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

YASMINE RAMIREZ BARAHONA,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiff,

vs.

CARL’S JR. 800 INC., a California
corporation; BJ MART, LLC, an unknown
business entity; BR MART, INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Lead Case No.: 21STCV20100
Related to Case No.: 21STCV33550

Honorable Elihu M. Berle
Department SSC6

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Yasmin Hosseini); Declaration of
Proposed Class Representative (Yasmine
Ramirez Barahona); and [Proposed]
Order filed concurrently herewith]

Date: September 26, 2023
Time: 10:00 a.m.
Department: SSC6

Complaint Filed: May 27, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on September 26, 2023 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Elihu M. Berle in Department SSC6 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Stipulation of Class Action and PAGA Settlement (“Settlement” or “Agreement,”) attached as “**EXHIBIT 1**” to the Declaration of Yasmin Hosseini, 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 Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Settlement Class for settlement purposes;
- Preliminarily appointing Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez as Class Representative;
- Preliminarily appointing Arby Aiwarzian, Joanna Ghosh, and Yasmin Hosseini 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 Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc., as the Settlement Administrator; and

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- 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 Award for Plaintiff, and Settlement Administration Costs to Settlement Administrator.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of the settlement of a putative class action, allows the Court to preliminarily certify a class for settlement purposes, and permits 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 (Yasmin Hosseini) and Proposed Class Representative (Yasmine Ramirez Barahona) 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: August 10, 2023

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiff

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TABLE OF CONTENTS

I. SUMMARY OF MOTION.....1

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....2

III. SUMMARY OF THE SETTLEMENT TERMS4

**IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENTS.....7**

**V. THE COURT SHOULD PRELIMINARILY APPROVE THE
SETTLEMENT8**

**A. The Settlement Resulted from Arm’s-Length Negotiations Based
Upon Extensive Investigation and Discovery.9**

B. The Settlement Is Fair, Reasonable, and Adequate.....11

C. The Settlement Is of Significant Value.....13

VI. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE..13

A. The Class Is Ascertainable and Sufficiently Numerous.14

B. The Class Members Share a Well-Defined Community of Interest....14

**VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR
ATTORNEYS’ FEES AND COSTS16**

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE18

**IX. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT
ADMINISTRATOR.....19**

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS20

**XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION
FOR ENHANCEMENT AWARD22**

XII. CONCLUSION23

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	9
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	14
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	18
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 .	14
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	18, 19
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	18
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	8
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7, 9
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	18
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	8, 9
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	14
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	12
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	17
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	13
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	17
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	17
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	14
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	18
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	18
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	8
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	14
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	13, 14, 15

1	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	7
2	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	22
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	7, 9
4	Statutes	
5	Cal. Code Civ. Proc. § 1781.....	18
6	Cal. Code Civ. Proc. § 1781(f).....	7
7	Other Authorities	
8	Conte & Newberg, <i>Newberg on Class Actions</i> § 11.25 (4th Ed.)	8
9	Conte & Newberg, <i>Newberg on Class Actions</i> § 11.26 (4th Ed.)	20
10	Conte & Newberg, <i>Newberg on Class Actions</i> § 11.47 (4th Ed.)	12
11	Conte & Newberg, <i>Newberg on Class Actions</i> § 14.03 (4th Ed.)	17
12	Conte & Newberg, <i>Newberg on Class Actions</i> § 8.21 (4th Ed.)	19
13	Conte & Newberg, <i>Newberg on Class Actions</i> § 8.29 (4th Ed.)	19
14	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	19
15	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	19
16	Rules	
17	Fed. R. Civ. P. 23(c)(2)	19
18	Fed. R. Civ. P. 23(e).....	19
19		
20		
21		
22		
23		
24		
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Stipulation of Class Action and PAGA Settlement (“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 Carl’s Jr. 800 Inc., Carl’s Jr. 7140 Inc.¹, BJ Mart, LLC, BR mart, Inc., Jasper Rodd, and Behnam Rodd (together, “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 Total Settlement Amount of Four Hundred Thirty-Two Thousand Five Hundred Dollars (\$432,500.00).² The Total Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount³; (2) the Enhancement Award of Nine Thousand Dollars (\$9,000.00) to Plaintiff⁴; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount, or \$151,375.00, and reimbursement of litigation costs and expenses not to exceed Thirty-Three Thousand Dollars (\$33,000.00)⁵; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Ten Thousand Dollars (\$10,000.00);⁶ and (5) the amount of Seventy-Five Thousand Dollars (\$75,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$56,250.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$18,750.00) will be distributed to Aggrieved Employees on a *pro rata* basis based on Aggrieved Employees’ Workweeks during the PAGA Period.⁷

¹ Defendants represent that BJ Mart, LLC ceased to exist at some point during the Class Period and was replaced with Carl’s Jr. 7140, Inc. for the South Bay location.

² Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), ¶ 8.mm.

³ *Id.*, ¶ 8.t.

⁴ *Id.*, ¶ 13.

⁵ *Id.*, ¶ 12.

⁶ *Id.*, ¶ 15.

⁷ *Id.*, ¶ 16. “PAGA Period,” means the period from January 11, 2020 through the date of Preliminary Approval. *See id.*, ¶ 8.y.

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

All current and former hourly-paid or non-exempt employees of Defendants in California employed during the Class Period (“Settlement Class” or “Class Members”).⁸

Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Class Member and/or Aggrieved Employee worked for Defendants as an hourly-paid or non-exempt employee in California during the Class Period (“Workweeks”).⁹ Aggrieved Employees will receive a share of the 25% portion of the PAGA Penalty Amount (“Individual PAGA Payment”) on a *pro rata* basis, based on the number of Workweeks during the PAGA Period.¹⁰

The Settlement resolves the Released Class Claims of Plaintiff and Settlement Class Members, and the Released PAGA Claims of Plaintiff, Aggrieved Employees, and the State of California, against the Released Parties.¹¹

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are in the fast-food service industry and operate Carl’s Jr. franchised locations. Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez is a former employee of Defendants.

On May 27, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“*Barahona* Class Action”).

On July 7, 2021, Plaintiff submitted notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendant of her intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq.

⁸ Settlement Agreement, ¶ 8.e. “Class Period” is defined as the period from May 27, 2017 through the date of Preliminary Approval. *See id.*, ¶ 8.g.

⁹ Settlement Agreement, ¶¶ 8.ll, 8.t & 8.nn.

¹⁰ *Id.*, ¶ 8.r.

¹¹ *See id.* at ¶ 8.ee, for the full scope of the “Released Class Claims,” *id.* at ¶ 8.ff, for the full scope of the “Released PAGA Claims,” and *id.* at ¶ 8.gg for the definition of the “Released Parties.”

1 On September 10, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
2 Attorneys General Act in the Los Angeles County Superior Court (“Ramirez PAGA Action”).

3 On January 5, 2022, Defendants filed a Notice of Related Case and on January 6, 2022,
4 the *Barahona* Class Action and the *Ramirez* PAGA Action were deemed related in Los Angeles
5 County Superior Court with the *Barahona* Class Action being the lead case (together, the
6 *Barahona* Class Action and *Ramirez* PAGA Action are referred to as “Actions”).

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

18 Defendants have denied, and continues to deny, any liability and wrongdoing of any kind
19 associated with any of the allegations in the Actions, and further denies that the Actions are
20 appropriate for class treatment or representative adjudication for any purpose other than for
21 settlement purposes only.

22 The Parties have actively litigated the Action since the *Barahona* Class Action was
23 commenced on May 27, 2021. On June 22, 2022, the Parties participated in a formal, full-day
24 mediation conducted by Donna D. Melby, Esq., a well-regarded mediator experienced in
25 mediating complex labor and employment matters. With the aid of the mediator’s evaluation,
26 the Parties ultimately reached the Settlement described herein to resolve the Actions in their
27 entirety.

28 ///

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

2 Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to
3 resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a
4 timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class
5 Member) and the Released PAGA Claims of Plaintiff, Aggrieved Employees, and the State of
6 California, with respect to the Released Parties.¹² Subject to approval by the Court, the Net
7 Settlement Amount will be calculated by deducting the following amounts from the Total
8 Settlement Amount: (1) attorneys' fees in an amount not to exceed One Hundred Fifty-One
9 Thousand Three Hundred Seventy-Five Dollars (\$151,375.00) (i.e., up to 35% of the Total
10 Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed
11 Thirty-Three Thousand Dollars (\$33,000.00) to Class Counsel (collectively referred to as the
12 "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated
13 not to exceed Ten Thousand Dollars (\$10,000.00) to the Settlement Administrator ("Settlement
14 Administration Costs"); (3) payment PAGA Penalty Amount (\$75,000.00), of which 75% will
15 be distributed to the LWDA (i.e., \$56,250.00) ("LWDA Payment") and the remaining 25% (i.e.,
16 \$18,750.00) will be distributed to Aggrieved Employees; and (4) payment in the amount of up
17 to Nine Thousand Dollars (\$9,000.00) to Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine
18 Ramirez ("Enhancement Award").¹³ The Parties have agreed to retain Simpluris, Inc.,
19 ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration
20 process.

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

- 24 a. After Preliminary Approval of the Settlement, the Settlement Administrator will
25 divide the Net Settlement Amount by the Workweeks of all Class Members to yield
26 the "Estimated Workweek Value," and multiply each Class Member's individual
27 Workweeks by the Estimated Workweek Value to yield his or her estimated

28 ¹² Settlement Agreement, ¶¶ 33 & 34.

¹³ *Id.*, ¶¶ 12, 13, 15 & 16.

Individual Settlement Share that he or she may be eligible to receive under the Settlement.¹⁴

- 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 to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁵

The Parties have agreed that the Individual PAGA Payments will be calculated and apportioned from the 25% of the PAGA Penalty Amount payable to Aggrieved Employees, based on the Aggrieved Employees’ Workweeks during the PAGA Period as follows: the Settlement Administrator will divide the 25% of the PAGA Penalty Amount by the Workweeks of all Aggrieved Employees during the PAGA Period to yield the “PAGA Workweek Value,” and multiply each Aggrieved Employee’s individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.¹⁶

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: fifteen percent (15%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty-five percent (85%) as penalties and interest, which will be reported on an IRS Form 1099.¹⁷ One hundred percent (100%) of each Individual PAGA Payment shall represent civil penalties.¹⁸ The Settlement Administrator will withhold the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments.¹⁹ The employer’s share of taxes and contributions on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total Settlement Amount.²⁰

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.²¹ All funds associated with such cancelled checks will

¹⁴ Settlement Agreement, ¶ 16.a.i.

¹⁵ *Id.*, ¶ 16.a.ii.

¹⁶ *Id.*, ¶ 16.b.

¹⁷ *Id.*, ¶ 27.

¹⁸ *Ibid.*

¹⁹ *Id.*, ¶ 27.

²⁰ *Ibid.*

²¹ *Id.*, ¶ 21.

be transmitted to the *cy pres*, Bet Tzedek, in accordance with California Code of Civil Procedure section 384.²²

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit a timely, written letter to be excluded from the Class Settlement (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked no later than sixty (60) days after from the initial mailing of the Class Notice (“Response Deadline”).²³ The Request for Exclusion must: (a) contain the case name and number of the *Barahona* Class Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion; (d) clearly state that the Class Member does not wish to be included in the Class Settlement; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁴ A Class Member who timely submits a valid Request for Exclusion will not participate in, or be bound by, the Class Settlement and will not be issued any payment pursuant to the Class Settlement, and will not have any right to object, appeal, or comment thereon.²⁵ Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.²⁶

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) may object to the Class Settlement by submitting a written objection to the Class Settlement (“Notice of Objection”) to the Settlement Administrator, by mail, on or before the Response Deadline or directly presenting his or her objection orally to the Court at the Final Approval Hearing with or without submitting a written objection to the Class Settlement.²⁷ The Notice of Objection must: (a) be signed by the Class Member; (b) contain the case name and number of the *Barahona* Class Action; (c) contain the Class member’s full name, telephone number, mailing address, and last four digits of their Social Security Number; (d)

²² *Ibid.*

²³ *Id.*, ¶¶ 8.hh. & 8.ii.

²⁴ *Id.*, ¶ 8.hh.

²⁵ *Id.*, ¶ 23.

²⁶ *Ibid.*

²⁷ Settlement Agreement, ¶¶ 8.w. & 24.

clearly state the factual and legal basis for objecting to the Class Settlement; (e) indicate whether the Class Member is represented by counsel and identify said counsel; and (f) indicate whether the Class Member intends to appear at the Final Approval Hearing and seeks to be heard at the Final Approval Hearing.²⁸

Class Members and Aggrieved Employees will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notices.²⁹ In order to dispute Workweeks, Class Members and/or Aggrieved Employees may submit a written letter to the Settlement Administrator that: (a) contains the case name and number of the *Barahona* Class Action; (b) is signed by the Class Member and/or Aggrieved Employees; (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member and/or Aggrieved Employee; (d) clearly states that the Class Member and/or Aggrieved Employee disputes 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; (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct; and (f) is returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³⁰

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

²⁸ *Ibid.*

²⁹ *Id.*, ¶ 20.

³⁰ *Ibid.*

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.

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 the *Barahona* Class Action was commenced on May 27, 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.³¹

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendants.³² The volume of data and documents that Class Counsel reviewed and analyzed

³¹ Hosseini Decl., ¶¶ 10-12.

³² *Id.*, ¶ 11.

1 included and was not limited to: employment records of Plaintiff, earning statements, payroll
2 reports, company policy acknowledgements (Statement of Understanding), internal memoranda,
3 operations and employment practices, forms (including but not limited to Employee Declaration
4 of Paid Wages and Well Being), procedures, and policies (including but not limited to Cashier
5 Policy and Procedures), among other information and documents.³³ Class Counsel interviewed
6 Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁴ Counsel
7 for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to
8 the pleadings, discovery, and the production of documents and data prior to the mediation.³⁵
9 Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court
10 proceedings, settlement negotiations, and the mediation, among other tasks.³⁶

11 The Parties engaged in extensive settlement negotiations and participated in a formal,
12 full-day mediation conducted by Donna D. Melby, Esq., a well-respected mediator experienced
13 in mediating complex labor and employment matters.³⁷ In the course of litigation and in
14 connection with mediation and settlement discussions, the Parties exchanged class information
15 and engaged in an intensive discussion regarding their evaluations of the case and various
16 aspects of the case, including but not limited to, the risks and delays of further litigation, the
17 risks to the Parties of proceeding with class certification and/or representative adjudication, the
18 law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and
19 PAGA representative claims, as well as the evidence produced and analyzed, and the possibility
20 of appeals, among other things.³⁸ During all settlement discussions, the Parties conducted their
21 negotiations at arm's length in an adversarial position.³⁹ Arriving at a settlement that was
22 acceptable to both Parties was not easy. Defendants and its counsel felt strongly about their
23 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that
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25 ³³ *Ibid.*

26 ³⁴ *Ibid.*

27 ³⁵ *Ibid.*

28 ³⁶ *Ibid.*

³⁷ *Id.*, ¶ 10.

³⁸ Hosseini Decl., ¶ 10.

³⁹ *Ibid.*

they would be able to obtain class certification and prevail at trial.⁴⁰ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴¹

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.⁴² The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴³ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁴ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁵

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

The Settlement, which provides for a Total Settlement Amount of Four Hundred Thirty-Two Thousand Five Hundred Dollars (\$432,500.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁶ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴⁷ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁸ Moreover, considering all of the facts and

⁴⁰ *Id.*, ¶¶ 10, 15-17.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 10-12 & 15-17.

⁴⁵ *Id.*, ¶¶ 6-7.

⁴⁶ Hosseini Decl., ¶¶ 10, 12, 13 & 20.

⁴⁷ *Id.*, ¶¶ 10-12.

⁴⁸ *Id.*, ¶¶ 15-17.

1 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
2 for the Settlement Class.⁴⁹

3 Assuming that the Attorneys' Fees and Costs, Enhancement Award, PAGA Penalty
4 Amount, and Settlement Administration Costs are approved by the Court and paid in the full
5 amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount
6 that is currently estimated to be One Hundred Fifty-Four Thousand One Hundred Twenty-Five
7 Dollars (\$154,125.00).⁵⁰ As discussed in Part III, *supra*, the entire Net Settlement Amount will
8 be fully paid out to the Settlement Class Members, in accordance with the Settlement
9 Agreement. The amount of each Settlement Class Member's Individual Settlement Share will
10 be calculated based on his or her Workweeks during the Class Period and the amount of each
11 Aggrieved Employee's Individual PAGA Payment will be based on his or her Workweeks
12 during the PAGA Period.⁵¹ There is no reason to doubt the fairness of the proposed plan of
13 allocation of the settlement funds for purposes of preliminary approval. Even at the final
14 approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant
15 approval], particularly if recommended by experienced and competent class counsel." *In re*
16 *American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d
17 418, 429-30.

18 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
19 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵²
20 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
21 the recommendations into account, particularly if Class Counsel appears to be competent, and
22 has experience with this type of litigation, and investigation have been completed, as is the case
23 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
24 Settlement.

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27 ⁴⁹ *Id.*, ¶¶ 10, 12, & 20.

⁵⁰ *Id.*, ¶ 13.

⁵¹ Settlement Agreement, ¶ 17.

⁵² Hosseini Decl., ¶¶ 10, 11, & 20.

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

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted significant formal and informal discovery and exchanged thousands of pages of
4 documents, data, and information in the course of litigation and in connection with mediation
5 and settlement negotiations.⁵³ The discovery and information that Class Counsel obtained from
6 Defendants and through other sources allowed Class Counsel to develop valuation models in
7 order to evaluate the potential value and merit of the claims, and perform a complete evaluation
8 of Defendants’ defenses thereto.⁵⁴ As outlined in the Declaration of Yasmin Hosseini, Class
9 Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to
10 entering into the Settlement.⁵⁵

11 **VI. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE**

12 For settlement purposes, the requisites for establishing class certification are met, and
13 the Parties have stipulated to conditional certification of the Settlement Class for settlement
14 purposes only.⁵⁶ California Code of Civil Procedure Section 382 “authorizes class actions when
15 the question is one of a common or general interest, of many persons, or when the Parties are
16 numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc.*
17 *v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the
18 plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest
19 among class members.” *Id.*

20 The Settlement Class is ascertainable and numerous as to make it impracticable to join
21 all Class Members, and there are common questions of law and fact that predominate over any
22 questions affecting any individual Class Member. Further, Plaintiff’s claims are typical of the
23 claims of the Class Members, and Class Counsel will fairly and adequately protect the interests
24 of the Settlement Class. Finally, prosecution of separate actions by individual Class Members
25 would create the risk of inconsistent or varying adjudications, and a class action is superior to
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27 ⁵³ *Id.*, ¶¶ 10-12 & 17.

28 ⁵⁴ *Id.*, ¶ 17.

⁵⁵ *Id.*, ¶¶ 10-12 & 15-17.

⁵⁶ Settlement Agreement, ¶ 35.

1 other available means for the fair and efficient adjudication of the case. The Settlement Class is
2 amenable to class certification for settlement purposes as discussed below.

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

4 “Ascertainability is required in order to give notice to putative class members as to whom
5 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
6 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
7 by describing a set of common characteristics sufficient to allow a member of that group to
8 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
9 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
10 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

11 This class is sufficiently numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d
12 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement
13 as joinder is not practical at that point). Further, all Class Members can and will be identified by
14 Defendants to the Settlement Administrator through a review of Defendants’ employment
15 records regarding hourly-paid and non-exempt employees in California during the Class Period.
16 As such, the Settlement Class is ascertainable and sufficiently numerous.

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

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

27 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
28 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 Actions. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiff 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.⁵⁷ 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, 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.⁵⁸

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.⁵⁹ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.⁶⁰

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

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⁵⁷ Hosseini Decl., ¶ 15.

⁵⁸ *Ibid.*

⁵⁹ Hosseini Decl., ¶ 15.

⁶⁰ *Ibid.*

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

Class Counsel has litigated the matter for over two (2) years, and was actively preparing the matter for class certification and trial.⁶¹ 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 thousands of pages of documents and data⁶² and also interviewed and obtained information from Plaintiff and other sources, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings and the production of documents and data prior to mediation.⁶³ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁴

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Settlement Class.⁶⁵

The Settlement establishes a Total Settlement Amount of Four Hundred Thirty-Two Thousand Five Hundred Dollars (\$432,500.00), 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-five percent (35%) of the Total Settlement Amount (i.e., \$151,375.00) and an amount not to exceed Thirty-Three Thousand Dollars and Zero Cents (\$33,000.00) for costs and expenses.⁶⁶ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases

⁶¹ *Id.*, ¶¶ 10-12.

⁶² *Id.*, ¶ 11.

⁶³ *Ibid.*

⁶⁴ *Id.*, ¶ 10.

⁶⁵ *Id.*, ¶¶ 6-7.

⁶⁶ Settlement Agreement, ¶ 12.

1 that Class Counsel had to turn down in order to devote its time and efforts to this matter. The
2 proposed Class Notice provides Class Members with information about the amount allocated
3 toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will
4 be sought, as provided for by the Settlement.⁶⁷

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

18 The propriety of calculating and awarding attorneys' fees as a percentage of a settlement
19 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
20 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California
21 Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar
22 cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check
23 and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he
24 percentage of fund method survives in California." *Id.* (internal quotation marks omitted).

25 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
26 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
27 *Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the
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⁶⁷ Settlement Agreement, Exh. A.

\$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.⁶⁸

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

The proposed Class Notice⁶⁹ describes the Settlement, the deadlines and procedures to mail a Notice of Objection to the Class Settlement, Request for Exclusion from the Class Settlement, and/or disputes regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷⁰

The proposed Class Notice fulfills the requirement of neutrality in notice procedure.

⁶⁸ Hosseini Decl., ¶ 18.

⁶⁹ Settlement Agreement, Exh. A.

⁷⁰ *Ibid.*

1 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
2 members to make an informed decision about their participation.” *Manual for Complex*
3 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
4 proceedings to date and the terms and conditions of the Settlement in an informative and
5 coherent manner.⁷¹ The proposed Class Notice recognizes that the Court has not yet granted
6 final approval of the settlement.⁷² The proposed Class Notice also apprises the Class Members
7 of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks
8 credited to them.⁷³

9 The proposed Class Notice satisfies all due process requirements and complies with the
10 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
11 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The
12 essentials of due process of law in class suits would appear to be afforded by fair representation
13 in the assertion of claims of class members against the opposing parties in any lawsuit, and
14 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

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

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

17 The Settlement Administrator will mail the Class Notice to all identified Class Members
18 by First-Class U.S. mail.⁷⁴ With respect to Class Notices that are returned as undeliverable with
19 a forwarding address on or before the Response Deadline, the Settlement Administrator will re-
20 mail the Class Notice within five (5) calendar days.⁷⁵ With respect to Class Notice that are
21 returned as undeliverable without a forwarding address on or before the Response Deadline, the
22 Settlement Administrator will search for an alternate address by way of skip-trace and re-mail
23 the Class Notice within five (5) calendar days.⁷⁶ In the event that a Class Notice is re-mailed to
24 a Class Member, the Response Deadline for that Class Member shall be extended by fifteen (15)

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26 ⁷¹ *Ibid.*

27 ⁷² *Ibid.*

28 ⁷³ *Ibid.*

⁷⁴ Settlement Agreement, ¶ 20.a.

⁷⁵ *Id.*, ¶ 20.b.

⁷⁶ *Id.*, ¶ 20.c.

1 calendar days from the original deadline.⁷⁷ The Settlement Administrator will receive and
2 process Requests for Exclusion, Notice of Objections, and dispute regarding Workweeks.⁷⁸

3 The Settlement Administrator's duties will include translating the Class Notice into
4 Spanish, printing, distributing, and tracking Class Notices and other documents for this
5 settlement, calculation and distributing payments due under the Settlement, issuing of 1099 and
6 W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing
7 necessary reports and declarations, and other duties and responsibilities set forth herein to
8 process this settlement, and as requested by the Parties.⁷⁹ The Settlement Administration Costs
9 are currently estimated to be Ten Thousand Dollars (\$10,000.00) and will be paid out of the
10 Total Settlement Amount, subject to approval by the Court.⁸⁰

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

15 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

16 At this preliminary approval stage, plaintiff seeks approval of the proposed deadlines for
17 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails
18 mailing of the Class Notice, in the form approved by the Court, to all known and reasonably
19 ascertainable Class Members based on Defendants' records.⁸¹

20 Within thirty (30) calendar days of Preliminary Approval, Defendants will provide the
21 Settlement Administrator with a complete list of all Class Members and Aggrieved Employees
22 which will include each Class Member's and Aggrieved Employee's: full name, last known
23 mailing address, Social Security Number, dates worked for Defendants during the Class Period
24 and, if applicable, during the PAGA Period, and dates worked for Defendants during the period
25 May 27, 2017 to the date of Preliminary Approval and such other information and data as

26 ⁷⁷ *Id.*, ¶ 8.ii.

27 ⁷⁸ *Id.*, ¶¶ 21, 23 & 25.

28 ⁷⁹ *Id.*, ¶ 15.

⁸⁰ *Ibid.*

⁸¹ Settlement Agreement, ¶ 20.a.

necessary for the Settlement Administrator to independently calculate the Workweeks.⁸²

Within fourteen (14) calendar days after receiving the Class List from Defendants, the Settlement Administrator will perform a search based on the 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 to all Class Members via First-Class U.S. Mail.⁸³ With respect to Class Notices that are returned as undeliverable with a forwarding address on or before the Response Deadline, the Settlement Administrator will re-mail the Class Notice with five (5) calendar days.⁸⁴ With respect to Class Notices that are returned as undeliverable without a forwarding address 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.⁸⁵ Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, disputes regarding Workweeks, and/or a Notice of Objection.⁸⁶

Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendants.⁸⁷ Defendant will fund the Total Settlement Amount by way of three (3) installments: within thirty (30) calendar days of receipt of the Settlement Administrator's accounting, Defendants will make a deposit of One Hundred Forty-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$144,166.67) ("First Installment"); within seven (7) months after payment of the First Installment, Defendants will make a second deposit of One Hundred Forty-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$144,166.67) ("Second Installment"); and within seven (7) months after payment of the Second Installment, Defendants will make the third and final deposit of One Hundred Forty-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Six Cents (\$144,166.66) ("Third Installment").⁸⁸ Within seven (7) calendar days of

⁸² *Id.*, ¶¶ 8.d & 19.

⁸³ *Id.*, ¶ 20.a.

⁸⁴ *Id.*, ¶ 20.b.

⁸⁵ *Id.*, ¶ 20.c.

⁸⁶ *Id.*, ¶¶ 21, 23 & 25.

⁸⁷ *Id.*, ¶ 11.

⁸⁸ Settlement Agreement, ¶¶ 11.a, 11.b & 11.c.

the full 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 Aggrieved Employees; (c) LWDA payment to the LWDA; (d) Enhancement Award to Plaintiff; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to the Settlement Administrator.⁸⁹

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.⁹⁰ All funds associated with such cancelled checks will be transmitted to the *cy pres*, Bet Tzedek, in accordance with California Code of Civil Procedure section 384.⁹¹

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT AWARD

Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Award in an amount up to Nine Thousand Dollars (\$9,000.00) to Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez.⁹² It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

⁸⁹ *Id.*, ¶ 11.

⁹⁰ *Id.*, ¶ 22.

⁹¹ *Ibid.*

⁹² *Id.*, ¶ 13.

The Enhancement Award is fair and appropriate. 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.⁹³ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁹⁴ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for her services on behalf of the Settlement Class, Aggrieved Employees, and the State of California, in addition to her individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Settlement Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez as Class Representative; appoint Simpluris as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Award, PAGA Penalty Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement 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.

Dated: August 10, 2023

LAWYERS for JUSTICE, PC

By: _____


Yasmin Hosseini
Attorneys for Plaintiff

⁹³ Hosseini Decl., ¶ 20; Declaration of Yasmine Ramirez Barahona in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Barahona Decl."), ¶ 4.

⁹⁴ Hosseini Decl., ¶ 20; Barahona Decl., ¶¶ 3-6.