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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

YESENIA ROJAS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

FRANK-LIN DISTILLERS PRODUCTS,
LTD., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: FCS055208

Honorable Christine A. Carringer
Department 12

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
(Ovsanna Takvoryan); Declaration of
Proposed Class Representative (Yesenia
Rojas); and [Proposed] Order filed
concurrently herewith]

Date: May 11, 2022
Time: 8:30 a.m.
Department: 12

Complaint Filed: August 13, 2020
Trial Date: None Set

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

PLEASE TAKE NOTICE that on May 11, 2022 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Christine A. Carringer in Department 12 of the Superior Court of California for the County of Solano, located at Old Solano Courthouse, 580 Texas Street, Fairfield, California 94533, Plaintiff Yesenia Rojas (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting Plaintiff leave to file the [Proposed] First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“First Amended Complaint”) attached as “**EXHIBIT 2**” to the Declaration of Ovsanna Takvoryan;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Ovsanna Takvoryan 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, Class Representative Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Yesenia Rojas as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;

- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Class Representative Enhancement Payment for Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

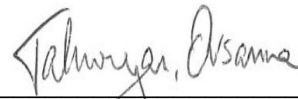
This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Ovsanna Takvoryan) and Proposed Class Representative (Yesenia Rojas) 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: April 19, 2022

LAWYERS for JUSTICE, PC

By:



Ovsanna Takvoryan
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Yesenia Rojas (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Frank-Lin Distillers Products, Ltd. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of eight hundred thousand dollars and no cents (\$800,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Enhancement Payment of ten thousand dollars and no cents (\$10,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-eight percent (38%) of the Gross Settlement Amount, or \$304,000.00, and reimbursement of litigation costs and expenses not to exceed thirty thousand dollars and no cents (\$30,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed six thousand dollars and no cents (\$6,000.00);⁵ and (5) the amount of one hundred fifty thousand dollars and no cents (\$150,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$112,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$37,500.00) will be distributed to Participating Class Members as a part of the Net Settlement Amount.⁶

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¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Ovsanna Takvoryan (“Takvoryan Decl.”), § 13.

² *Id.*, § 38.

³ *Id.*, § 34.

⁴ *Id.*, § 33.

⁵ *Id.*, § 35.

⁶ *Id.*, § 36.

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

All current and former California non-exempt hourly employees who were employed by Defendant at any time during the Class Period (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately two hundred (200) individuals.⁸

Class Members who do not submit a timely and valid Request for Exclusion (“Participating Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Payment”) on a *pro rata* basis based on the number of workweeks a Participating Class Member worked during the Class Period (“Workweeks”).⁹

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Claims of Plaintiff and Participating Class Members, against the Released Parties.¹⁰

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiff also moves 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 is a bottler and distributor of alcoholic beverages, which includes, among other things, producing distilled spirit products from raw materials and bottling those products and distilled products made by other enterprises. Plaintiff Yesenia Rojas is a former non-exempt employee of Defendant.

On August 13, 2020, Plaintiff filed a Class Action Complaint for Damages in the Solano County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

⁷ Settlement Agreement, § 5. “Class Period” is defined as the period from August 13, 2016, through the earlier of: (i) September 22, 2021 or (ii) the date upon which the total number of workweeks equals up to 22,267.3 workweeks through. *See id.*, § 7.

⁸ Takvoryan Decl., ¶ 9; *see also*, Settlement Agreement, § 5.

⁹ Settlement Agreement, §§ 14, 20, & 38.

¹⁰ *See id.* at § 24, for the full scope of the “Released Claims,” and *id.* at § 25 for the definition of the “Released Parties.”

1 On October 2, 2020, Defendant filed an Answer to Plaintiff's Class Action Complaint
2 for Damages.

3 On October 6, 2020, Plaintiff propounded multiple sets of discovery including Requests
4 for Production of Documents, (Set One & Two); Special Interrogatories, (Set One, Two, &
5 Three); and Form Interrogatories – General, (Set One), on Defendant, and noticed the deposition
6 of Defendant's Person Most Knowledgeable regarding job duties, organizational structure, and
7 affirmative defenses of Defendant.

8 On March 25, 2021, Defendant noticed the deposition of Plaintiff. On April 5, 2021,
9 Plaintiff additionally noticed the deposition of Defendant's Person Most Knowledgeable
10 designee. On April 14, 2021 and April 15, 2021, Defendant took the deposition of Plaintiff. On
11 May 17, 2021, Defendant objected to Plaintiff's April 5, 2021 deposition notice. On May 24,
12 2021, Plaintiff took the deposition of Defendant's Person Most Knowledgeable Designee
13 (specifically, Defendant's Executive Vice-President and Chief Financial Officer).

14 The Parties have actively litigated the Action since it was commenced on August 13,
15 2020. Plaintiff's core allegation is that Defendant has violated the California Labor Code by
16 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
17 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
18 and rest periods and associated premium pay, failing to timely pay wages during employment
19 and upon termination of employment, failing to provide compliant wage statements, failing to
20 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
21 thereby engaged in unfair business practices in violation of California Business and Professions
22 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff
23 contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, meal period
24 and rest break premiums, and statutory and civil penalties (including and not limited to, penalties
25 pursuant to PAGA, waiting time penalties, etc.), and attorneys' fees and costs.

26 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
27 associated with any of the allegations in the Action, and further denies that the Action is
28

appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

On June 4, 2021, the Parties participated in a formal, full-day mediation conducted by Jeffrey A. Ross, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On July 7, 2021, Plaintiff served a letter on the California Labor & Workforce Development Agency and Defendant, that provided notice of her intent to seek civil penalties for alleged violations of the California Labor Code, under PAGA.

As part of the Settlement, to effectuate the settlement of the claims investigated, pursued, litigated, mediated, and ultimately resolved, the Parties agreed to the filing of an amended complaint in the Action ("First Amended Complaint"). The First Amended Complaint will add a cause of action under PAGA.

On April 19, 2022, the Parties filed a Joint Stipulation Granting Plaintiff Leave to File First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Joint Stipulation"), requesting the entry of an order from this Court granting Plaintiff leave to file the [Proposed] First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint") attached as "Exhibit A" thereto. The same proposed First Amended Complaint is also attached as "EXHIBIT 2" to the Declaration of Ovsanna Takvoryan filled concurrently herewith.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and valid Request for Exclusion (i.e., Participating Class Members) with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an

¹¹ Settlement Agreement, §§ 13 & 32.

amount not to exceed three hundred four thousand dollars and no cents (\$304,000.00) (i.e., up to 38% of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed thirty thousand dollars and no cents (\$30,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs, which are not to exceed six thousand dollars and no cents (\$6,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) payment to the LWDA of its 75% share of the PAGA Allocation (i.e., \$112,500.00 out of \$150,000.00) (“LWDA Payment”); and (4) payment in the amount of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Yesenia Rojas (“Class Representative Enhancement Payment”).¹² The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member’s share of the available Net Settlement Amount (“Individual Settlement Payment”), in accordance with the Settlement Agreement and as follows:

- a. Defendant will calculate the total number of Workweeks worked by each Class Member during the Class Period and the aggregate total number of Workweeks worked by all Class Members during the Class Period.¹³
- b. The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the “Workweek Value.” Each Class Member’s “Individual Settlement Payment” will be calculated by multiplying each individual Class Member’s total number of Workweeks by the Workweek Value.¹⁴

All Individual Settlement Payments will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as non-wage damages, penalties, and interest, which will be reported on an IRS Form 1099.¹⁵ Participating Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.¹⁶ Defendant will pay the employer’s share of

¹² Settlement Agreement, §§ 33, 34, 35, & 36.

¹³ *Id.*, § 38(a).

¹⁴ *Id.*, § 38(b).

¹⁵ *Id.*, § 41.

¹⁶ *Id.*, § 38(b).

1 payroll taxes, including the employer FICA, FUTA, and SDI contributions, with respect to the
2 wage portion of Individual Settlement Payments in addition to the Gross Settlement Amount.¹⁷

3 The Individual Settlement Payment checks issued to Participating Class Members will
4 be negotiable for one hundred and eighty (180) calendar days from the date of issuance, and
5 thereafter, shall be cancelled and void.¹⁸ All funds associated with such cancelled checks will
6 be transmitted, pursuant to California Code of Civil Procedure Section 384, to Child Haven,
7 Inc.¹⁹

8 Any Class Member wishing to opt-out from the Settlement Agreement must sign and
9 postmark a written valid and timely letter indicating a request to be excluded from the Settlement
10 (“Request for Exclusion”) to the Settlement Administrator on or before the date that is forty-
11 five (45) calendar days from the initial mailing of the Class Notice by the Settlement
12 Administrator (“Response Deadline”).²⁰ For the Request for Exclusion to be valid and timely,
13 it must: (i) set forth the name, address, telephone number, and last four digits of the Social
14 Security Number of the Class Member requesting exclusion; (ii) be signed by the Class Member;
15 (iii) clearly state that the Class Member does not wish to be included in the Settlement; and (iv)
16 be returned to the Settlement Administrator by mail postmarked on or before the Response
17 Deadline.²¹ Class Members who submit a valid and timely Request for Exclusion will not be
18 bound by the terms of the Settlement and Final Approval Order and Judgment.²²

19 To object to the Settlement Agreement, a Class Member must postmark a complete and
20 timely written objection (“Notice of Objection”) to the Settlement Administrator on or before
21 the Response Deadline.²³ For the Notice of Objection to be complete and timely, it must: (i)
22 contain the objector’s full name, signature, address, and telephone number; (ii) contain a written
23 statement of all grounds for the objection accompanied by any legal support for such objection;
24 (iii) attach copies of any papers, briefs, or other documents upon which the objection is based;

25 ¹⁷ Settlement Agreement, § 32.

26 ¹⁸ *Id.*, § 58.

27 ¹⁹ *Ibid.*

28 ²⁰ *Id.*, §§ 26, 27, & 53.

²¹ *Id.*, § 26.

²² *Id.*, § 53.

²³ *Id.*, §§ 17 & 55.

(iv) contain a statement indicating whether the objector intends to appear at the final approval hearing; and (v) be returned to the Settlement Administrator by mail postmarked on or before the Response Deadline.²⁴

In order to dispute Workweeks, Class Members must submit a written letter to the Settlement Administrator that: (i) contains the disputing Class Member's full name, signature, address, and telephone number; (ii) clearly states that the Class Member 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; (iii) 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 (iv) is returned to the Settlement Administrator by mail postmarked on or before the Response Deadline.²⁵

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

²⁴ Settlement Agreement, § 17.

²⁵ *Id.*, § 52.

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

1 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
2 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
3 at 1027 (citation omitted).

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

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

13 The Parties actively litigated the Action since it was commenced on August 13, 2020.
14 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
15 the claims, and Class Counsel was actively preparing the case for class certification and trial.²⁶

16 Prior to engaging in mediation, Class Counsel conducted significant investigation and
17 formal and informal discovery regarding the facts of the case, including and not limited to, the
18 exchange, review, and analysis of thousands of pages of documents and data produced by
19 Defendant.²⁷ The volume of data and documents that Class Counsel reviewed and analyzed
20 included and was not limited to: Plaintiff’s employment records, a detailed sampling of Class
21 Members’ time and pay data, multiple iterations of Defendant’s Employee Handbook, internal
22 memoranda, job descriptions, Defendant’s operations and employment acknowledgments
23 (including, but not limited to, Defendant’s Employee Handbook Acknowledgment and
24 Agreement, Employee Handbook Policy Update Acknowledgement and Agreement,
25 Acknowledgement of Receipt of California Meal Period and Rest Break Policy, and Arbitration
26 Acknowledgement and Agreement), agreements (including, but not limited to, Defendant’s
27

28 ²⁶ Takvoryan Decl., ¶¶ 11-13.

²⁷ *Id.*, ¶ 12.

Arbitration Agreement), forms (including, but not limited to, Defendant's Employee Disciplinary Report, Time Off Request Form, Request for Leave of Absence Vacation or Sick Leave, Safety Footwear Authorization Form, and Meal Break Waiver Form), procedures (including, but not limited to, Defendant's Safety Shoe Program), and policies (including, but not limited to, Defendant's Breaks and Meal Periods policy, Business Expenses policy, Overtime Procedure policy, Pay Day policy, Clocking In and Out policy, Personal Appearance policy, Final Pay policy, Reimbursement of Outstanding Expenses policy, Cellular Phone Policy, and Use of Personal Vehicles policy), among other information and documents.²⁸ Class Counsel interviewed Plaintiff to gather facts and to identify potential witnesses.²⁹ Class Counsel propounded multiple sets of formal written discovery requests on Defendant (specifically, Requests for Production of Documents, (Set One & Two); Special Interrogatories, (Set One, Two, & Three); and Form Interrogatories – General, (Set One)), and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure, job duties, and affirmative defenses.³⁰ Class Counsel also prepared for and defended the deposition of Plaintiff over the course of two (2) separate half days on April 14, 2021 and April 15, 2021, and prepared for and took the deposition of Defendant's Person Most Knowledgeable witnesses (specifically, Defendant's Executive Vice-President and Chief Financial Officer) on May 24, 2021.³¹ 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.³² Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³³

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation on June 4, 2021 conducted by Jeffrey A. Ross, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁴ Prior to and

²⁸ Takvoryan Decl., ¶ 12.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Id.*, ¶ 11.

1 during the mediation and settlement discussions, the Parties exchanged class information and
2 engaged in an intensive discussion regarding their evaluations of the case and various aspects
3 of the case, including but not limited to, Defendant's financial condition, the risks and delays of
4 further litigation, the risks to the Parties of proceeding with class certification and/or
5 representative adjudication, the law relating to off-the-clock theory, meal and rest periods,
6 federal and state wage-and-hour law and enforcement, and PAGA representative claims, as well
7 as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁵
8 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
9 adversarial position.³⁶ Arriving at a settlement that was acceptable to both Parties was not easy.
10 Defendant and its counsel were strongly convinced of their ability to prevail on the merits and
11 at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
12 certification and prevail at trial.³⁷ After conducting investigations, extensive formal and
13 informal discovery, exchange of information, extensive settlement negotiations, and with the
14 aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for
15 settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and
16 risks to both sides that would attend further litigation.³⁸

17 The Settlement takes into account the strengths and weaknesses of each side's position
18 and the uncertainty of how the case might have concluded at certification and trial.³⁹ The Parties
19 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁰
20 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
21 the Class Members' employment with Defendant and performed significant research into the
22 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
23 rest periods, federal and state wage-and-hour law and enforcement, Plaintiff's claims, and
24 Defendant's defenses thereto, as well as facts discovered.⁴¹ The Parties have reached the

25 ³⁵ Takvoryan Decl., ¶ 11.

26 ³⁶ *Ibid.*

27 ³⁷ *Id.*, ¶¶ 11, 16-18.

28 ³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 11-13 & 16-18.

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.⁴²

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

The Settlement, which provides for a Gross Settlement Amount of eight hundred thousand dollars and no cents (\$800,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴³ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁴ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁵ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴⁶

Assuming that the Attorneys' Fees and Costs, Class Representative Enhancement Payment, LWDA Payment, 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 three hundred thirty-seven thousand five hundred dollars and no cents (\$337,500.00).⁴⁷ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Payment will be calculated based on his or her Workweeks.⁴⁸ 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

⁴² Takvoryan Decl., ¶¶ 2-7.

⁴³ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁴ *Id.*, ¶¶ 11-13.

⁴⁵ *Id.*, ¶¶ 16-18.

⁴⁶ *Id.*, ¶¶ 11, 13, & 21.

⁴⁷ *Id.*, ¶ 14.

⁴⁸ Settlement Agreement, § 38.

1 and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities*
2 *Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

3 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
4 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁴⁹
5 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
6 the recommendations into account, particularly if Class Counsel appears to be competent, and
7 have experience with this type of litigation, and investigation have been completed, as is the
8 case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
9 Settlement.

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

11 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
12 conducted extensive formal and informal discovery and exchanged thousands of pages of
13 documents, data, and information prior to mediation.⁵⁰ The documents, discovery, and
14 information that Class Counsel obtained from Defendant and through other sources allowed
15 Class Counsel to develop valuation models in order to evaluate the potential value and merit of
16 the claims, and perform a complete evaluation of Defendant’s defenses thereto.⁵¹ As outlined
17 in the Declaration of Ovsanna Takvoryan, Class Counsel performed an extensive analysis of
18 each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵²

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

20 For settlement purposes, the requisites for establishing class certification are met, and
21 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵³
22 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
23 one of a common or general interest, of many persons, or when the Parties are numerous, and it
24 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
25 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies

26 ⁴⁹ Takvoryan Decl., ¶¶ 11, 13, & 21.

27 ⁵⁰ *Id.*, ¶¶ 11-13 & 18.

28 ⁵¹ *Id.*, ¶ 18.

⁵² *Id.*, ¶¶ 11-13 & 16-18.

⁵³ Settlement Agreement, § 31.

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

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiff’s 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. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed 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 two hundred (200) individuals.⁵⁴ 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 hourly employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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⁵⁴ Takvoryan Decl., ¶ 9.

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

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

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

16 Here, common issues of fact and law predominate as to each of the claims alleged and
17 asserted in the Operative Complaint. Based on the documents and information obtained through
18 formal and informal discovery and exchange of information in this case, Plaintiff contends that
19 Class Members were subject to the same or similar job duties and uniform operations and
20 employment practices, policies, and procedures during the time period at issue.⁵⁵ Plaintiff’s
21 claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to
22 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
23 wages for all hours worked, failing to provide compliant meal and rest periods and associated
24 premium pay, failing to timely pay wages during employment and upon termination of
25 employment, failing to provide complaint wage statements, failing to keep requisite payroll
26 records, and failing to reimburse necessary business-related expenses.⁵⁶

27
28 ⁵⁵ Takvoryan Decl., ¶ 16.

⁵⁶ *Ibid.*

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁵⁷

As a result of the alleged conduct, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁵⁸

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

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

Class Counsel has litigated the matter for over a year and a half and was actively preparing the matter for class certification and trial.⁵⁹ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant.⁶⁰ Class Counsel also noticed and took the deposition of Defendant's Person Most Knowledgeable designee and prepared for and defended the deposition of Plaintiff.⁶¹ Class Counsel reviewed thousands of pages of documents and data⁶² and also interviewed and obtained information from Plaintiff, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶³ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁴

⁵⁷ Takvoryan Decl., ¶ 16.

⁵⁸ *Ibid.*

⁵⁹ *Id.*, ¶¶ 11-13.

⁶⁰ *Id.*, ¶ 12.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Id.*, ¶ 11.

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

3 The Settlement establishes a Gross Settlement Amount of eight hundred thousand dollars
4 and no cents (\$800,000.00), and provides for Class Counsel to apply to the Court for Attorneys'
5 Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-eight percent
6 (38%) of the Gross Settlement Amount (i.e., 304,000.00) and an amount not to exceed thirty
7 thousand dollars and no cents (\$30,000.00) for costs and expenses.⁶⁶ The attorneys' fees
8 provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in
9 bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel
10 dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the
11 results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement
12 that Class Counsel has achieved for the Class Members, and (6) the other cases that Class
13 Counsel had to turn down in order to devote its time and efforts to this matter. The proposed
14 Class Notice provides Class Members with information about the amount allocated toward the
15 Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought,
16 as provided for by the Settlement.⁶⁷

17 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
18 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
19 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
20 "experienced trial judge is the best judge of the value of professional services rendered in his
21 court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
22 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
23 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
24 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
25 a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should
26 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace

27 ⁶⁵ Takvoryan Decl., ¶¶ 2-7.

28 ⁶⁶ Settlement Agreement, §§ 13, 32, & 33.

⁶⁷ *Id.*, Exh. A.

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 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.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.

⁶⁸ Takvoryan Decl., ¶ 19.

1 Considering the work performed and the risks incurred, the attorneys’ fees provided for by the
2 Settlement and to be requested by Class Counsel are well within the range of reasonableness.

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

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

9 The proposed Class Notice⁶⁹ describes the Settlement, the deadlines and procedures to
10 submit a Notice of Objection, Request for Exclusion, and/or dispute regarding Workweeks, and
11 the date and time set for the Final Approval Hearing.⁷⁰

12 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
13 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
14 members to make an informed decision about their participation.” *Manual for Complex*
15 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
16 proceedings to date and the terms and conditions of the Settlement in an informative and
17 coherent manner.⁷¹ The proposed Class Notice recognizes that the Court has not yet granted
18 final approval of the settlement.⁷² The proposed Class Notice also apprises the Class Members
19 of, *inter alia*, how their Individual Settlement Payment is calculated, and the number of
20 Workweeks credited to them.⁷³

21 The proposed Class Notice satisfies all due process requirements and complies with the
22 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
23 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The
24 essentials of due process of law in class suits would appear to be afforded by fair representation
25

26 ⁶⁹ Settlement Agreement, Exh. A.

27 ⁷⁰ *Ibid.*

28 ⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

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 to each Class Member by First-Class U.S. Mail.⁷⁴ Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline, will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.⁷⁵ If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved and will perform a single re-mailing.⁷⁶ Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion, Notice of Objection, and/or a Workweeks dispute.⁷⁷ The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.⁷⁸

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to Participating Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys’ Fees and Costs, Class Representative Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁷⁹ The

⁷⁴ Settlement Agreement, § 49.

⁷⁵ *Id.*, § 50.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Id.*, § 52, 53, & 55.

⁷⁹ *Ibid.*; Takvoryan Decl., ¶ 15.

1 Settlement Administration Costs are currently estimated not to exceed six thousand dollars and
2 no cents (\$6,000.00) and will be paid out of the Gross Settlement Amount, subject to approval
3 by the Court.⁸⁰

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

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

9 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
10 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
11 entails mailing of the Class Notice, in the form approved by the Court, to all known and
12 reasonably ascertainable Class Members based on Defendant's records.⁸¹

13 Within twenty (20) calendar days after the date on which the Court enters the order
14 granting preliminary approval of the Settlement, Defendant will provide the Settlement
15 Administrator with a complete list of all Class Members that Defendant will diligently and in
16 good faith compile from its records, formatted in Microsoft Office Excel, which list shall
17 include: each Class Member' full name; most recent mailing address and telephone number;
18 Social Security number; dates of employment; the respective number of Workweeks that each
19 Class Member worked during the Class Period; and any other relevant information needed to
20 calculate settlement payments (collectively, "Class List").⁸²

21 Within ten (10) calendar days after receiving the Class List from Defendant, the
22 Settlement Administrator will mail a Class Notice to all Class Members via regular First-Class
23 U.S. Mail, using the most current, known mailing addresses identified in the Class List.⁸³ Prior
24 to mailing, the Settlement Administrator will perform a skip-trace search for information to
25 update and correct for any known or identifiable address changes.⁸⁴ Any Class Notice returned

26 ⁸⁰ Settlement Agreement, § 28.

27 ⁸¹ *Id.*, § 49.

28 ⁸² *Id.*, §§ 4 & 48.

⁸³ *Id.*, § 49.

⁸⁴ *Id.*, § 50.

to the Settlement Administrator as non-deliverable on or before the Response Deadline, will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.⁸⁵ If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved and will perform a single re-mailing.⁸⁶ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, dispute regarding Workweeks, and/or Notice of Objection.⁸⁷ Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion, Notice of Objection, and/or a Workweeks dispute.⁸⁸

The first five hundred thousand dollars and no cents (\$500,000.00) of the Gross Settlement Amount, together with an amount sufficient to cover the employer payroll taxes, shall be due within thirty (30) calendar days after the Effective Date.⁸⁹ The second and final installment of three hundred thousand dollars and no cents (\$300,000.00) of the Gross Settlement Amount shall be due within one hundred and eighty (180) calendar days after the first installment is paid (two hundred and ten (210) calendar days after the Effective Date).⁹⁰ Payment of the Gross Settlement Amount installments shall be through deposit into a Qualified Settlement Account to be established by the Settlement Administrator.⁹¹ The first installment of the Gross Settlement Amount shall be used for: distribution of the Net Settlement Amount through Individual Settlement Payments, the LWDA Payment, and the Class Representative Enhancement Payment.⁹² The second installment and any funds remaining from the first installment shall be used for Attorneys' Fees and Costs and Settlement Administration Costs.⁹³

⁸⁵ Settlement Agreement, § 50.

⁸⁶ *Ibid.*

⁸⁷ *Id.*, §§ 52, 53, and 55.

⁸⁸ *Ibid.*

⁸⁹ *Id.*, § 32.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

The Individual Settlement Payment checks issued to Participating Class Members will be negotiable for one hundred and eighty (180) calendar days from the date of issuance, and thereafter, shall be cancelled.⁹⁴ All funds associated with such cancelled checks will be transmitted, pursuant to California Code of Civil Procedure Section 384, to Child Haven, Inc.⁹⁵

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

Plaintiff Yesenia Rojas respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Enhancement Payment in an amount up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Yesenia Rojas.⁹⁶ 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.*

The Class Representative Enhancement Payment 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, and prepared for and attended deposition.⁹⁷ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.⁹⁸ Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative

⁹⁴ Settlement Agreement, § 58.

⁹⁵ *Ibid.*

⁹⁶ *Id.*, § 34.

⁹⁷ Takvoryan Decl., ¶ 20; Declaration of Yesenia Rojas in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Rojas Decl."), ¶ 3-5.

⁹⁸ Takvoryan Decl., ¶ 20; Rojas Decl., ¶¶ 3-5.

Enhancement Payment for her services on behalf of the Class, in addition to her Individual Settlement Payment.

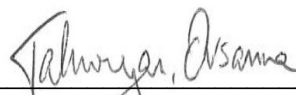
XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwasian, Arby Aiwasian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Yesenia Rojas as Class Representative; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Class Representative Enhancement Payment, LWDA Payment, 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 six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: April 19, 2022

LAWYERS for JUSTICE, PC

By:


Ovsanna Takvoryan
Attorneys for Plaintiff