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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

MARITZA TORRES, ANNETTE OLVERA NUNEZ, individually, and on behalf of other members of the general public similarly situated; JESSICA SALCEDO, 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;

Plaintiffs,

vs.

CLINICA SIERRA VISTA, a California corporation; and DOES 1 through 100, inclusive,

Defendant.

Case No.: BCV-19-101966

Honorable Bernard C. Barmann, Jr.
Department H
1215 Truxton Ave. Bakersfield, CA 93301

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Helene Mayer); Declarations of Proposed Class Representatives (Maritza Torres, Annette Olvera Nunez, and Jessica Salcedo); and [Proposed] Order filed concurrently herewith]

Date:	November 7, 2024
Time:	8:30 a.m.
Department:	H

Complaint Filed:	July 16, 2019
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on November 7, 2024 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Bernard C. Barmann, Jr., in Department H of the Superior Court of California for the County of Kern, located at 1215 Truxton Avenue, Bakersfield, California 93301, Plaintiffs Maritza Torres, Annette Olvera Nunez, and Jessica Salcedo ("Plaintiffs" or "Class Representatives") 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 Joint Stipulation for Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Helene Mayer, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Maritza Torres, Annette Olvera Nunez, and Jessica Salcedo as Class Representatives;
- Preliminarily appointing Arby Aiwazian, and Joanna Ghosh, and Helene Mayer of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement;
- Directing the mailing of the Class Notice to the Class Members and posting of the Class Notice on the internet;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Helene Mayer) and Proposed Class Representatives (Maritza Torres, Annette Olvera Nunez, and Jessica Salcedo) 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: October 9, 2024 **LAWYERS *for* JUSTICE, PC**

By: Helene Mayer
Helene Mayer
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Maritza Torres, Annette Olvera Nunez, and Jessica Salcedo ("Plaintiffs" or "Class Representatives") seek preliminary approval of the Joint Stipulation for Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Clinica Sierra Vista ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the "Parties") have agreed to settle this lawsuit for a Total Settlement Amount of Four Million Dollars ($4,000,000.00).[1] The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Enhancement Payments of Seven Thousand Five Hundred Dollars ($7,500.00) to each Plaintiff ($22,500.000 total)[3]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-eight percent (38%) of the Total Settlement Amount, or $1,520,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars ($30,000.00)[4]; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Twenty-One Thousand Dollars ($21,000.00);[5] and (5) the amount of Four Hundred Twenty-Five Thousand Dollars ($425,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $318,750.00) will be distributed to the Labor and Workforce Development

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Helene Mayer ("Mayer Decl."), ¶ 9.ll. Defendant represents that, during the period from July 16, 2015 through August 21, 2023, there are 394,802 Workweeks for the Class Members. If it is determined that the total number of Workweeks exceed 394,802 by more than ten percent (10%) (i.e. exceeds 434,282) on the date the Court grants Preliminary Approval of the Settlement or June 27, 2024, whichever is earlier, then, at Defendant's option, either: (a) the Total Settlement Amount will be increased on a *pro rata* basis equal to the percentage increase in the number of Workweeks above 434,282 Workweeks (e.g., if the threshold of 434,282 Workweeks is exceeded by 1%, the Total Settlement Amount will increase by 1%), or, (b) the Class Period will end as of the date the ten percent (10%) threshold was reached (i.e., the date on which the Workweeks total reached 434,282) and such date shall be referred to as the "Alternate Class Period End Date." In the event that Defendant chooses to end the Class Period on the Alternate Class Period End Date, then, the PAGA Period will also end on the Alternate Class Period End Date (and, as to the PAGA Period, such date shall be referred to as the "Alternate PAGA Period End Date"). *Id.*, ¶ 39.

[2] *Id.*, ¶ 9.r.

[3] *Id.*, ¶¶ 9.n & 14.

[4] *Id.*, ¶¶ 9.a & 13.

[5] *Id.*, ¶¶ 9.jj & 15.

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Agency ("LWDA") and 25% (i.e., $106,250.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant in California who worked at any time during the PAGA Period ("PAGA Employees").[6]

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

> All current and former hourly-paid or non-exempt employees of Defendant in California who worked at any time during the Class Period ("Class" or "Class Members").[7]

According to information provided by Defendant, the Class is estimated to consist of approximately three thousand one hundred seventy-two (3,172) individuals.[8]

Class Members who do not submit a timely and valid Request for Exclusion ("Settlement Class Members") will receive a portion of the Net Settlement Amount based upon the number of weeks each Class Member worked for Defendant as an hourly paid or non-exempt employee in California during the Class Period, which will be calculated by the Settlement Administrator by doubling the number of bi-weekly pay periods a Class Member earned regular wages ("Workweeks").[9]

All PAGA Employees will receive a *pro rata* share of the 25% portion of the PAGA Amount ("Individual PAGA Payment") based each PAGA Employees' number of Workweeks during the PAGA Period.[10]

The Settlement resolves the Released Class Claims of Plaintiffs and Settlement Class Members and the Released PAGA Claims of Plaintiffs, PAGA Employees, and the State of California against the Released Parties.[11]

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[6] Settlement Agreement, ¶¶ 9.w & 16. "PAGA Period" means the time period from July 16, 2020 through the earlier of the date of Preliminary Approval of the Settlement or June 27, 2024, or, if applicable, the Alternate PAGA Period End Date, pursuant to Paragraph 39 of the Settlement Agreement. *Id.*, ¶ 9.z.

[7] *Id.*, ¶ 9.d. "Class Period" means the time period from July 16, 2015 through the earlier of the date of Preliminary Approval of the Settlement or June 27, 2024, or, if applicable, the Alternate Class Period End Date, pursuant to Paragraph 39 of the Settlement Agreement. *Id.*, ¶ 9.f.

[8] Mayer Decl., ¶ 8.

[9] Settlement Agreement, ¶¶ 9.kk & 9.mm.

[10] *Id.*, ¶ 9.q & 18.

[11] *Id.*, ¶ 33 & 43. See *id.* at ¶ 9.dd, for the full scope of the "Released Class Claims," *id.* at ¶ 9.ee, for the full scope of the "Released PAGA Claims," and *id.* at ¶ 9.ff for the definition of the "Released Parties." s

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In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiffs also move for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Clinica Sierra Vista is a healthcare organization providing medical, dental, and behavioral health services in Kern and Fresno counties. Plaintiffs are former employees of Defendant.

On July 16, 2019, Plaintiff Torres filed her Class Action Complaint for Damages entitled *Torres v. Clinica Sierra Vista* in the Superior Court of California for the County of Kern, Case No. BCV-19-101966 ("Action"). On January 21, 2020, Plaintiff Torres filed her First Amended Complaint to add additional factual details.

On July 16, 2021, Plaintiff Salcedo provided notice by electronic upload to the LWDA and written notice by certified mail to Defendant of her intent to pursue civil penalties under PAGA for Defendant's alleged violations of the California Labor Code ("PAGA Notice"), thereby initiating LWDA Case No. LWDA-CM-838328-21.

On August 4, 2021, Plaintiff Salcedo filed her Class Action Complaint for Damages entitled *Salcedo v. Clinica Sierra Vista* in the Superior Court of California for the County of Kern, Case No. BCV-21-101800. ("*Salcedo* Class Action"). On September 21, 2021, Plaintiff Salcedo filed her Complaint for Enforcement Under The Private Attorneys General Act California Labor Code § 2698, Et Seq. entitled *Salcedo v. Clinica Sierra Vista* in the Superior Court of California for the County of Kern, Case No. BCV-21-102231. ("*Salcedo* PAGA Action").

By Stipulation of the Parties, on February 10, 2022, Plaintiff Torres filed her Second Amended Complaint ("Operative Complaint") to consolidate the *Salcedo* Class Action, *Salcedo* PAGA Action, and Action (collectively referred to as the "Actions"). The Operative Complaint adds Plaintiff Nunez as a class representative, Plaintiff Salcedo as a class and PAGA representative, and adds a claim for violations of California Labor Code § 2698, et seq.

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(California Labor Code Private Attorneys General Act of 2004).

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

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

On August 27, 2019, Plaintiff Torres propounded multiple sets of discovery including Requests for Production of Documents, (Sets One & Two); Special Interrogatories, (Sets One, Two, & Three); and Form Interrogatories, (Set One), on Defendant and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on September 30, 2019, Defendant responded to Plaintiffs' discovery requests. On June 24, 2020, Defendant provided supplemental responses.

On March 2, 2020, Defendant propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One); Form Interrogatories – Employment Law, (Set One); and Form Interrogatories, (Set One), on Plaintiff Torres. Thereafter, on May 4, 2020, Plaintiff Torres responded to Defendant's discovery requests.

The Parties have actively litigated the Action since it was commenced on July 19, 2019. On August 21, 2023, the Parties participated in a formal, full-day mediation conducted by

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Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. Unfortunately, the mediation session was not successful. However, the Parties continued to litigate the matter and engaged in negotiations with the mediator and directly between the Parties. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety on or about February 2024 which ultimately resulted in the long form settlement agreement fully executed on or about July 12, 2024.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Member) the Released PAGA Claims of Plaintiffs, the State of California, and PAGA Employees with respect to the Released Parties.[12] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed One Million Five Hundred Twenty Thousand Dollars ($1,520,000.00) (i.e., up to 38% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Thirty Thousand Dollars ($30,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) administration costs, which are approximately Twenty-One Thousand Dollars ($21,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) the PAGA Amount ($425,000.00), of which 75% (i.e., $318,750) will be distributed to the LWDA (the "LWDA Payment") and the remaining 25% (i.e., $106,250) shall be a distributed to PAGA Employees (the "PAGA Employee Amount"); and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars ($7,500.00) to each Plaintiff ($22,500.000 total) ("Enhancement Payments").[13] The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.[14]

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[12] Settlement Agreement, ¶¶ 33 & 34.
[13] *Id.*, ¶¶ 9.u, 13, 14, 15, & 16.
[14] *Id.*, ¶ 9.ii.

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

a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the estimated Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks during the Class Period by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share.[15]

b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members during the Class Period to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks during the Class Period by the Final Workweek Value to yield his or her Individual Settlement Share.[16]

The Parties have agreed that the Settlement Administrator will determine each PAGA Employee's *pro rata* share of the PAGA Employee Amount ("Individual PAGA Payment"), in accordance with the Settlement Agreement and as follows:

a. The Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the total number of Workweeks of all PAGA Employees during the PAGA Period to yield the "PAGA Workweek Value," and multiply each PAGA Employee's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.[17]

Each Individual Settlement Share will be allocated as follows: ten percent (10%) as wages, which will be reported on an IRS Form W-2; and the remaining ninety percent (90%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.[18] Any employee contributions and deductions required by any and all applicable federal, state, and local tax regulations or withholding orders shall be paid from/deducted from the Settlement Class Member's Individual Settlement Share.[19] The Settlement Administrator shall calculate the employer's share of payroll taxes and withholdings on those portions of the Individual Settlement Shares to Class Members that are allocated to wages ("Employer Taxes") and Defendant shall pay those amounts in addition to the Total Settlement Amount.[20] Each

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[15] Settlement Agreement, ¶ 17.a.
[16] *Id.*, ¶ 17.b.
[17] *Id.*, ¶ 18.
[18] *Id.*, ¶ 28.
[19] *Id.*, ¶ 30.
[20] *Id.*, ¶ 9.m.

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Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.[21]

Each Individual Settlement Payment check and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date of original issuance, and thereafter, shall be canceled and funds associated with the cancelled checks will be transmitted to Court Appointed Special Advocates ("CASA") of Kern County.[22]

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit a written request ("Request for Exclusion") to the Settlement Administrator by mail, postmarked on or before the date that is forty-five (45) calendar days after the Settlement Administrator mails the Class Notice to Class Members and PAGA Members ("Response Deadline").[23] A Request for Exclusion must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, signature, address, telephone number, and last four (4) digits of his or her Social Security Number; (c) contain a clear written statement indicating that the Class Member seeks exclusion from the Class Settlement; and (d) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[24] Any Class Member who opts out of the Class Settlement will not be bound by the terms of the Class Settlement, will not receive an Individual Settlement Payment, and will not have the right to object to the Class Settlement.[25] However, PAGA Employees will still receive an Individual PAGA Payment regardless of whether they submit a valid and timely Request for Exclusion and will be bound to the PAGA Settlement.[26]

To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) may submit a timely and complete written objection ("Objection") to the Class Settlement to the Settlement Administrator, on or before the Response Deadline or appear at the Final Approval Hearing with or without submitting a written objection

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[21] Settlement Agreement, ¶ 28.
[22] *Id.*, ¶ 23.c.
[23] *Id.*, ¶¶ 9.gg & 9.hh.
[24] *Id.*, ¶ 9.gg.
[25] *Id.*, ¶ 24.
[26] Ibid.

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to the Class Settlement.[27] The Objection to the Class Settlement must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, signature, address, telephone number, and last four (4) digits of his or her Social Security Number; (c) contain a written statement of all grounds for the objection accompanied by any legal and factual support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[28] Class Members who have opted-out have no right to object to the Class Settlement.[29]

A Class Member who wishes to challenge the number of Workweeks which have been credited to him or her, as reflected in his or her Class Notice, may do so by submitting a written letter to the Settlement Administrator ("Workweeks Dispute").[30] The Workweeks Dispute must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, signature, address, telephone number, and last four (4) digits of his or her Social Security Number; (c) clearly state that the Class Member disputes of the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (d) attach any documentation that he or she has to support the dispute; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.[31]

IV. <u>LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS</u>

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,*

[27] Settlement Agreement, ¶ 25.
[28] *Id.*, ¶ 9.vv.
[29] *Id.*, ¶ 24.
[30] *Id.*, ¶ 22.c.
[31] *Id.*, ¶ 9.nn.

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Inc. (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

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

The Parties actively litigated the Action since it was commenced on July 16, 2019. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.[32]

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the

[32] Mayer Decl., ¶¶ 10-11.

exchange, review, and analysis of a large volume of documents and data produced by Defendant.[33] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs' employment records, a detailed sampling of Class Members' time and pay data, Defendant's Employee Handbook, job descriptions, new hire and training documents and checklists, time sheets, pay stubs, earning statements, company policy acknowledgements, Defendant's operations and employment practices, and policies, among other information and documents.[34] Class Counsel had the opportunity to interview Plaintiffs and other Class Members to gather facts and to identify potential witnesses.[35] 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 designees regarding organizational structure and job duties, and worked with Plaintiff Torres to provide responses to multiple sets of discovery requests that were propounded by Defendant.[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 Plaintiffs' 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 Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[39] In the course of litigation and in connection with 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

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[33] Mayer Decl., ¶ 11.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] *Id.*, ¶ 10.

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law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[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 Plaintiffs 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 Plaintiffs' 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 Plaintiffs' 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, Plaintiffs' 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 have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[47]

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[40] Mayer Decl., ¶ 10.
[41] Ibid.
[42] *Id*., ¶¶ 10, 15-17.
[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] *Id*., ¶¶ 10-12 & 15-17.
[47] *Id*., ¶¶ 2-6.

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

The Settlement, which provides for a Total Settlement Amount of Four Million Dollars ($4,000,000.00), represents a fair, adequate, and reasonable resolution of the matter.[48] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.[49] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[50] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[51]

Assuming that the Attorneys' Fees and Costs, Enhancement Payments, PAGA Amount, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be One Million Nine Hundred Eighty-One Thousand Five Hundred Dollars ($1,981,500.00).[52] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during the Class Period and the amount of each PAGA Employee's Individual PAGA Payment will be calculated based on his or her Workweeks during the PAGA Period.[53] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

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[48] Mayer Decl., ¶¶ 10, 12, 13 & 20.
[49] *Id.*, ¶¶ 10-12.
[50] *Id.*, ¶¶ 15-17.
[51] *Id.*, ¶¶ 10, 12, & 20.
[52] *Id.*, ¶ 13.
[53] Settlement Agreement, ¶¶ 17 & 18.

In light of the foregoing considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.[54] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have 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. <u>The Settlement Is of Significant Value.</u>

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 Helene Mayer, Class Counsel performed an extensive analysis of each claim pursuant to *Kullar* prior to entering into the Settlement.[57]

VI. <u>CERTIFICATION OF THE CLASS IS APPROPRIATE</u>

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.*

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[54] Mayer Decl., ¶¶ 10, 12, & 20.
[55] *Id.*, ¶¶ 10-12 & 17.
[56] *Id.*, ¶ 17.
[57] *Id.*, ¶¶ 10-12 & 15-17.
[58] Settlement Agreement, ¶ 10.

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

A. <u>The Class Is Ascertainable and Sufficiently Numerous.</u>

"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 plaintiffs 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 three thousand one hundred and seventy-two (3,172) individuals.[59] 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 Defendant to the Settlement Administrator through a review of Defendant's employment records regarding non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. <u>The Class Members Share a Well-Defined Community of Interest.</u>

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

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[59] Mayer Decl., ¶ 8.

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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 Defendant'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).

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiffs contends that 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.[60] Plaintiffs' claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[61]

Plaintiffs also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.[62] As a result, Plaintiffs claims that all of the Class Members were uniformly not paid

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[60] Mayer Decl., ¶ 15.
[61] Ibid.
[62] Ibid.

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all compensation due to them from Defendant during the time period at issue.[63]

Plaintiffs 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 LITIGATION EXPENSES

Class Counsel have litigated the matter for approximately five (5) 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. Class Counsel reviewed a large volume of documents and data[65] and also interviewed and obtained information from Defendant, Plaintiffs and other sources, 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 are 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 Total Settlement Amount of Four Million Dollars ($4,000,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Total Settlement Amount (i.e., $1,520,000.00) and an amount not to exceed Thirty Thousand Dollars ($30,000.00) for costs and expenses.[69] The attorneys' fees provided for by the

[63] Mayer Decl., ¶ 15.
[64] *Id.*, ¶¶ 10-12.
[65] *Id.*, ¶ 11.
[66] Ibid.
[67] *Id.*, ¶ 10.
[68] *Id.*, ¶¶ 2-6.
[69] Settlement Agreement, ¶¶ 9.a & 13.

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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 have shown, (4) the results that Class Counsel have achieved throughout the litigation, (5) the value of the Settlement that Class Counsel have 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 Attorneys' Fees and Costs and that an award of the Class Counsel Award 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 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

[70] Settlement Agreement, Exh. A.

and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id.* (internal quotation marks omitted).

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

Class Counsel have 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 Plaintiffs' motion for final approval of the Settlement and application for the Attorneys' Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

[71] Mayer Decl., ¶ 18.

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The proposed Class Notice[72] describes the Settlement, the deadlines and procedures to mail an Objection to the Class Settlement, mail a Request for Exclusion from the Class Settlement, and/or Workweeks Dispute, and the date and time set for the Final Approval Hearing.[73]

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

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

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

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice in English and Spanish to each Class Member by First-Class U.S. mail.[77] Within fourteen (14) calendar days after receiving

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[72] Settlement Agreement, Exh. A.
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] *Id.*, ¶ 22.a.

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the Class List from Defendant, the Settlement Administrator will perform a search based on the United States Postal Service's National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes.[78] The Settlement Administrator will post a copy of the Class Notice in English and Spanish and Preliminary Approval Order on the Settlement Administrator's website, at least through the date of the Final Approval Hearing.[79] With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days to an alternate address if one is located.[80] If unable to identify any alternate addresses by way of sip trace, the Settlement Administrator will verify with Defendant (through counsel) that it does not have any additional information to locate or send the Class Notice.[81] In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline to submit a Request for Exclusion, Objection, and/or Workweeks Dispute for that Class Member shall be extended by fifteen (15) calendar days from the initial Response Deadline.[82] The Settlement Administrator will receive and process Requests for Exclusion, Objections, and/or Workweeks Disputes.[83]

The Settlement Administrator's duties will include, inter alia, translating the Class Notice to Spanish, printing, distributing, and tracking Class Notices and other documents for the Settlement, calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties.[84] The Settlement Administration Costs

[78] Settlement Agreement, ¶ 22.a.
[79] Ibid.
[80] *Id.*, ¶ 22.b.
[81] Ibid.
[82] *Id.*, ¶ 9.hh.
[83] *Id.*, ¶ 15.
[84] *Id.*, ¶ 15.

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are currently estimated to be Twenty-One Thousand Dollars ($21,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.[85]

Accordingly, Plaintiffs 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, plaintiff seeks 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.[86]

Within twenty-one (21) calendar days of the entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator with the following information for each Class Member: last-known full name, mailing address, telephone number, Social Security Number, dates paid as an hourly-paid or non-exempt employee of Defendant in California during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks (collectively, "Class List").[87]

Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the United States Postal Service's National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish to all Class Members via First Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.[88] With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way

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[85] Settlement Agreement, ¶ 15.
[86] *Id.*, ¶ 22.
[87] *Id.*, ¶¶ 9.c & 21.
[88] *Id.*, ¶ 22.a.

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of skip-trace and re-mail the Class Notice within five (5) calendar days to an alternate address if one is located.[89] If unable to identify any alternate addresses by way of sip trace, the Settlement Administrator will verify with Defendant (through counsel) that it does not have any additional information to locate or send the Class Notice.[90]

Within thirty (30) calendar days after the Effective Date, Defendant will make a one-time deposit of the Total Settlement Amount into the settlement account to be established by the Settlement Administrator.[91] Within seven (7) calendar days of the funding of the Total Settlement Amount, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) Individual PAGA Payments to PAGA Employees; (c) LWDA Payment to the LWDA; (d) Enhancement Payments to Plaintiffs; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to itself (the Settlement Administrator).[92]

Any check that is not negotiated within one hundred eighty (180) calendar days from the date of mailing to a Class Member, or that is undeliverable following unsuccessful efforts, shall be cancelled and funds associated with the cancelled checks will be transmitted to Court Appointed Special Advocates ("CASA") of Kern County.[93]

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR SERVICE PAYMENT

Plaintiffs Maritza Torres, Annette Olvera Nunez, and Jessica Salcedo respectfully request that the Court appoint them as the Class Representative and preliminarily approve the Enhancement Payments in an amount up Seven Thousand Five Hundred Dollars ($7,500) to each Plaintiff ($22,500 total).[94] 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).

[89] Settlement Agreement, ¶ 22.a.
[90] Ibid.
[91] *Id.*, ¶ 12.
[92] Ibid.
[93] *Id.*, ¶ 23.c.
[94] *Id.*, ¶ 14.

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The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Enhancement Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[95] For example, Plaintiffs Torres expended effort to review and provide responses to multiple sets of discovery requests that were propounded by Defendant.[96] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[97] Accordingly, it is appropriate and just for Plaintiffs to receive Enhancement Payments for their services on behalf of the Class and the State of California, in addition to their Individual Settlement Payments and Individual PAGA Payments (if applicable).

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiffs Maritza Torres, Annette Olvera Nunez, and Jessica Salcedo as Class Representatives; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payments, PAGA Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement

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[95] Mayer Decl., ¶ 19; Declaration of Maritza Torres in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Torres Decl."), ¶¶ 3-4; Declaration of Annette Olvera Nunez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Nunez Decl.") ¶¶ 3-4; Declaration of Jessica Salcedo in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Salcedo Decl.") ¶¶ 3-4.

[96] Mayer Decl., ¶ 19; Torres Decl., ¶ 4.

[97] Mayer Decl., ¶ 19; Torres Decl., ¶¶ 3-5; Nunez Decl., ¶¶ 3-5; Salcedo Decl., ¶¶ 3-5.

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Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately five (5) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: October 9, 2024

LAWYERS *for* JUSTICE, PC

By: Helene Mayer

Helene Mayer
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