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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

NORBERTO CEJA, 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.

WARE DISPOSAL, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 30-2021-01224571-CU-OE-CXC
[consolidated with 30-2021-01228821-CU-
OE-CXC]

Honorable William Claster
Department CX-101

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
(Selena Matavosian); Declaration of Proposed
Class Representative (Norberto Ceja) and
[Proposed] Order filed concurrently
herewith]

Reservation: 74227584
Date: March 15, 2024
Time: 9:00 a.m.
Department: CX-101

Complaint Filed: October 1, 2021
FAC Filed: November 20, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that on March 15, 2024 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable William Claster in Department CX-101 of the Superior Court of California for the County of Orange, Civil Complex Center, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Norberto Ceja (“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 Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Selena Matavosian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Norberto Ceja 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, Enhancement Award for Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

This Motion is made pursuant to Rule 3.769, Rule 3.764, 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 (Selena Matavosian) and Proposed Class Representative (Norberto Ceja) 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 12, 2024

LAWYERS for JUSTICE, PC

By: 
Selena Matavosian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Norberto Ceja (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims (“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 Ware Disposal, Inc. (“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 One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Award of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff³; (3) the Class Counsel Attorneys’ Fees and Costs, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$612,500.00, and reimbursement of litigation costs and expenses not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00);⁵ and (5) the amount of One Hundred Fifty Thousand Dollars and Zero 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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Selena Matavosian (“Matavosian Decl.”), ¶ 19. The Settlement is based on the representation that there were no more than 49,000 Workweeks worked by the Class Members during the period from October 1, 2017 through April 25, 2023. If that number increases by more than 10% during the Class Period, Defendant will have the choice of either: (a) paying a proportional increase in the Gross Settlement Amount for each additional pay period over 53,900; or (b) modifying the end date of the Class Period to a date prior to preliminary approval, to avoid incurring the *pro rata* increase. For example, if the number is 11% higher, Defendant would have the option to increase the Gross Settlement Amount by 1%, or ending the Class Period earlier. *See id.*, ¶ 60.

² *Id.*, ¶ 21.

³ *Id.*, ¶ 61.c.

⁴ *Id.*, ¶ 61.a.

⁵ *Id.*, ¶ 61.b.

distributed to anyone who was employed by Defendant in the State of California, as a non-exempt or hourly-paid employee at any time during the PAGA Period (“Aggrieved Employees”).⁶

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

Anyone who was employed by Defendant in the State of California, as a non-exempt or hourly-paid employee at any time during the Class Period. (“Class” or “Class Members”).⁷

Based on information provided by Defendant, the Class is estimated to consist of approximately five hundred one (501) individuals and the Aggrieved Employees are estimated to consist of approximately four hundred nineteen (419) individuals.⁸

Class Members who have not submitted a valid and timely Opt-Out Request (“Participating Class Members”) will receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based upon the number of weeks each Class Member was employed during the Class Period (“Workweeks”).⁹

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

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⁶ Settlement Agreement, ¶¶ 3 & 61.d. “PAGA Period” is defined as the period from February 28, 2020, through the date the Court enters the Preliminary Approval Order. *See id.*, ¶ 31.

⁷ *Id.*, ¶ 7. “Class Period” is defined as the time period from October 1, 2017 through the date on which the Court enters an order granting preliminary approval of the Settlement Agreement. *See id.*, ¶ 9.

⁸ Matavosian Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 22, 35 & 42.

¹⁰ *Id.*, ¶¶ 55 & 56. *See id.* at ¶ 38, for the full scope of the “Released Class Claims,” *id.* at ¶ 37, for the full scope of the Released PAGA Claims, and *id.* at ¶ 39, for the definition of the “Released Parties.”

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

2 Defendant provides refuse and recycling services to businesses and residences
3 throughout Southern California. Plaintiff Norberto Ceja is a former employee of Defendant.

4 On August 24, 2021, Plaintiff provided written notice by online submission to the
5 LWDA and by certified mail to Defendants Ware Disposal, Inc. and Judith Helaine Ware of the
6 specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice
7 I").

8 On October 1, 2021, Plaintiff filed a Class Action Complaint for Damages ("Class
9 Complaint") in the Orange County Superior Court ("Court"), Case No. 30-2021-01224571-CU-
10 OE-CXC, thereby commencing the above-captioned lawsuit ("Class Action").

11 On October 28, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
12 Attorneys General Act, California Labor Code § 2698, Et Seq. ("PAGA Complaint") in the
13 Orange County Superior Court, thereby commencing a Private Attorneys General Act
14 ("PAGA") representative action entitled *Norberto Ceja v. Ware Disposal, Inc., et al.*, Case No.
15 30-2021-01228821-CU-OE-CXC ("PAGA Action") (the PAGA Action and Class Action are
16 collectively referred to as the "Action").

17 On December 7, 2021, Defendant filed an Answer to the Class Complaint.

18 On December 22, 2021, Defendants Ware Disposal, Inc. and Judith Helaine Ware filed
19 an Answer to the PAGA Complaint.

20 On May 12, 2023, Plaintiff provided a follow-up written notice by online submission to
21 the LWDA and by certified mail to Defendants Ware Disposal, Inc. and Judith Helaine Ware of
22 additional provisions of the California Labor Code that were alleged to be violated ("PAGA
23 Notice II") (together, the PAGA Notice I and PAGA Notice II are referred to as "PAGA
24 Notices").

25 On November 7, 2023, the Court granted the Parties' Stipulation to Consolidate the Class
26 Action (Case No. 30-2021-01224571-CU-OE-CXC) and the PAGA Action (Case No. 30-2021-
27 01228821-CU-OE-CXC), and deemed the Class Action as the lead case.

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1 On November 20, 2023, Plaintiff filed a First Amended Class Action Complaint for
2 Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §
3 2698, Et Seq. (“First Amended Complaint” or “Operative Complaint”) in the Class Action,
4 thereby adding a representative claim for civil penalties under PAGA, and fleshing out
5 additional allegations consistent with the allegations set forth in Plaintiff’s PAGA Notice II.

6 On December 6, 2023, Defendant filed an Answer to the First Amended Complaint.

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

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

23 The Parties have actively litigated the Action since the Class Action was commenced on
24 October 1, 2021. On April 25, 2023, the Parties participated in a formal, full-day mediation
25 conducted by Lynn S. Frank, Esq. (the “Mediator”), a well-regarded mediator experienced in
26 mediating complex labor and employment matters. With the aid of the Mediator’s evaluation,
27 the Parties ultimately reached the Settlement described herein to resolve the Actions in their
28 entirety.

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

2 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to
3 resolve the Released Class Claims of Plaintiff and the Participating Class Members and the
4 Released PAGA Claims of Plaintiff, Aggrieved Employees, and the State of California with
5 respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount
6 will be calculated by deducting the following amounts from the Gross Settlement Amount: (1)
7 attorneys' fees in an amount not to exceed Six Hundred Twelve Thousand Five Hundred Dollars
8 and Zero Cents (\$612,500.00) (i.e., up to 35% of the Gross Settlement Amount) and
9 reimbursement of costs and expenses in an amount not to exceed Twenty Thousand Dollars and
10 Zero Cents (\$20,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and
11 Costs"); (2) settlement administration costs, which are currently estimated to be up to Twelve
12 Thousand Dollars and Zero Cents (\$12,000.00) to the Settlement Administrator ("Settlement
13 Administration Costs"); (3) PAGA Amount of One Hundred Fifty Thousand Dollars and Zero
14 Cents (\$150,000.00), of which seventy-five percent (75%) (i.e., \$112,500.00 out of
15 \$150,000.00) will be paid to the LWDA ("LWDA Payment") and twenty-five percent (25%)
16 (i.e., \$37,500.00 out of \$150,000.00) will be distributed to Aggrieved Employees on a *pro rata*
17 basis ("PAGA Payment"); and (4) payment in the amount of up to Seven Thousand Five
18 Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Norberto Ceja ("Enhancement
19 Award").¹² The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement
20 Administrator") to handle the notice and settlement administration process.

21 The Parties have agreed that the Settlement Administrator will determine each
22 Participating Class Member's *pro rata* share of the Net Settlement Amount (i.e, Individual
23 Settlement Share), in accordance with the Settlement Agreement and as follows: (1) dividing
24 the Participating Class Member's Workweeks by the total number of Workweeks for all Class
25 Members, and (2) multiplying this figure by the Net Settlement Amount.¹³

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27 ¹¹ Settlement Agreement, ¶¶ 55 & 56.

28 ¹² *Id.*, ¶¶ 61.a, 61.b, 61.c & 61.d.

¹³ *Id.*, ¶ 61.e.

The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employee's *pro rata* share of the PAGA Payment ("Individual PAGA Payment"), in accordance with the Settlement Agreement and as follows: (1) dividing the Aggrieved Employee's PAGA Pay Periods by the total number of PAGA Pay Periods for all Aggrieved Employees, and (2) multiplying this figure by the PAGA Payment.¹⁴

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and eighty percent (80%) as interest and penalties, which will be reported on an IRS Form 1099.¹⁵ The Individual PAGA Payment will be considered one hundred percent (100%) civil penalties, and will be reported as such to each Aggrieved Employees on an IRS Form 1099, if applicable.¹⁶ Prior to mailing Individual Settlement Payments to Participating Class Members, the Settlement Administrator will calculate, withhold from the Individual Settlement Payment, and remit to applicable governmental agencies sufficient amounts as may be owed by Participating Class Members for employee's and employer's share of state and federal payroll taxes, withholdings, and contributions.¹⁷ Defendant's share of the payroll taxes associated with the wage portion of the Individual Settlement Payments ("Employer Payroll Taxes") will be paid separately and in addition to the Gross Settlement Amount.¹⁸

Checks for the Individual Settlement Payments and the Individual PAGA Payments will become void and no longer available if not cashed within one hundred eighty (180) calendar days after mailing.¹⁹ The funds from voided checks will be transferred to Court Appointed Special Advocates ("CASA") of Orange County, or to another recipient to the extent the Court orders so.²⁰

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¹⁴ Settlement Agreement, ¶¶ 20 & 61.f. "PAGA Pay Periods" is defined as the number of pay periods an Aggrieved Employee was employed during the PAGA Period and will be calculated by dividing the total number of calendar days that the Aggrieved Employee was employed by 7. *See id.*, ¶ 33.

¹⁵ *Id.*, ¶ 63.a.

¹⁶ *Ibid.*

¹⁷ *Id.*, ¶ 63.b.

¹⁸ *Id.*, ¶¶ 15 & 19.

¹⁹ *Id.*, ¶ 68.f.

²⁰ *Ibid.*

Class Members who wish to be excluded from the Class Settlement must submit a written letter (“Opt-Out Request”) to the Settlement Administrator, by mail, postmarked on or before the expiration of the time period commencing on the date the Class Notice is mailed to Class Members and ending sixty (60) days thereafter (“Notice Period”).²¹ An Opt-Out Request must: (i) contain the Class Member’s full name, current address, and signature; (ii) the name and case number of the Class Action; (iii) a written request clearly expressing the Class Member’s desire to be excluded from (or opt out of) the Class Settlement; and (iv) be returned so that it is postmarked on or before the expiration of the Notice Period.²² Unless a Class Member opts out of the Class Settlement, the Class Member will be bound by the Class Settlement, including the release of the Released Class Claims.²³ Any Class Member who worked during the PAGA Period and who opts out of the Class Settlement will still be considered an Aggrieved Employee, will still be bound to the PAGA Settlement, and will still be issued an Individual PAGA Payment, regardless of whether they submit an Opt-Out Request.²⁴

To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Participating Class Members) must submit a timely and complete written objection to the Settlement Administrator, by mail, on or before the expiration of the Notice Period.²⁵ A written objection must contain: (i) the objecting Class Member’s full name, current address, and signature; (ii) the name and case number of the Class Action; (iii) a statement of the specific reasons why the objector believes the Class Settlement is unfair or objects to the Class Settlement; (iv) copies of any papers, briefs, or other documents upon which the objection is based; and (v) a statement of whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number.²⁶ All objections

²¹ Settlement Agreement, ¶¶ 26 & 66. “Class Settlement” is defined as the settlement and release of all Released Class Claims. *See id.*, ¶ 10.

²² *Id.*, ¶ 66.

²³ *Ibid.*

²⁴ *Ibid.* “PAGA Settlement” is defined as the settlement and release of the Released PAGA Claims. *See id.*, ¶ 32.

²⁵ *Id.*, ¶ 67.

²⁶ *Id.*, ¶ 67.a.

1 shall be signed by the objecting Class Member or the Class Member’s legally-authorized
2 representative.²⁷ Class Members who have not objected in writing may still appear and be heard
3 at the Final Approval Hearing.²⁸

4 Class Members may dispute the number of Workweeks allocated to the Class Member
5 by submitting a written dispute sent via U.S. Mail to the Settlement Administrator postmarked
6 no later than the expiration of the Notice Period (“Workweek Dispute”).²⁹ To be valid, a
7 Workweek Dispute must contain the following: (i) the Class Member’s full name, current
8 address, and signature; (ii) the name and case number of the Class Action; (iii) clearly states
9 that the Class Member disputes the number of Workweeks and/or PAGA Pay Periods credited
10 to him or her, and the number of Workweeks and/or PAGA Pay Periods the Class Member
11 maintains is correct; and (iv) documents to demonstrate that Defendant’s calculation of the
12 Workweeks and/or PAGA Pay Periods for the Class Member is incorrect.³⁰

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

15 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
16 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
17 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
18 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
19 or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.*
20 (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and
21 reasonable, whether certification of the class was proper, and whether the attorney fee award
22 was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s
23 decision to approve a class action settlement may be reversed only upon a strong showing of
24 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
25 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

26
27 ²⁷ Settlement Agreement, ¶ 67.a.

28 ²⁸ *Id.*, ¶ 67.

²⁹ *Id.*, ¶ 65.

³⁰ *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.**

Class Counsel has actively litigated the Action since the Class Action was commenced on October 1, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³¹

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data obtained from Defendant, Plaintiff, and other sources.³² 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 Plaintiff’s and other Class Member’s time data and pay records, Defendant’s Employee Handbook, collective bargaining agreements applicable to some of the Class, internal memoranda, new hire orientation checklists, job descriptions, company policy

³¹ Matavosian Decl., ¶¶ 11-13.

³² *Id.*, ¶ 12.

acknowledgments (including but not limited to Final Pay Check Acknowledgment and Employee Handbook Confirmation of Receipt), forms (including but not limited to Request for Tool/Boot Allowance and Business Expense Report Summary), procedures (including but not limited to Dispute Resolution Agreement, Confidentiality Agreement, and Employee Arbitration Agreement), and policies (including but not limited to Anti-Fraternization Policy, Employee Acknowledgment Cell Phone Usage Policy, Safety Program, Traffic Violation Policy, and Injury, Illness Prevention Policy), among other information and documents.³³ Class Counsel had the opportunity to interview Plaintiff and other class members to gather information regarding the facts and circumstances surrounding Plaintiff's and putative class members' employment and to identify potential witnesses.³⁴ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, and the production of documents and data prior to the mediation.³⁵ Class Counsel also drafted pleadings and the mediation brief and prepared for and attended court proceedings, mediation, and settlement negotiations, among other tasks.³⁶

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Lynn Frank, Esq. (the "Mediator"), a well-respected mediator experienced in mediating complex labor and employment matters.³⁷ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in extensive discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the impact of the collective bargaining agreements applicable to some of the Class Members and issues of preemption under the National Labor Relations Act, the law relating to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other

³³ Matavosian Decl., ¶ 12.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ *Id.*, ¶ 11.

things.³⁸ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁹ Arriving at a settlement that was acceptable to all Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁰ After conducting extensive investigations, informal discovery, exchange of information, and extensive settlement negotiations, and with the aid of the Mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴¹

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.⁴² The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴³ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, issues of preemption under the National Labor Relations Act, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁴ The Settlement was based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁵

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

The Settlement, which provides for a Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00), represents a fair, adequate,

³⁸ Matavosian Decl., ¶ 11.

³⁹ Ibid.

⁴⁰ *Id.*, ¶¶ 11, 16-18.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁵ *Id.*, ¶¶ 2-7.

1 and reasonable resolution of the matter.⁴⁶ The Settlement was calculated using the information
2 and data uncovered during litigation, case investigation, as well as the formal and informal
3 exchange of information.⁴⁷ The Settlement takes into account the potential risks and rewards
4 inherent in any case and, in particular, in the case at issue.⁴⁸ Moreover, considering all of the
5 facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate
6 recovery for the Class, Aggrieved Employees, and the State of California.⁴⁹

7 Assuming that the Attorneys' Fees and Costs, Enhancement Award, PAGA Amount,
8 and Settlement Administration Costs are approved by the Court and paid in the full amounts
9 provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is
10 currently estimated to be Nine Hundred Forty-Eight Thousand Dollars and Zero Cents
11 (\$948,000.00).⁵⁰ Additionally, 75% of the PAGA Amount (i.e., the LWDA Payment), which is
12 \$112,500.00 out of \$150,000.00, will be distributed to the LWDA and 25% of the PAGA
13 Amount (i.e., the PAGA Payment), which is \$37,500.00 out of \$150,000.00, will be distributed
14 to Aggrieved Employees on a *pro rata* basis.⁵¹ As discussed in Part III, *supra*, the entire Net
15 Settlement Amount will be fully paid out to the Participating Class Members and the PAGA
16 Amount will be fully paid out to the LWDA and Aggrieved Employees, in accordance with the
17 Settlement Agreement. The amount of each Participating Class Member's Individual Settlement
18 Share will be calculated based on his or her Workweeks, and the amount of each Aggrieved
19 Employees' Individual PAGA Payment will be calculated based on his or her PAGA Pay
20 Periods during the PAGA Period.⁵² There is no reason to doubt the fairness of the proposed
21 plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final
22 approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant
23 approval], particularly if recommended by experienced and competent class counsel." *In re*
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25 ⁴⁶ Matavosian Decl., ¶¶ 11, 13, 14, & 21.

26 ⁴⁷ *Id.*, ¶¶ 11-13.

27 ⁴⁸ *Id.*, ¶¶ 16-18.

28 ⁴⁹ *Id.*, ¶¶ 11, 13, & 21.

⁵⁰ *Id.*, ¶ 14.

⁵¹ *Ibid.*

⁵² Settlement Agreement, ¶¶ 20, 22, 61.e & 61.f.

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, the State of California, and Aggrieved Employees.⁵³ 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.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁴ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁵ As outlined in the Declaration of Selena Matavosian, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁷ California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies

⁵³ Matavosian Decl., ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶¶ 11-13 & 21.

⁵⁵ *Id.*, ¶ 18.

⁵⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, § 12.1.

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

3 The Class is ascertainable and numerous as to make it impracticable to join all Class
4 Members, and there are common questions of law and fact that predominate over any questions
5 affecting any individual Class Member. Further, Plaintiffs’ claims are typical of the claims of
6 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
7 Class. Finally, prosecution of separate actions by individual Class Members would create the
8 risk of inconsistent or varying adjudications, and a class action is superior to other available
9 means for the fair and efficient adjudication of the case. The Class is amenable to class
10 certification for settlement purposes as discussed below.

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

12 “Ascertainability is required in order to give notice to putative class members as to whom
13 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
14 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
15 by describing a set of common characteristics sufficient to allow a member of that group to
16 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
17 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
18 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

19 This action involves a class of approximately five hundred one (501) individuals.⁵⁸ This
20 class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-
21 35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder
22 is not practical at that point). Further, all Class Members can and will be identified by Defendant
23 to the Settlement Administrator through a review of Defendant’s employment records regarding
24 hourly-paid or non-exempt employees in California during the Class Period. As such, the Class
25 is ascertainable and sufficiently numerous.

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28 ⁵⁸ Matavosian 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 that*
6 *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 Action. Based on the documents and information obtained through informal
18 discovery and exchange of information in this case, Plaintiff contends that Class Members were
19 subject to the same or similar job duties and uniform operations and employment practices,
20 policies, and procedures during the time period at issue.⁵⁹ Plaintiff’s claims arise from
21 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
22 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
23 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
24 to timely pay wages during employment and upon termination of employment, failing to provide
25 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
26 necessary business-related expenses.⁶⁰

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28 ⁵⁹ Matavosian Decl., ¶ 16.

⁶⁰ *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.⁶¹ As a result, 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.⁶²

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 hourly-paid or non-exempt employees employed by Defendant 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 two (2) years and was actively preparing for class certification and trial.⁶³ 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 informal discovery. Class Counsel reviewed a large volume of documents and data⁶⁴ 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 and the production of documents and data prior to mediation.⁶⁵ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁶

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁷

The Settlement establishes a Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00), and provides for Class Counsel to apply

⁶¹ Matavosian Decl., ¶ 16.

⁶² Ibid.

⁶³ *Id.*, ¶¶ 11-13.

⁶⁴ *Id.*, ¶ 12.

⁶⁵ Ibid.

⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 2-7.

1 to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to
2 exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$612,500.00) and an
3 amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) for costs and
4 expenses.⁶⁸ The attorneys' fees provided for by the Settlement is commensurate with: (1) the
5 risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and
6 expense that Class Counsel dedicated to the case, (3) the skill and determination that Class
7 Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5)
8 the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the
9 other cases that Class Counsel had to turn down in order to devote its time and efforts to this
10 matter. The proposed Class Notice provides Class Members with information about the amount
11 allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and
12 Costs will be sought, as provided for by the Settlement.⁶⁹

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

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28 ⁶⁸ Settlement Agreement, ¶ 61.a.

⁶⁹ *Id.*, Exh. A.

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

8 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
9 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
10 *Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the
11 \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y.
12 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees).
13 California courts routinely approve class action attorneys' fee awards "averag[ing] around one-
14 third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court
15 found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions);
16 *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No.
17 BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court
18 Case No. BC263646 (Sept. 2006) (wage and hour).

19 Class Counsel has borne all of the risks and costs of litigation and will not receive any
20 compensation until recovery is obtained.⁷⁰

21 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
22 and further argument at the time of filing Plaintiff's motion for final approval of the Settlement
23 and application for the Attorneys' Fees and Costs and at the Final Approval Hearing.
24 Considering the work performed and the risks incurred, the attorneys' fees provided for by the
25 Settlement and to be requested by Class Counsel are well within the range of reasonableness.

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28 ⁷⁰ Matavosian Decl., ¶ 19.

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 Notice⁷¹ describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, Opt-Out Request, and/or Workweek Dispute, and the date and time set for the Final Approval Hearing.⁷²

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.⁷³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payment is calculated and the number of Workweeks and PAGA Pay Periods credited to them.⁷⁵

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.

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

IX. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR

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

The Settlement Administrator will mail the Class Notice to each Class Member and Aggrieved Employee by First-Class U.S. mail in English and Spanish.⁷⁶ The Settlement Administrator will re-mail any Class Notice returned by the United States Postal Service with a forwarding address on or before the expiration of the Notice Period.⁷⁷ It shall be conclusively presumed that those Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days after re-mailing, received the Class Notice.⁷⁸ The Settlement Administrator will receive and process objections to the Class Settlement, Opt-Out Requests, and Workweek Disputes.⁷⁹

The Settlement Administrator's duties will include, calculating the amounts of the Individual Settlement Payments and Individual PAGA Payments; 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 Participating Class Members and Individual PAGA Payment checks to Aggrieved Employees; issue W-2 and 1099 forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations; calculate and disburse the Attorneys' Fees and Costs, Enhancement Award, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁰ The Settlement Administration Costs are currently estimated not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸¹

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⁷⁶ Settlement Agreement, ¶¶ 61.b & 64.c.

⁷⁷ *Id.*, ¶ 64.d.

⁷⁸ *Id.*, ¶ 64.d.

⁷⁹ *Id.*, ¶¶ 65, 66 & 67.

⁸⁰ *Id.*, ¶ 61.b.

⁸¹ *Ibid.*

Accordingly, Plaintiff respectfully request that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employees 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.⁸²

Within ten (10) business days after entry of the Preliminary Approval Order, Defendant will provide the Class List to the Settlement Administrator, which shall include a list of Class Members that identifies each Class Member by full name, Social Security Number, and last-known address; and provide the number of Workweeks credited to each Class Member during the Class Period and the number of PAGA Pay Periods credited to each Aggrieved Employee during the PAGA Period (collectively, "Class List").⁸³

Within fifteen (15) calendar days after receipt of the Class List from Defendant, the Settlement Administrator will send the Class Notice to each Class Member via First Class U.S. Mail.⁸⁴ Receipt of the Class Notice shall be presumed as to each and every Class Member whose Class Notice is not returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days after mailing.⁸⁵

The Settlement Administrator will re-mail any Class Notice returned by the United States Postal Service with a forwarding address on or before the expiration of the Notice Period.⁸⁶ It shall be conclusively presumed that those Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within fifteen (15)

⁸² Settlement Agreement, ¶ 64.c.

⁸³ *Id.*, ¶ 64.

⁸⁴ *Id.*, ¶ 64.c.

⁸⁵ *Ibid.*

⁸⁶ *Id.*, ¶ 64.d.

1 calendar days after re-mailing, received the Class Notice.⁸⁷ Class Members will have until the
2 expiration of the Notice Period to submit an Opt-Out Request, Workweek Dispute, and/or
3 objection to the Class Settlement.⁸⁸

4 Defendant shall remit the Gross Settlement Amount of \$1,750,000.00 to the Settlement
5 Administrator in two installments: (i) \$900,000.00 will be due within sixty (60) days of the
6 Effective Date (“First Installment”); and (ii) \$850,000.00, as well as the Employer Payroll
7 Taxes, will be due within six (6) months of the First Installment (“Second Installment”). (The
8 First Installment, the Second Installment, and the Employer Payroll Taxes are collectively
9 called, “Settlement Fund”).⁸⁹ The distribution of Individual Settlement Payments to
10 Participating Class Members and Individual PAGA Payments to Aggrieved Employees will
11 occur no later than fifteen (15) business days after receipt of the Settlement Fund from
12 Defendant (“Settlement Proceeds Distribution Deadline”).⁹⁰ The distribution of the Attorneys’
13 Fees and Costs and Enhancement Award shall occur no later than fifteen (15) business days
14 after the Settlement Administrator receives the Settlement Fund from Defendant.⁹¹ The
15 distribution of the LWDA Payment shall occur no later than fifteen (15) business days after the
16 Settlement Administrator receives the Settlement Fund from Defendant.⁹²

17 Each Individual Settlement Payment and Individual PAGA Payment check will become
18 void and no longer available if not cashed within one hundred eighty (180) calendar days after
19 mailing.⁹³ The funds from voided checks will be transferred to CASA of Orange County, or to
20 another recipient to the extent the Court orders so.⁹⁴

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25 ⁸⁷ Settlement Agreement, ¶ 64.d.

26 ⁸⁸ *Id.*, ¶ 65, 66 & 67.

27 ⁸⁹ *Id.*, ¶ 68.b.

28 ⁹⁰ *Id.*, ¶ 68.c.

⁹¹ *Id.*, ¶ 68.d.

⁹² *Id.*, ¶ 68.e.

⁹³ *Id.*, ¶ 68.f.

⁹⁴ *Ibid.*

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

Plaintiff Norberto Ceja respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Award in an amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00).⁹⁵ 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 Award is fair and appropriate. Plaintiff spent time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁶ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹⁷ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for his services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to his individual settlement payments.

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 Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Norberto Ceja as Class Representative; appoint Simpluris, Inc. as the

⁹⁵ Settlement Agreement, ¶ 16.

⁹⁶ Matavosian Decl., ¶ 20; Declaration of Norberto Ceja in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Ceja Decl."), ¶¶ 4.

⁹⁷ Matavosian Decl., ¶ 20; Ceja Decl., ¶ 3-6.

Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Award, PAGA Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: February 12, 2024

LAWYERS for JUSTICE, PC

By:



Selena Matavosian
Attorneys for Plaintiff