
16 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
17 the claims, and Class Counsel was actively preparing the case for class certification and trial.³¹

18 Prior to engaging in mediation, Class Counsel conducted significant investigation and
19 formal and informal discovery regarding the facts of the case, including and not limited to, the
20 exchange, review, and analysis of a large volume of documents and data produced by
21 Defendant.³² The volume of data and documents that Class Counsel reviewed and analyzed
22 included and was not limited to: employment records of Plaintiff and other Class Members, a
23 detailed sampling of Class Members’ time and pay data and records (including putative class
24 members’ clock-in and clock-out times, hours worked per day, hourly pay rate, pay dates, and
25 departments), multiple iterations of Defendant’s Employee Handbook, company policy
26 acknowledgements, internal memoranda, job descriptions, new hire orientation video and
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28 ³¹ Aiwazian Decl., ¶¶ 11-13.

³² Aiwazian Decl., ¶ 12.

training documents, Defendant's operations and employment practices, forms (including but not limited to Defendant's Driver Job Description Form and At Will Employment Release form), procedures (including but not limited to Defendant's Good Manufacturing Practices, Meal and Rest Period Acknowledgement, and Employee Performance Review), and policies (including but not limited to Defendant's Voicemail and Email Policy and Harassment Policy), among other information and documents.³³ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁴ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto, noticed the depositions of Defendant's Person Most Knowledgeable, and worked with Plaintiff to provide responses and supplemental responses to multiple sets of discovery requests that were propounded by Defendant.³⁵ Class Counsel prepared for and took the depositions of Defendant's Person Most Knowledgeable witnesses and prepared for and defended the deposition of Plaintiff.³⁶ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁷ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁸

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Eve Wagner, a well-respected mediator experienced in mediating complex labor and employment matters.³⁹ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock and

³³ Aiwazian Decl., ¶ 12.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ *Id.*, ¶ 11.

incentive pay theories, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴¹ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴² After conducting investigations, significant 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 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴³

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁴ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁵ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁶ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁷

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⁴⁰ Aiwazian Decl., ¶ 12.

⁴¹ Ibid.

⁴² *Id.*, ¶¶ 11, 16-18.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁷ *Id.*, ¶¶ 6-7.

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

2 The Settlement, which provides for a Gross Fund Value of four hundred sixty-two
3 thousand five hundred dollars and no cents (\$462,500.00), represents a fair, adequate, and
4 reasonable resolution of the matter.⁴⁸ The Settlement was calculated using the information and
5 data uncovered during litigation, case investigation, as well as the formal and informal exchange
6 of information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in
7 any case and, in particular, in the case at issue.⁵⁰ Moreover, considering all of the facts and
8 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
9 for the Class.⁵¹

10 Assuming that the Attorneys' Fees and Attorneys' Costs, Service Award, LWDA
11 Payment, and Settlement Administration Costs are approved by the Court and paid in the full
12 amounts provided for by the Settlement, the Settlement provides for a Net Fund Value that is
13 currently estimated to be two hundred seventeen thousand six hundred twenty-five dollars and
14 no cents (\$217,625.00).⁵² As discussed in Part III, *supra*, the entire Net Fund Value will be
15 fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement.
16 The amount of each Settlement Class Member's Individual Settlement Payment will be
17 calculated based on his or her Workweeks.⁵³ There is no reason to doubt the fairness of the
18 proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even
19 at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis
20 [to warrant approval], particularly if recommended by experienced and competent class
21 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
22 127 F.Supp.2d 418, 429-30.

23 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
24 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵⁴

25 ⁴⁸ Aiwasian Decl., ¶¶ 11, 13, 14 & 27.

26 ⁴⁹ *Id.*, ¶¶ 11-13.

27 ⁵⁰ *Id.*, ¶¶ 16-18.

28 ⁵¹ *Id.*, ¶¶ 11, 13, & 27.

⁵² *Id.*, ¶ 14.

⁵³ Settlement Agreement, § IV.c. & f.

⁵⁴ Aiwasian Decl., ¶¶ 11, 13, & 27.

Although the recommendations of Class Counsel are not conclusive, 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 significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁵ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant’s defenses thereto.⁵⁶ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁷

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.⁵⁸ 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

⁵⁵ Aiwazian Decl., ¶¶ 11-13 & 18.

⁵⁶ *Id.*, ¶18.

⁵⁷ *Id.*, ¶¶ 11-13, 16-18, & 21-26.

⁵⁸ Settlement Agreement, § VIII.a.

1 affecting any individual Class Member. Further, Plaintiff's 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 one hundred sixteen (116) individuals.⁵⁹
16 This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
17 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as
18 joinder is not practical at that point). Further, all Class Members can and will be identified by
19 Defendant to the Settlement Administrator through a review of Defendant's employment
20 records regarding hourly non-exempt employees in California during the Class Period. As such,
21 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 ⁵⁹ Aiwazian 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, Plaintiff contends 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.⁶⁰ Plaintiff's
15 claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to
16 Plaintiff 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 compliant wage statements, failing to keep requisite payroll
20 records, and failing to reimburse necessary business-related expenses.⁶¹

21 Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect
22 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶²
23 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
24 compensation due to them from Defendant during the time period at issue.⁶³

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27 ⁶⁰ Aiwazian Decl., ¶ 16.

28 ⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

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

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

Class Counsel has litigated the matter for over three years, and was actively preparing the matter for class certification and trial.⁶⁴ 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 also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed a large volume of documents and data⁶⁵ and also interviewed and obtained information from Plaintiff, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁶ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁷

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

The Settlement establishes a Gross Fund Value of four hundred sixty-two thousand five hundred dollars and no cents (\$462,500.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Attorneys' Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Fund Value (i.e., \$161,875.00) and an amount

⁶⁴ Aiwazian Decl., ¶¶ 11-13.

⁶⁵ *Id.*, ¶ 12.

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶ 11.

⁶⁸ *Id.*, ¶¶ 6-7.

not to exceed forty thousand dollars and no cents (\$40,000.00) for costs and expenses.⁶⁹ 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, 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 Attorneys' Costs, and that an award of the Attorneys' Fees and Attorneys' Costs will be sought, as provided for by the Settlement.⁷⁰

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

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California

⁶⁹ Settlement Agreement, §§ III.a & III.c.

⁷⁰ *Id.*, Exh. B.

Supreme Court has taken the position that “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

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

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

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

⁷¹ Aiwazian Decl., ¶ 19.

1 matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623
2 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

3 The proposed Class Notice⁷² describes the Settlement, the deadlines and procedures to
4 file and serve an objection to the Settlement, mail a request for exclusion from the Settlement,
5 and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval
6 Hearing.⁷³

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

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

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27 ⁷² Settlement Agreement, Exh. B.

28 ⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

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

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

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁷⁷ If the Class Notice is returned as undeliverable with a forwarding address within thirty (30) calendar days of the initial mailing of the Class Notice, the Settlement Administrator will promptly resend the Class Notice to that forwarding address along with a brief letter stating that the Class Member has until the original Response Deadline to submit an objection, opt out, and/or Workweeks Dispute.⁷⁸ If an original mailing is returned as undeliverable without a forwarding address, within thirty (30) calendar days of the initial mailing of the Class Notice, the Settlement Administrator will perform one skip-trace only, and if it obtains a more recent address, will resend the Class Notice along with a brief letter stating that the Class Member has until the original Response Deadline to submit an objection, opt out, and/or Workweeks Dispute.⁷⁹ The Settlement Administrator will endeavor to complete all re-mailings within five (5) calendar days of receipt of an undeliverable.⁸⁰ The Settlement Administrator will receive and process requests for exclusion, objections, and any disputes regarding Workweeks.⁸¹

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Attorneys' Costs, Service Award, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸² The Settlement Administration

⁷⁷ Settlement Agreement, § V.a.

⁷⁸ *Id.*, § V.d.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Id.*, §§ IV.e & V.b-c.

⁸² *Ibid.*; Aiwazian Decl., ¶ 15.

Costs are currently estimated to be eight thousand dollars and no cents (\$8,000.00) and will be paid out of the Gross Fund Value, subject to approval by the Court.⁸³

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁴

Within fifteen (15) business 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) last known telephone number; (4) Social Security number; and (5) dates of employment as an hourly non-exempt employee of Defendant in California during the Class Period (collectively, "Class List").⁸⁵

Within twenty-five (25) business days of Preliminary Approval, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁶ If a Class Notice is returned to the Settlement Administrator with a forwarding address within thirty (30) calendar days of the initial mailing of the Class Notice, the Settlement Administrator will re-send the Class Notice to the forwarding address.⁸⁷ If no forwarding address is provided within thirty (30) calendar days of the initial mailing of the Class Notice, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace only, and re-mail the Class Notice to the Class

⁸³ Settlement Agreement, §§ II.a & IV.b .

⁸⁴ *Id.*, §§ IV.f & V.a.

⁸⁵ *Id.*, §§ II.f & IV.f.

⁸⁶ *Id.*, § V.a.

⁸⁷ *Id.*, § V.d.

Member.⁸⁸ Class Members will have until the Response Deadline to mail a request for exclusion, mail a dispute regarding Workweeks, and/or to file and serve an objection.⁸⁹

Defendant will make a one-time deposit of the Gross Fund Value, together with an amount sufficient to pay Employer Taxes, into a qualified settlement account to be established by the Settlement Administrator, within ten (10) business days of the Effective Date.⁹⁰ Within ten (10) business days after Defendant's deposit of funds with the Settlement Administrator, the Settlement Administrator will distribute: (1) Individual Settlement Payments to Settlement Class Members; (2) LWDA Payment to the LWDA; (3) the Court-approved Attorneys' Fees and Attorneys' Costs to Class Counsel; (4) the Court-approved Settlement Administration Costs to itself; and (5) the Service Award to Plaintiff.⁹¹

The Individual Settlement Payment checks will remain negotiable for one hundred eighty (180) calendar days from the date of their issuance.⁹² Checks that are not negotiated within the 180-day period will be cancelled.⁹³ The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Alliance for Children's Rights.⁹⁴

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR SERVICE AWARD

Plaintiff Pedro German respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Service Award in an amount up to five thousand dollars and no cents (\$5,000.00).⁹⁵ 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

⁸⁸ Settlement Agreement, § V.d.

⁸⁹ *Id.*, §§ IV.e & V.b-c.

⁹⁰ *Id.*, §§ VI.a. & IV.g.

⁹¹ *Id.*, § VI.b.

⁹² *Id.*, § V.e.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Id.*, § III.d.

1 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
2 representative; (3) the amount of time and effort spent by the class representative; (4) the
3 duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class
4 representative as a result of the litigation. *Id.*

5 The Service Award is fair and appropriate. Plaintiff spent a substantial amount of time
6 and effort in producing relevant documents and past employment records, providing the facts
7 and evidence necessary to attempt to prove the allegations, preparing for and attending a
8 deposition, and responding to discovery requests.⁹⁶ Plaintiff was available whenever Class
9 Counsel needed him and actively tried to obtain and provide information that would benefit the
10 Class.⁹⁷ Accordingly, it is appropriate and just for Plaintiff to receive a Service Award for his
11 services on behalf of the Class, in addition to his Individual Settlement Payment.

12 **XII. CONCLUSION**

13 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
14 approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary
15 appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and
16 designate Plaintiff Pedro German as Class Representative; appoint Simpluris, Inc. as Settlement
17 Administrator; preliminarily approve the allocations for Attorneys' Fees and Attorneys' Costs,
18 Service Award, LWDA Payment, and Settlement Administration Costs; approve the proposed
19 Class Notice; direct the Settlement Administrator to undertake the notice and settlement
20 administration process in conformity with the deadlines and procedures provided by the
21 Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately
22 five (5) months.

23 Dated: November 29, 2021

LAWYERS for JUSTICE, PC

24
25 By:


Edwin Aiwanian
Attorneys for Plaintiff

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27
28 ⁹⁶ Aiwanian Decl., ¶ 20; Declaration of Pedro German in Support of Plaintiff's Motion for Preliminary Approval
of Class Action Settlement ("German Decl."), ¶¶ 4-5.

⁹⁷ Aiwanian Decl., ¶ 20; German Decl., ¶¶ 3-6.