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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

PRISCILLA DE LA CRUZ CORONA,  
individually, and on behalf of other members  
of the general public similarly situated and  
on behalf of other aggrieved employees  
pursuant to the California Private Attorneys  
General Act;

Plaintiff,

vs.

WEST POINT MEDICAL CENTER, an  
unknown business entity;  
COMPREHENSIVE PRIMARY CARE  
MEDICAL, an unknown business entity; and  
COMPREHENSIVE PRIMARY CARE  
MEDICAL ASSOCIATES, INC., dba WEST  
POINT MEDICAL CENTER, a California  
corporation; DOES 2 through 100, inclusive,

Defendants.

Case No.: CIVDS2009703

Honorable David S. Cohn  
Department S26

**CLASS ACTION**

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

[Declaration of Proposed Class Counsel  
(Edwin Aiwazian); Declaration of  
Proposed Class Representative (Priscilla  
De La Cruz Corona); and [Proposed]  
Order filed concurrently herewith]

Date: March 11, 2022  
Time: 9:00 a.m.  
Department: S26

Complaint Filed: June 3, 2020  
FAC Filed: December 20, 2021  
Trial Date: None Set

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

**PLEASE TAKE NOTICE** that on March 11, 2022 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable David S. Cohn in Department S26 of the Superior Court of California for the County of San Bernardino, located at San Bernardino Justice Center, 247 West Third Street, San Bernardino, California 92415, Plaintiff Priscilla De La Cruz Corona (“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 Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Edwin Aiwarzian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Priscilla De La Cruz Corona as Class Representative;
- Preliminarily appointing Edwin Aiwarzian, Arby Aiwarzian, and Joanna Ghosh of *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

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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 Payment to 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 (Edwin Aiwazian) and Proposed Class Representative (Priscilla De La Cruz Corona) 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: February 15, 2022

**LAWYERS for JUSTICE, PC**

By:

  
Edwin Aiwazian  
Attorneys for Plaintiff

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Priscilla De La Cruz Corona (“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 Comprehensive Primary Care Medical Associates, Inc., dba, West Point Medical Center, erroneously sued as defendants West Point Medical Center and Comprehensive Primary Care Medical (“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 Maximum Settlement Amount of six hundred thousand dollars and no cents (\$600,000.00).<sup>1</sup> The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount<sup>2</sup>; (2) the Enhancement Payment of seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff<sup>3</sup>; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of one-third (33 1/3%) of the Maximum Settlement Amount, or \$200,000.00, and reimbursement of litigation costs and expenses not to exceed thirty-five thousand dollars and no cents (\$35,000.00)<sup>4</sup>; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed seven thousand dollars and no cents (\$7,000.00);<sup>5</sup> and (5) the amount of one hundred thousand dollars and no cents (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”)

<sup>1</sup> Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 6.s. If it is determined that the total number of Workweeks during the period of June 3, 2016 to May 4, 2021 exceed 9,077 total Workweeks by more than ten percent (10%) (i.e., the Workweeks for the period referenced are actually more than 9,985), then the Maximum Settlement Amount will increase on a proportional basis to the extent the threshold is exceeded. *See id.*, § 36.

<sup>2</sup> *Id.*, §§ 6.s & 6.p.

<sup>3</sup> *Id.*, §§ 6.s & 11.

<sup>4</sup> *Id.*, §§ 6.s & 10.

<sup>5</sup> *Id.*, §§ 6.s & 12.

1 and 25% (i.e., \$25,000.00) will be distributed to Settlement Class Members as a part of the Net  
2 Settlement Amount.<sup>6</sup>

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

5 All current and former hourly-paid or non-exempt employees of Defendant in  
6 California at any time during the period from June 3, 2016 through May 4, 2021  
7 (“Class” or “Class Members”).<sup>7</sup>

8 The Class is estimated to consist of approximately one hundred and twenty-one (121)  
9 individuals.<sup>8</sup>

10 Class Members who do not submit a timely and valid request to be excluded from the  
11 Settlement (“Settlement Class Members”) will receive a share of the Net Settlement Amount  
12 (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Class  
13 Member was employed by Defendant as an hourly-paid or non-exempt employee in California  
14 during the Class Period, which will be calculated by the Settlement Administrator by calculating  
15 the total calendar weeks between the Class Member’s start and end dates as set forth in the Class  
16 Data and List (“Workweeks”).<sup>9</sup>

17 The Settlement, if granted preliminary and final approval by the Court, will operate to  
18 resolve the Released Claims of Plaintiff and Settlement Class Members, against the Released  
19 Parties.<sup>10</sup>

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

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25 ///

26 <sup>6</sup> Settlement Agreement, §§ 6.s & 13.

27 <sup>7</sup> *Id.*, § 6.d. “Class Period” is defined as the period from June 3, 2016 through May 4, 2021. *See id.*, § 6.f.

28 <sup>8</sup> Aiwazian Decl., ¶ 9.

<sup>9</sup> Settlement Agreement, §§ 6.q and 6.ee.

<sup>10</sup> *See id.* at § 6.x, for the full scope of the “Released Claims,” and *id.* at § 6.y for the definition of the “Released Parties.”

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

2             Defendant provides urgent care and medical services throughout California and currently  
3     operates three different locations in Fontana, San Bernardino, and Rancho Cucamonga. Plaintiff  
4     Priscilla De La Cruz Corona is a former employee of Defendant.

5             On June 3, 2020, Plaintiff filed a Class Action Complaint for Damages in the San  
6     Bernardino County Superior Court (“Court”), thereby commencing the above-captioned lawsuit  
7     (“Action”).

8             On October 6, 2020, Defendant filed an Answer to Plaintiff’s Class Action Complaint.

9             On October 8, 2020, Plaintiff propounded multiple sets of discovery including Requests  
10    for Production of Documents (Set One); Special Interrogatories (Sets One & Two); and Form  
11    Interrogatories (Set One), on Defendant and noticed the depositions of Defendant’s Person Most  
12    Knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on  
13    November 12, 2020, and December 14, 2020, Defendant objected and responded to Plaintiff’s  
14    discovery requests.

15            On December 20, 2021, Plaintiff filed a First Amended Class Action Complaint for  
16    Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §  
17    2698, *Et Seq.* (“Operative Complaint”).

18            On June 4, 2021, the Parties participated in a formal, full-day mediation conducted by  
19    Paul Grossman, a well-regarded mediator experienced in mediating complex labor and  
20    employment matters. With the aid of the mediator’s evaluation, the Parties ultimately reached  
21    the Settlement described herein to resolve the Action in its entirety.

22            The Parties have actively litigated the Action since it was commenced on June 3, 2020.  
23    Plaintiff’s core allegation is that Defendant has violated the California Labor Code by engaging  
24    in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter*  
25    *alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest  
26    periods and associated premium pay, failing to timely pay wages during employment and upon  
27    termination of employment, failing to provide compliant wage statements, failing to maintain  
28    requisite payroll records, and failing to reimburse necessary business expenses, and thereby

engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

### III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Maximum Settlement Amount to resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Members) with respect to the Released Parties.<sup>11</sup> Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees in an amount not to exceed two hundred thousand dollars and no cents (\$200,000.00) (i.e., up to 33 1/3% of the Maximum Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed thirty-five thousand dollars and no cents (\$35,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed seven thousand dollars and no cents (\$7,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$75,000.00 out of \$100,000.00) ("LWDA Payment"); and (4) payment in the amount of up to seven thousand five hundred dollars and no cents (\$7,500.00) to Plaintiff Priscilla De La Cruz Corona ("Enhancement Payment").<sup>12</sup> The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

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<sup>11</sup> Settlement Agreement, §§ 6.s & 30.

<sup>12</sup> *Id.*, §§ 10, 11, 12 & 13.

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

- a. After Preliminary Approval of the Settlement, the Settlement Administrator will determine the Workweeks of each Class Member, divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.<sup>13</sup>
- 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.<sup>14</sup>

Each Individual Settlement Share will be allocated as follows: twenty-five percent (25%) wages, which will be reported on an IRS Form W-2; and seventy-five percent (75%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.<sup>15</sup> The Settlement Administrator will withhold (and remit to the appropriate taxing authorities) 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 Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).<sup>16</sup> Defendant will pay the employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares ("Employer Taxes") in addition to the Maximum Settlement Amount.<sup>17</sup>

Each Individual Settlement 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.<sup>18</sup> Thereafter, all funds represented by any uncashed or undeliverable checks, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed

<sup>13</sup> Settlement Agreement, § 14.a. "Preliminary Approval" is defined as entry of the Court order granting preliminary approval of the Settlement Agreement. *See id.*, § 6.w.

<sup>14</sup> *Id.*, § 14.b. "Final Approval" is defined as the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon. *See id.*, § 6.n.

<sup>15</sup> *Id.*, § 25.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Id.*, § 6.l.

<sup>18</sup> *Id.*, § 19.

Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those Settlement Class Members who did not cash their checks until such time as they claim their property.<sup>19</sup>

Any Class Member wishing to be excluded from the Settlement must submit a timely letter indicating a request to be excluded from the Settlement (“Request for Exclusion”).<sup>20</sup> The Request for Exclusion must: (a) contain the case name and number of the 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 Settlement; and (e) be returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or faxed on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator (“Response Deadline”).<sup>21</sup> Any Class Member who does not affirmatively request exclusion from the settlement by submitting a timely and valid Request for Exclusion will be bound by all of the terms of the Settlement Agreement, including and not limited to the release of Released Claims, as well as any judgment that may be entered by the Court if grants Final Approval to the Settlement.<sup>22</sup>

To object to the Settlement, a Class Member must submit a valid and timely written objection to the Settlement Agreement (“Notice of Objection”) to the Settlement Administrator, by fax or mail, on or before the Response Deadline.<sup>23</sup> The Notice of Objection must be in writing and include: (a) the case name and number of the Action; (b) the objector’s full name, signature, address, and telephone number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based.<sup>24</sup> Any Class Member who submits a Request for Exclusion is prohibited from making any objection to the Settlement Agreement.<sup>25</sup>

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<sup>19</sup> Settlement Agreement, § 19.

<sup>20</sup> *Id.*, §§ 6.z & 20.

<sup>21</sup> *Id.*, §§ 6.z & 6.aa.

<sup>22</sup> *Id.*, § 21.

<sup>23</sup> *Id.*, §§ 6.u & 22.

<sup>24</sup> *Id.*, § 6.u.

<sup>25</sup> *Id.*, § 20.

Class Members will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notices.<sup>26</sup> In order to dispute Workweeks, Class Members must submit a written letter to the Settlement Administrator that: (a) contains the case name and number of the Action; (b) is signed by the Class Member; (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member; (d) 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; (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 fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or fax-stamped on or before the Response Deadline.<sup>27</sup>

#### 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.

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<sup>26</sup> Settlement Agreement, § 18.

<sup>27</sup> *Ibid.*

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

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

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

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

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

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

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

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

The Parties actively litigated the Action since it was commenced on June 3, 2020. 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.<sup>28</sup>

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 Defendant.<sup>29</sup> The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, a detailed sampling of Class Members’ time and pay data, Defendant’s Employee Handbook, acknowledgements (including but not limited to Defendant’s Staff Member Handbook Acknowledgement), agreements (including but not limited to Defendant’s Arbitration Agreement and Meal Break Waiver Agreement), internal memoranda, job descriptions, Defendant’s operations and employment

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<sup>28</sup> Aiwazian Decl., ¶¶ 11-13.

<sup>29</sup> *Id.*, ¶ 12.

practices, procedures, and policies (including but not limited to Defendant's Overtime policy, Working Off the Clock policy, and Rest Breaks and Meal Periods policy), among other information and documents.<sup>30</sup> Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.<sup>31</sup> Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses thereto, noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties, and reviewed Defendant's objections thereto.<sup>32</sup> 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.<sup>33</sup> Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.<sup>34</sup>

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation on June 4, 2021, conducted by Paul Grossman, a well-respected mediator experienced in mediating complex labor and employment matters.<sup>35</sup> Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, Defendant's financial condition, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, federal and state wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.<sup>36</sup> During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.<sup>37</sup> Arriving at a settlement that was acceptable to both Parties was not easy. Defendant

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<sup>30</sup> Aiwazian Decl., ¶ 12.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Id.*, ¶ 11.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

1 and its counsel felt strongly about their ability to prevail on the merits and at certification, and  
2 Plaintiff and Class Counsel believed that they would be able to obtain class certification and  
3 prevail at trial.<sup>38</sup> After conducting investigations, significant formal and informal discovery,  
4 exchange of information, extensive settlement negotiations, and with the aid of the mediator's  
5 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal  
6 issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that  
7 would attend further litigation.<sup>39</sup>

8 The Settlement takes into account the strengths and weaknesses of each side's position  
9 and the uncertainty of how the case might have concluded at certification and trial.<sup>40</sup> The Parties  
10 have had the opportunity to interview and obtain information from their respective witnesses.<sup>41</sup>  
11 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and  
12 the Class Members' employment with Defendant and performed significant research into the  
13 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and  
14 rest periods, federal and state wage-and-hour law and enforcement, Plaintiff's claims, and  
15 Defendant's defenses thereto, as well as facts discovered.<sup>42</sup> The Parties have reached the  
16 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class  
17 Counsel has extensive experience in employment class actions, including significant experience  
18 in California wage-and-hour litigation.<sup>43</sup>

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

20 The Settlement, which provides for a Maximum Settlement Amount of six hundred  
21 thousand dollars and no cents (\$600,000.00), represents a fair, adequate, and reasonable  
22 resolution of the matter.<sup>44</sup> The Settlement was calculated using the information and data  
23 uncovered during litigation, case investigation, as well as the formal and informal exchange of  
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25 <sup>38</sup> Aiwazian Decl., ¶¶ 11, 16-18.

26 <sup>39</sup> *Ibid.*

27 <sup>40</sup> *Ibid.*

28 <sup>41</sup> *Ibid.*

<sup>42</sup> *Id.*, ¶¶ 11-13 & 16-18.

<sup>43</sup> *Id.*, ¶¶ 6-7.

<sup>44</sup> *Id.*, ¶¶ 11, 13, 14 & 21.

information.<sup>45</sup> The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.<sup>46</sup> Moreover, considering all of the facts and circumstances of the Action, the Settlement represents a fair, reasonable, and adequate recovery for the Class.<sup>47</sup>

Assuming that the Attorneys' Fees and Costs, 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 two hundred seventy-five thousand five hundred dollars and no cents (\$275,500.00).<sup>48</sup> As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks.<sup>49</sup> There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.<sup>50</sup> Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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<sup>45</sup> Aiwasian Decl., ¶¶ 11-13.

<sup>46</sup> *Id.*, ¶¶ 16-18.

<sup>47</sup> *Id.*, ¶¶ 11, 13, & 21.

<sup>48</sup> *Id.*, ¶ 14.

<sup>49</sup> Settlement Agreement, § 14.

<sup>50</sup> Aiwasian Decl., ¶¶ 11, 13, & 21.

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 prior to mediation.<sup>51</sup> The documents, discovery, and  
5           information that Class Counsel obtained from Defendant, Plaintiff, and other sources allowed  
6           Class Counsel to develop valuation models in order to evaluate the potential value and merit of  
7           the claims, and perform a complete evaluation of Defendant’s defenses thereto.<sup>52</sup> As outlined  
8           in the Declaration of Edwin Aiwarzian, Class Counsel performed an extensive analysis of each  
9           and every claim pursuant to *Kullar* prior to entering into the Settlement.<sup>53</sup>

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

11           For settlement purposes, the requisites for establishing class certification are met, and  
12           the Parties have stipulated to conditional certification of the Class for settlement purposes only.<sup>54</sup>  
13           California Code of Civil Procedure Section 382 “authorizes class actions when the question is  
14           one of a common or general interest, of many persons, or when the Parties are numerous, and it  
15           is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*  
16           (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies  
17           “both [1] an ascertainable class and [2] a well-defined community of interest among class  
18           members.” *Id.*

19           The Class is ascertainable and numerous as to make it impracticable to join all Class  
20           Members, and there are common questions of law and fact that predominate over any questions  
21           affecting any individual Class Member. Further, Plaintiff’s claims are typical of the claims of  
22           the Class Members, and Class Counsel will fairly and adequately protect the interests of the  
23           Class. Finally, prosecution of separate actions by individual Class Members would create the  
24           risk of inconsistent or varying adjudications, and a class action is superior to other available  
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27           <sup>51</sup> Aiwarzian Decl., ¶¶ 11-13 & 18.

28           <sup>52</sup> *Id.*, ¶ 18.

<sup>53</sup> *Id.*, ¶¶ 11-13 & 16-18.

<sup>54</sup> Settlement Agreement, § 7.

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 one hundred twenty-one (121) individuals.<sup>55</sup> 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 hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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<sup>55</sup> Aiwazian Decl., ¶ 9.

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

6 Here, common issues of fact and law predominate as to each of the claims alleged and  
7 asserted in the Operative Complaint. Based on the documents and information obtained through  
8 formal and informal discovery and exchange of information in this case, Plaintiff contends that  
9 Class Members were subject to the same or similar job duties and uniform operations and  
10 employment practices, policies, and procedures during the time period at issue.<sup>56</sup> Plaintiff’s  
11 claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to  
12 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum  
13 wages for all hours worked, failing to provide compliant meal and rest periods and associated  
14 premium pay, failing to timely pay wages during employment and upon termination of  
15 employment, failing to provide complaint wage statements, failing to keep requisite payroll  
16 records, and failing to reimburse necessary business-related expenses.<sup>57</sup>

17 Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect  
18 to Plaintiff and the Class Members were substantially the same during the time period at issue.<sup>58</sup>  
19 As a result of the alleged conduct, Plaintiff claims that all of the Class Members were uniformly  
20 not paid all compensation due to them from Defendant during the time period at issue.<sup>59</sup>

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

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27 <sup>56</sup> Aiwazian Decl., ¶ 16.

28 <sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

**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.<sup>60</sup> 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, and reviewing Defendant's responses thereto. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data<sup>61</sup> and also interviewed and obtained information from Plaintiff and other Class Members, 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.<sup>62</sup> Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.<sup>63</sup>

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.<sup>64</sup>

The Settlement establishes a Maximum Settlement Amount of six hundred thousand dollars and no cents (\$600,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed one-third (33 1/3%) of the Maximum Settlement Amount (i.e., \$200,000.00) and an amount not to exceed thirty-five thousand dollars and no cents (\$35,000.00) for costs and expenses.<sup>65</sup> 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

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<sup>60</sup> Aiwazian Decl., ¶¶ 11-13.

<sup>61</sup> *Id.*, ¶ 12.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Id.*, ¶ 11.

<sup>64</sup> *Id.*, ¶¶ 6-7.

<sup>65</sup> Settlement Agreement, §§ 6.s & 10.

dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.<sup>66</sup>

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

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check 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).

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<sup>66</sup> Settlement Agreement, Exh. A.

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.<sup>67</sup>

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 Notice<sup>68</sup> describes the Settlement, the deadlines and procedures to submit a Notice of Objection, Request for Exclusion, and/or dispute regarding Workweeks, and

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<sup>67</sup> Aiwasian Decl., ¶ 19.

<sup>68</sup> Settlement Agreement, Exh. A.

the date and time set for the Final Approval Hearing.<sup>69</sup>

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.<sup>70</sup> The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.<sup>71</sup> The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks credited to them.<sup>72</sup>

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

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

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.<sup>73</sup> With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternative address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.<sup>74</sup> In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member

<sup>69</sup> Settlement Agreement, Exh. A.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> Settlement Agreement, § 17.a.

<sup>74</sup> *Id.*, § 17.b.

shall be extended by fifteen (15) calendar days.<sup>75</sup> The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.<sup>76</sup>

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.<sup>77</sup> The Settlement Administration Costs are currently estimated to not exceed seven thousand dollars and no cents (\$7,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.<sup>78</sup>

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

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

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.<sup>79</sup>

Within twenty-one (21) calendar of Preliminary Approval, Defendant will provide a complete list of all Class Members that Defendant will diligently and in good faith compile from its records to the Settlement Administrator, which will include each Class Member's last-known (1) full name, (2) mailing address, (3) telephone number, (4) Social Security Number, (5) the start and end dates of employment as an hourly-paid or non-exempt employee of Defendant in

<sup>75</sup> Settlement Agreement, § 6.aa.

<sup>76</sup> *Id.*, § 18, 20 & 22.

<sup>77</sup> *Id.*, § 12.; Aiwazian Decl., ¶ 15.

<sup>78</sup> Settlement Agreement, § 12.

<sup>79</sup> *Id.*, § 17.

California during the Class Period, and (6) such other information as is necessary for the Settlement Administrator to calculate Workweeks (collectively referred to as the “Class Data and List”).<sup>80</sup>

Within ten (10) business days after receiving the Class Data and List from Defendant, 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 mail a Class Notice in English to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.<sup>81</sup> With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternative address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.<sup>82</sup> Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, dispute regarding Workweeks, and/or Notice of Objection.<sup>83</sup>

Upon Preliminary Approval, Defendant will make a deposit of half the Maximum Settlement Amount (i.e., \$300,000), into the qualified settlement account established by the Settlement Administrator (“First Installment”).<sup>84</sup> Six (6) months after the funding of the First Installment, Defendant will make a deposit of the remaining half of the Maximum Settlement Amount (i.e., \$300,000), plus an amount sufficient to pay Employer Taxes, into the qualified settlement account established by the Settlement Administrator (“Second Installment”).<sup>85</sup> Within seven (7) calendar days of the Second Installment and the Effective Date, 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) LWDA Payment to the Labor and Workforce Development Agency; (c) Enhancement Payment to Plaintiff; (d) Attorneys’ Fees and Costs to Class Counsel; and (e) Settlement Administration Costs to itself

<sup>80</sup> Settlement Agreement, §§ 6.c. & 16.

<sup>81</sup> *Id.*, § 17.a.

<sup>82</sup> *Id.*, § 17.b.

<sup>83</sup> *Id.*, §§ 6.z, 6.aa, 18, 20 & 22.

<sup>84</sup> *Id.*, § 9.b.

<sup>85</sup> *Id.*, § 9.c.

(the Settlement Administrator).<sup>86</sup>

Each Individual Settlement 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.<sup>87</sup> Thereafter, all funds represented by any uncashed or undeliverable checks, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those Settlement Class Members who did not cash their checks until such time as they claim their property.<sup>88</sup>

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

Plaintiff Priscilla De La Cruz Corona respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to seven thousand five hundred dollars and no cents (\$7,5000.00) to Plaintiff.<sup>89</sup> 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 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.<sup>90</sup> Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that

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<sup>86</sup> Settlement Agreement, § 9.d.

<sup>87</sup> *Id.*, § 19.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Id.*, § 11.

<sup>90</sup> Aiwazian Decl., ¶ 20; Declaration of Priscilla De La Cruz Corona in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Corona Decl."), ¶¶ 3-4.

would benefit the Class.<sup>91</sup> Accordingly, it is appropriate and just for Plaintiff to receive an 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 Aiwarzian, Arby Aiwarzian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Priscilla De La Cruz Corona as Class Representative; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, 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: February 15, 2022

**LAWYERS for JUSTICE, PC**

By:

  
Edwin Aiwarzian  
Attorneys for Plaintiff

<sup>91</sup> Aiwarzian Decl., ¶ 20; Corona Decl., ¶¶ 3-5.