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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Richard Tuozo, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

vs.

Real Community Services, Inc, a
California corporation; Real Place Inc, a
California corporation; AMN Home
Corporation, a California corporation;
Real Community Services, LLC, a
California limited liability company;
Nemia Home, Inc., a California
corporation; and DOES 1-50, inclusive;

Defendantss.

Case No.: 21STCV23851

Honorable Kenneth R. Freeman
Department SSC14

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Danielle L. GruppChang); Declaration of
Proposed Class Representative (Richard
Tuozo); and [Proposed] Order filed
concurrently herewith]

Date: November 20, 2024
Time: 11:00 a.m.
Department: SSC14

Complaint Filed: June 28, 2021
FAC Filed: August 28, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that on November 20, 2024 at 11:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Kenneth R. Freeman in Department SSC14 of the Superior Court of California for the County of Los Angeles, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiff Richard Tuozo (“Plaintiff” or “Class Representative”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT A**” to the Declaration of Danielle L. GruppChang, 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, Class Counsel Fees and Class Counsel Expenses to Class Counsel, Class Representative Service Payment to Plaintiff, and Administration Expenses Payment to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Richard Tuozo as Class Representative;
- Preliminarily appointing Brock & Gonzales, LLP as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval (“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 as the Settlement Administrator; and

- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees and Class Counsel Expenses to Class Counsel, Class Representative Service Payment for Plaintiff, and Administration Expenses Payment to Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Danielle L. GruppChang) and Proposed Class Representative (Richard Tuoza) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: September 12, 2024

BROCK & GONZALES, LLP

By:

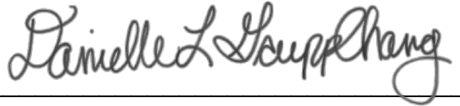

Danielle L. GruppChang
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION AND PROCEDURAL HISTORY

Plaintiff Richard Tuoza (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Real Community Services Inc., Real Place Inc., AMN Home Corporation, Real Community Services, LLC, and Nemia Home, Inc. (collectively referred to as “Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Nine Hundred Twenty Five Thousand Dollars (\$925,000).¹

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

any and all persons currently or formerly employed by Defendants as hourly-paid, non-exempt employees during the Class Period, in the State of California (“Class” or “Class Members”).²

The Class is estimated to consist of approximately four hundred ninety (490) individuals.³

The Settlement resolves the Released Class Claims of Plaintiff and Participating Class Members and Released PAGA Claims of Plaintiff and Aggrieved Employees, against the Released Parties.⁴

Defendants provide residential housing services to adults with special needs. Plaintiff is a former employee of multiple Defendants.

On June 28, 2021, Plaintiff filed a Class Action Complaint for Damages thereby commencing the above-captioned lawsuit (“Action”). On November 15, 2022, the Parties

¹ Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Danielle GruppChang (“GruppChang Decl.”), § 1.22.

² *Id.*, §§ 1.5 & 1.12. The “Class Period” is the time period from June 28, 2017 to July 24, 2024.

³ GruppChang Decl., ¶ 10.

⁴ See Settlement Agreement at §§ 5.2 & 5.3 respectively for the definitions of the “Released Class Claims” and “Released PAGA Claims,” and at § 1.41 for the definition of the “Released Parties.”

1 participated in a formal, full-day mediation conducted by Steven Serratore, esq., a well-regarded
2 mediator experienced in mediating complex labor and employment matters. The Parties were
3 unable to reach a resolution at the mediation and ultimately engaged in formal discovery before
4 agreeing to attend a second mediation. On April 26, 2024, the Parties attended in a second
5 formal, full-day mediation with third-party mediator Judge Brian Walsh (Ret.). Ultimately, with
6 the aid of the mediators and the mediators' evaluations, the Parties reached the Settlement
7 described herein to resolve the Action in its entirety.

8 On August 28, 2024, pursuant to the Court's order granting the Parties' joint stipulation,
9 Plaintiff filed the First Amended Class Action Complaint for Damages and Enforcement Under
10 the Private Attorneys General Act which alleged an additional cause of action under Private
11 Attorneys General Act ("PAGA").

12 Plaintiff's core allegation is that Defendants have violated the California Labor Code by
13 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
14 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
15 and rest periods and associated premium pay, failing to timely pay wages during employment
16 and upon termination of employment, failing to provide compliant wage statements, failing to
17 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
18 thereby engaged in unfair business practices in violation of California Business and Professions
19 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff
20 contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
21 (including and not limited to, penalties pursuant to PAGA), and attorneys' fees. Defendants
22 answered the Complaint and have denied all allegations.

23 **III. SUMMARY OF THE SETTLEMENT TERMS**

24 Subject to approval by the Court, the Net Settlement Amount will be calculated by
25 deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an
26 amount not to exceed Three Hundred Eight Thousand Three Hundred Thirty Three Dollars and
27 Thirty Three Cents (\$308,333.33) (i.e., 1/3 of the Gross Settlement Amount) and reimbursement
28 of costs and expenses in an amount not to exceed Fifty Thousand Dollars (\$50,000) to Class

Counsel (collectively referred to as the “Class Counsel Fees and Class Counsel Expenses”); (2) settlement administration costs, which are not to exceed Fifteen Thousand Dollars (\$15,000) to the Settlement Administrator (“Administration Expenses Payment”); (3) Fifty Thousand Dollars (\$50,000) allocated towards the settlement of PAGA (“PAGA Penalties”); and (4) payment in the amount of Ten Thousand Dollars (\$10,000) to Plaintiff (“Class Representative Service Payment”).⁵

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member’s share of the available Net Settlement Amount (“Individual Class Payment”), in accordance with the following formula: $(\text{Class Member's Workweeks} \div \text{Class Workweeks}) \times \text{Net Settlement Amount}$.⁶ Aggrieved Employee’s Individual PAGA Payment, will be calculated by the Settlement Administrator in accordance with the following formula: $(\text{Aggrieved Employee's Workweeks} \div \text{PAGA Workweeks}) \times \text{the PAGA Penalties}$.⁷

Each Participating Class Member’s Individual Class Payment will be allocated as follows: 20% as wages to be reported on an IRS Form W2 and 80% as penalties and interest to be reported on an IRS Form 1099.⁸ Participating Class Members will be issued payment of their Individual Class Payment subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Class Payment.⁹ Defendants will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Class Payments separately and in addition to the Gross Settlement Amount.¹⁰ Each Aggrieved Employee’s Individual PAGA Payment will be allocated entirely as penalties and will be reported on an IRS Form 1099.¹¹

The checks issued to Participating Class Members and Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days from the date of mailing.¹² Checks that

⁵ Settlement Agreement, §§ 3.1 - 3.2.4.2.

⁶ *Id.*, § 3.2.4.

⁷ *Id.*, § 3.2.5.

⁸ *Id.*, § 3.2.4.1.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Id.*, § 3.2.5.1

¹² *Id.*, § 4.4.1.

are not negotiated within the 180-day period will be cancelled and the funds from associated with such cancelled checks will be transmitted by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the corresponding Class Member.¹³

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing indicating that they want to exclude themselves (“Request for Exclusion”).¹⁴ To be timely, the Class Member must mail, fax, or email the Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is Forty Five (45) calendar days from the initial mailing of the Class Notice (“Response Deadline”).¹⁵ A valid Request for Exclusion must include: (1) the Class Member’s name; (2) Class Member’s address; (3) Class Member’s email address or telephone number; and (4) the following statement: “Please exclude me as a Class Member in the *Tuozo v. Real Community Services Inc., et al.* matter, I understand that by excluding myself I will not receive any payment under the Settlement.” or a statement of reasonably similar meaning.¹⁶ Class Members who submit a valid and timely Request for Exclusion will not be bound by release of Released Class Claims.¹⁷ Aggrieved Employees may not request exclusion from the release of Released PAGA Claims.¹⁸

Only Class Members who do not exclude themselves from the Settlement (i.e., Participating Class Members) have standing to object to the Settlement.¹⁹ A valid Objection must be mailed, faxed, or emailed on or before the Response Deadline.²⁰ Alternatively, a Participating Class Member may appear in Court to present an oral objection at the Final Approval Hearing.²¹

Class Members who wish to dispute the number of Workweeks credited to may do so by mailing, faxing, or emailing a written letter to the Settlement Administrator on or before the

¹³ Settlement Agreement, § 4.4.3.

¹⁴ *Id.*, § 7.5.1.

¹⁵ *Id.*, § 1.43

¹⁶ *Id.*, § 7.5.1.

¹⁷ *Id.*, § 7.5.4.

¹⁸ *Id.*, § 7.5.3.

¹⁹ *Id.*, § 7.7.1.

²⁰ *Id.*, § 7.7.2.

²¹ *Ibid.*

Response Deadline (“Workweek Dispute”).²²

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). 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).

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).

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801.

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

²² Settlement Agreement, § 7.6.

1151.

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

The Parties actively litigated the Action since it was commenced on June 28, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.²³

Prior to engaging in each mediation session, Class Counsel conducted significant investigation and informal and/or formal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendants.²⁴ Class Counsel interviewed Plaintiff and investigated other Class Members to gather facts and to identify potential witnesses.²⁵

The Parties engaged in extensive settlement negotiations and participated in two formal, full-day mediation conducted by Steven Serratore, *esq.* and Judge Brian Walsh (Ret.), each well-respected mediators with vast experience in mediating complex labor and employment matters.²⁶ Prior to and during each mediations and settlement discussions, the Parties exchanged class-wide information and engaged in an extensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, the possibility of appeals, and what Defendants alleged was enforceable and valid arbitration agreements, among other things.²⁷ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.²⁸

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²³ GruppChang Decl., ¶¶ 12-14.

²⁴ *Id.*, ¶ 13.

²⁵ *Ibid.*

²⁶ *Id.*, ¶ 12.

²⁷ *Ibid.*

²⁸ *Ibid.*

1 The Settlement takes into account the strengths and weaknesses of each side's position
2 and the uncertainty of how the case might have concluded at certification and trial.²⁹ In addition,
3 Class Counsel have extensive experience in employment class actions, including significant
4 experience in California wage-and-hour litigation.³⁰

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

6 The Settlement, which provides for a Gross Settlement Amount of Nine Hundred
7 Twenty Five Thousand Dollars (\$925,000), represents a fair, adequate, and reasonable
8 resolution of the matter.³¹ The Settlement takes into account the potential risks and rewards
9 inherent in any case and, in particular, in the case at issue.³² Moreover, considering all of the
10 facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate
11 recovery for the Class.³³

12 Assuming that the Class Counsel Fees, Class Counsel Expenses, Class Representative
13 Service Payment, PAGA Penalties, and Administration Expenses Payment are approved by the
14 Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a
15 Net Settlement Amount that is currently estimated to be Four Hundred Ninety One Thousand
16 Six Hundred Sixty Six Dollars and Sixty Seven Cents (\$491,666.67).³⁴ As discussed in Part III,
17 *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class
18 Members, in accordance with the Settlement Agreement. The amount of each Participating
19 Class Member's Individual Class Payment will be calculated based on his or her Workweeks
20 during the Class Period.³⁵ There is no reason to doubt the fairness of the proposed plan of
21 allocation of the settlement funds for purposes of preliminary approval. Even at the final
22 approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant
23 approval], particularly if recommended by experienced and competent class counsel." *In re*
24 *American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d

25 ²⁹ GruppChang Decl., ¶ 12.

26 ³⁰ *Id.*, ¶¶ 3-8.

27 ³¹ *Id.*, ¶¶ 12, 14, 19 & 22.

28 ³² *Id.*, ¶¶ 18-20.

³³ *Id.*, ¶¶ 12, 14, & 22.

³⁴ Settlement Agreement, §§ 1.28 & 3.1 – 3.2.3.

³⁵ *Id.*, § 3.2.4.

1 418, 429-30.

2 In light of the foregoing considerations, Class Counsel believe that the Settlement as a
3 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.³⁶
4 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
5 the recommendations into account, particularly if Class Counsel appear to be competent, and
6 have experience with this type of litigation, and investigation have been completed, as is the
7 case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
8 Settlement.

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

10 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
11 conducted significant informal discovery and exchanged thousands of pages of documents, data,
12 and information prior to mediation.³⁷ The documents and information that Class Counsel
13 obtained from Defendants and through other sources allowed Class Counsel to develop
14 valuation models in order to evaluate the potential value and merit of the claims, and perform a
15 complete evaluation of Defendants' defenses thereto.³⁸ As outlined in the Declaration of
16 Danielle L. GruppChang, Class Counsel investigated the strengths and weaknesses of each claim
17 and performed an extensive analysis of each claim pursuant to *Kullar* prior to entering into the
18 Settlement.³⁹

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

20 For settlement purposes, the requisites for establishing class certification are met, and
21 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁴⁰
22 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
23 one of a common or general interest, of many persons, or when the Parties are numerous, and it
24 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
25 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies

26 ³⁶ GruppChang Decl., ¶¶ 12, 14, & 22.

27 ³⁷ *Id.*, ¶¶ 12-14 & 19.

28 ³⁸ *Id.*, ¶ 19.

³⁹ *Id.*, ¶¶ 12-14 & 17-19.

⁴⁰ Settlement Agreement, § 12.1.

“both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately 111 individuals.⁴¹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding hourly-paid and/or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

⁴¹ GruppChang Decl., ¶ 10.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Complaint. Based on the documents and information obtained through informal discovery and exchange of information in this case, Plaintiff contends that all Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁴² Plaintiff's claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to: properly pay overtime and minimum wages for all hours worked, provide compliant meal and rest periods and associated premium pay, timely pay wages during employment and upon termination, provide compliant wage statements, keep requisite payroll records, and reimburse necessary business-related expenses.⁴³ Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁴⁴ As a result, Plaintiff claim that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.⁴⁵

Plaintiff maintains that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across the putative class members. 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 been investigating and litigating this action for over three years, and was actively preparing the matter for class certification and trial.⁴⁶ 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 engaged in extensive informal and formal discovery. Class Counsel reviewed thousands of pages of

⁴² GruppChang Decl., ¶ 12.

⁴³ *Id.*, ¶ 19.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶¶ 12-14.

documents and data⁴⁷ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to each mediation session.⁴⁸ Counsel for the Parties also undertook extensive settlement discussions, which included participating in two formal, full-day mediations with two different mediators.⁴⁹

Class Counsel is well-experienced in employment law and wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁵⁰

The Settlement provides for Class Counsel to apply to the Court for Class Counsel Fees consisting of attorneys' fees in an amount not to exceed one third (1/3) of the Gross Settlement Amount (i.e., \$308,333.33) and Class Counsel Expenses in an amount not to exceed Fifty Thousand Dollars (\$50,000) for costs and expenses.⁵¹ 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 has 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 their time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Class Counsel Fees and Class Counsel Expenses, and that an award of the Class Counsel Fees and Class Counsel Expenses will be sought, as provided for by the Settlement.⁵²

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. California law provides that attorney fee

⁴⁷ GruppChang Decl., ¶ 13.

⁴⁸ *Ibid.*

⁴⁹ *Id.*, ¶ 12.

⁵⁰ *Id.*, ¶¶ 3-8.

⁵¹ Settlement Agreement, § 3.2.2.

⁵² *Id.*, Exh. A.

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).

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.

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.⁵³

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 Class Counsel Fees and Class Counsel Expenses 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.

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⁵³ GruppChang Decl., ¶ 20.

1 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.**

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

7 The proposed Class Notice⁵⁴ describes the Settlement, the deadlines and procedures to
8 submit an Objection, Request for Exclusion, and/or Workweek Dispute, and the date and time
9 of the Final Approval Hearing.⁵⁵ The proposed Class Notice summarizes the proceedings to
10 date and the terms and conditions of the Settlement.⁵⁶ The proposed Class Notice recognizes
11 that the Court has not yet granted final approval of the settlement and also apprises the Class
12 Members of, *inter alia*, how their gross Individual Class Payment and Individual PAGA
13 Payment are calculated and the number of Workweeks credited to them.⁵⁷

14 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
15 *Newberg*, at § 8.39. Accordingly, the Court should approve the proposed Class Notice.

16 **IX. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR**

17 The Parties have selected Simpluris (“Simpluris”) to administer the Settlement.
18 Simpluris is a recognized national administrator of class action and claims administration.

19 The Settlement Administrator will mail the Class Notice to each Class Member by first
20 class USPS mail.⁵⁸ For any undeliverable Class Notice that is returned to the Settlement
21 Administrator returned on or before the Response Deadline, the Settlement Administrator will
22 obtain an updated address, and re-mail the Class Notice to the Class Member.⁵⁹ The Settlement
23 Administrator will receive and process Requests for Exclusion, Objections, and any Workweek
24 Disputes.⁶⁰

25 ⁵⁴ Settlement Agreement, Exh. A.

26 ⁵⁵ *Ibid.*

27 ⁵⁶ *Ibid.*

28 ⁵⁷ *Ibid.*

⁵⁸ *Id.*, § 7.4.2.

⁵⁹ *Ibid.*

⁶⁰ *Id.*, § 7.8.3.

The Settlement Administrator will calculate the amounts of the gross Individual Class Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of gross Individual Class Payments; mail the Individual Class Payment checks to Participating Class Members and Individual PAGA Payments to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment, Class Counsel Expenses, Class Representative Service Payment, and LWDA's portion of the PAGA Penalties; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁶¹ The Administration Expenses Payment will not exceed Fifteen Thousand Dollars (\$15,000) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁶²

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris 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 the preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26.

Within seven (7) calendar days after the preliminary approval date, Defendants will provide the Settlement Administrator with the Class Data.⁶³ Within fourteen (14) calendar days of receipt of the Class Data, the Settlement Administrator will mail the Class Notice to the Class Members via U.S. Mail.⁶⁴ Class Members and/or Aggrieved Employees will have until the applicable Response Deadline (i.e., 45 days after mailing) to submit a Request for Exclusion, Objection, and/or Workweek Dispute.⁶⁵

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⁶¹ Settlement Agreement, § 7.

⁶² *Id.*, § 3.2.3.

⁶³ *Id.*, § 4.2.

⁶⁴ *Id.*, § 7.4.2.

⁶⁵ *Id.*, § 1.43.

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENT

Plaintiff respectfully request that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Service Payment in the amount of up to Ten Thousand Dollars (\$10,000) to Plaintiff.⁶⁶ 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.

Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations and was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.⁶⁷ Plaintiff provided invaluable information about the Defendants, their relationships to each other, and the actual wage and hour practices the Defendants implemented. Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Service Payment for his services on behalf of the Class and in furtherance of the Action.

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⁶⁶ Settlement Agreement, § 3.2.1.

⁶⁷ GruppChang Decl., ¶ 21; Tuofo Decl., ¶¶ 4-6.

1 **XII. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
3 approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily
4 appoint and designate Brock & Gonzales, LLP as Class Counsel; preliminarily appoint and
5 designate Plaintiff Richard Tuoza as Class Representative; appoint Simpluris as Settlement
6 Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class
7 Counsel Expenses, Class Representative Service Payment, PAGA Penalties, and Administration
8 Expenses Payment; approve the proposed Class Notice; direct the Settlement Administrator to
9 undertake the notice and settlement administration process in conformity with the deadlines and
10 procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to
11 take place in approximately three and one half months after the Preliminary Approval Order is
12 entered.

13 Dated: September 12, 2024

BROCK & GONZALES, LLP

14
15 By:


Danielle L. GruppChang
Attorneys for Plaintiff