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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

CHRISTOPHER RODRIGUEZ, 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.

ARKEMA INC., an unknown business entity;
BOSTIK, INC., an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: BC721328

Honorable Maren E. Nelson
Department SSC17

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
(Alexandra Rose); Declaration of
Proposed Class Representative
(Christopher Rodriguez); and [Proposed]
Order filed concurrently herewith]

Date: June 20, 2022
Time: 9:00 a.m.
Department: SSC17

Complaint Filed: September 17, 2018
FAC Filed: October 31, 2018
SAC Filed: December 26, 2018
TAC Filed: August 25, 2020
FAC Filed: July 9, 2021
FAC Filed: January 4, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on June 20, 2022 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Maren E. Nelson in Department SSC17 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 N Spring Street, Los Angeles, California 90012, Plaintiff Christopher Rodriguez (“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 of Claims (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Alexandra Rose, 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, Class Counsel Award to Class Counsel, Class Representative Service Award to Plaintiff, and Settlement Administrator Costs to the Settlement Administrator;
- Conditionally certifying the Settlement Class for settlement purposes;
- Preliminarily appointing Plaintiff Christopher Rodriguez as Class Representative;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of *Lawyers for Justice, PC* as Class Counsel;
- Approving the proposed Notice of Pendency of Class Action Settlement and Final Approval Hearing Date (“Class Notice”), attached as “**EXHIBIT A**” to the Settlement Agreement;
- Directing the mailing of the Class Notice to the Settlement 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 Class Counsel Award to Class Counsel, Class Representative Service Award to Plaintiff, and Settlement Administrator 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 (Alexandra Rose) and Proposed Class Representative (Christopher Rodriguez) 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: June 1, 2022

LAWYERS for JUSTICE, PC

By: _____



Alexandra Rose
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Christopher Rodriguez (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release of 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 Defendants Arkema Inc. and Bostik, Inc. (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Fund of One Million One Hundred Thousand Dollars (\$1,100,000.00).¹ The Gross Settlement Fund includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Fund²; (2) the Class Representative Service Award of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff³; (3) the Class Counsel Award to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Fund, or \$385,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty-Four Thousand Dollars (\$34,000.00)⁴; (4) the Settlement Administrator Costs to the Settlement Administrator in the amount not to exceed Seven Thousand Dollars (\$7,000.00);⁵ and (5) the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$112,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$37,500.00) will be distributed to all current and former non-exempt employees who were

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Alexandra Rose (“Rose Decl.”), § I.18. To the extent the number of Compensable Work Weeks for the Class Period exceeds 18,427 by more than ten percent (10%), it will trigger an escalation of the Gross Settlement Fund whereby the Gross Settlement Fund shall increase by one percent (1%) for every one percent (1%) increase in Compensable Work Weeks over the ten percent (10%) threshold. *See id.*, § III.28.

² *Id.*, §§ I.20 & III.17.b.

³ *Id.*, §§ I.7 & III.20.

⁴ *Id.*, §§ I.3 & III.21.

⁵ *Id.*, §§ I.35 (pg. 9) & III.22.

1 employed by Defendants in California during the period September 17, 2014 to November 1,
2 2021 (“PAGA Members”).⁶

3 Plaintiff also seeks to provisionally certify the following Settlement Class for settlement
4 purposes, which Defendants do not oppose:

5 All current and former non-exempt employees who were employed by Defendants
6 in California during the period September 17, 2014 to November 1, 2021
7 (“Settlement Class” or “Settlement Class Members”).⁷

8 The Settlement Class is estimated to consist of approximately one hundred thirty (130)
9 individuals.⁸

10 Settlement Class Members who do not submit a valid and timely request to be excluded
11 from the Settlement (“Participating Class Members”) will receive a share of the Net Settlement
12 Fund (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of weeks
13 during the Class Period in which Settlement Class Members recorded time worked for
14 Defendants in the State of California, which is to be determined based on Defendants’ records
15 (“Compensable Work Weeks”).⁹

16 The Settlement resolves the Released Class Claims of Plaintiff and Participating Class
17 Members, and the Released PAGA Claims of the State of California and PAGA Members,
18 against the Released Parties.¹⁰

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

23 ///

24 ///

25 _____
26 ⁶ Settlement Agreement, §§ I.23, I.28, & I.29.

27 ⁷ *Id.*, § I.41. “Class Period” is defined as the period of time from September 17, 2014 to November 1, 2021. *See id.*,
28 § I.5.

⁸ Rose Decl., ¶ 9.

⁹ Settlement Agreement, §§ I.9, I.20, & III.17.b.

¹⁰ *See id.* at § I.35 (pg. 7) for the full scope of the “Released Class Claims,” *id.* at I.3, for the full scope of the
“Released PAGA Claims” and *id.* at § I.37 for the definition of the “Released Parties.”

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Arkema Inc. focuses on specialty chemicals and advanced materials and is organized into three (3) business segments – Coating Solutions, Industrial Chemicals, and Performance Products. As a global chemical major, Defendant Arkema Inc. has operations in over fifty (50) countries. Within California, Defendant Arkema Inc. operates plants in Temecula under the name Bostik and Torrance under the name Arkema. Defendant Bostik, Inc. is a subsidiary of Defendant Arkema Inc. Plaintiff is a former employee of Defendants.

On September 17, 2018, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On October 31, 2018, Plaintiff filed a First Amended Class Action Complaint for Damages, which removed causes of action for alleged violations of California Labor Code sections 204 and 1174(d) (“First Amended Complaint”).

On December 26, 2018, Plaintiff filed a Second Amended Class Action Complaint for Damages amending the allegations of his sixth cause of action pertaining to alleged inaccurate wage statements by consolidating the putative sub class and damages sought with respect to this claim (“Second Amended Complaint”).

On January 29, 2019, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents (Set One); Special Interrogatories (Sets One & Two); and Form Interrogatories (Set One), on Defendant Arkema Inc. and noticed the deposition of Defendant Arkema Inc.’s Person Most Knowledgeable regarding wage and hour practices and organizational structure of Defendant Arkema Inc.

On June 26, 2019, Defendant Arkema Inc. filed an Answer to Plaintiff’s Second Amended Complaint.

On August 25, 2020, Plaintiff filed a Third Amended Class Action Complaint for Damages adding Bostik, Inc. as a named defendant (“Third Amended Complaint”).

On October 23, 2020, Defendant Bostik, Inc. filed a Demurrer and Motion to Strike Portions of Plaintiff’s Third Amended Complaint.

1 On April 26, 2021, Plaintiff filed an Opposition to Defendant Bostik, Inc.’s Demurrer
2 and Motion to Strike Portions of Plaintiff’s Third Amended Complaint.

3 On May 3, 2021, Defendant Bostik, Inc. filed a Reply in Support of its Demurrer and
4 Motion to Strike Portions of Plaintiff’s Third Amended Complaint.

5 On June 10, 2021, the Court filed an Order Sustaining Demurrer and Granting Motion
6 to Strike.

7 On July 9, 2021, Plaintiff filed a Fourth Amended Class Action Complaint for Damages
8 alleging an agency theory between Arkema Inc. and Bostik Inc (“Fourth Amended Complaint”).

9 On January 4, 2022, Plaintiff filed a Fifth Amended Class Action Complaint for
10 Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698
11 Et Seq. (“Fifth Amended Complaint or “Operative Complaint”), which added a cause of action
12 under PAGA and added causes of action for alleged violations of California Labor Code section
13 204 and 1174(d).

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

25 Defendants have denied, and continue to deny, any liability and wrongdoing of any kind
26 associated with any of the allegations in the Action, and further denies that the Action is
27 appropriate for class treatment or representative adjudication for any purpose other than for
28 settlement purposes only.

The Parties have actively litigated the Action since it was commenced on September 17, 2018. On August 2, 2021, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Fund to resolve the Released Class Claims of Plaintiff and the Settlement Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Participating Class Members) and the Released PAGA Claims of the State of California and PAGA Members with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Fund will be calculated by deducting the following amounts from the Gross Settlement Fund: (1) attorneys' fees in an amount not to exceed Three Hundred Eighty-Five Thousand Dollars (\$385,000.00) (i.e., up to 35% of the Gross Settlement Fund) and reimbursement of costs and expenses in an amount not to exceed Thirty-Four Thousand Dollars (\$34,000.00) to Class Counsel (collectively referred to as the "Class Counsel Award"); (2) settlement administration costs, which are currently estimated not to exceed Seven Thousand Dollars (\$7,000.00) to the Settlement Administrator ("Settlement Administrator Costs"); (3) One Hundred Fifty Thousand Dollars (\$150,000.00) allocated to penalties under PAGA ("PAGA Payment"); and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Christopher Rodriguez ("Class Representative Service Award").¹² The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

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

¹¹ Settlement Agreement, § I.18.

¹² *Id.*, §§ I.3, I.7, I.24, I.29, I.35 (pg. 9), III.20, III.21, & III.22.

- a. The Net Settlement Fund will be divided by the total number of Compensable Work Weeks worked by all Participating Class Members, the product of which is the “Compensable Class Work Weeks Value.”¹³
- b. The Compensable Class Work Weeks Value will be multiplied by the individual number of Compensable Work Weeks for each Participating Class Member, which equals the Individual Settlement Payment that each Participating Class Member will be paid, reduced as necessary to account for the employee’s mandatory payroll withholdings.¹⁴

The Parties have agreed that the Settlement Administrator will determine each PAGA Member’s share of the twenty-five percent (25%) portion of the PAGA Payment (“Individual PAGA Payment”), in accordance with the Settlement Agreement and as follows:

- c. Twenty-five percent (25%) of the PAGA Payment will be divided by the total number of Compensable Work Weeks worked by all PAGA Members, the product of which is the “Compensable PAGA Work Weeks Value.”¹⁵
- d. The Compensable PAGA Work Weeks Value will be multiplied by the individual number of Compensable Work Weeks for each PAGA Member, which equals the Individual PAGA Payment that each PAGA Member will be paid.¹⁶

All Individual Settlement Payments will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2, and eighty percent (80%) as interest, penalties, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable).¹⁷ Participating Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.¹⁸ Defendants’ share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages, including but not limited to Defendants’ FICA and FUTA contributions (“Employer Taxes”) shall be paid by Defendants separately and in addition to the Gross Settlement Fund.¹⁹ All Individual PAGA Payments will be allocated as one hundred percent (100%) penalties, which will be reported on an IRS Form 1099 (if applicable).²⁰

¹³ Settlement Agreement, § III.17.b.

¹⁴ *Ibid.*

¹⁵ *Id.*, § III.18.c.

¹⁶ *Ibid.*

¹⁷ *Id.*, § III.17.a.

¹⁸ *Id.*, § III.17.b.

¹⁹ *Id.*, § I.18.

²⁰ *Id.*, § III.18.c.

Individual Settlement Payment and Individual PAGA Payment checks will be valid and negotiable for one hundred and eighty (180) days from the date of issuance, and thereafter will be cancelled.²¹ The funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment or Individual PAGA Payment checks (“leftover funds”) will be transmitted to the California State Controller’s Office Unclaimed Property Division in the name of the Participating Class Members and PAGA Members who did not negotiate their checks.²² If, for some reason, the Court does not approve the treatment of leftover funds, the Parties agree the leftover funds will be transmitted to Bet Tzedek Employment Rights Project.²³

Settlement Class Members who wish to exclude themselves from the Class Settlement must submit a valid and timely letter electing to be excluded from the Class Settlement (“Request for Exclusion”) on or before the date forty-five (45) days after the Settlement Administrator mails the Class Notice (“Response Deadline”).²⁴ A Request for Exclusion must be in writing and: (1) contain the case name and number of the Action; (2) contain the full name, address, telephone number, and last four (4) digits of the Social Security number of the Settlement Class Member; (3) contain a statement expressing that the Settlement Class Member elects to be excluded from the Class Settlement; (4) be signed by the Settlement Class Member; and (5) be postmarked or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at the specified address or fax number.²⁵ Any Settlement Class Member who requests to be excluded from the Class Settlement will not be entitled to any Individual Settlement Payment and will not be bound by the terms of the Class Settlement or have any right to object, appeal, or comment thereon, however, PAGA Members will be bound to the PAGA Settlement and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.²⁶

²¹ Settlement Agreement, § III.19.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Id.*, §§ I.38, I.39, & III.12.

²⁵ *Id.*, § I.38.

²⁶ *Id.*, § III.12.

1 Settlement Class Members who do not submit a Request for Exclusion who wish to
2 object to the Class Settlement may do so in person at the Final Approval Hearing and/or in
3 writing by submitting a written objection to the Class Settlement (“Notice of Objection”) to the
4 Settlement Administrator on or before the Response Deadline.²⁷ The Notice of Objection must
5 be in writing and: (1) contain the case name and number of the Action; (2) contain the full name,
6 address, telephone number, and last four (4) digits of the Social Security number of the
7 Participating Class Member; (3) contain a statement of the basis for the objection to the Class
8 Settlement accompanied by any legal support for such objection; (4) be signed by the
9 Participating Class Member; (5) indicate whether the Participating Class Member intends to
10 appear at the Final Approval Hearing; and (6) be postmarked or fax stamped on or before the
11 Response Deadline and returned to the Settlement Administrator at the specified address or fax
12 number.²⁸

13 Settlement Class Members who wish to dispute the number of Compensable Work
14 Weeks credited to them in their Class Notice may do so by submitting a letter (“Compensable
15 Work Weeks Dispute”) to the Settlement Administrator on or before the Response Deadline.²⁹
16 The Compensable Work Weeks Dispute must be in writing and: (1) contain the case name and
17 number of the Action; (2) contain the full name, address, telephone number, and last four (4)
18 digits of the Social Security number of the Settlement Class Member; (3) contain a statement
19 that the Settlement Class Member disputes the number of Compensable Work Weeks credited
20 to them and what they contend is the correct number to be credited to them; (4) contain
21 information and/or documentation demonstrating that the number of Compensable Work Weeks
22 that they contend should be credited to them is correct; (5) be signed by the Settlement Class
23 Member; and (6) be postmarked or fax stamped on or before the Response Deadline and returned
24 to the Settlement Administrator at the specified address or fax number.³⁰

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26
27 ²⁷ Settlement Agreement, §§ I.26 & III.13.

28 ²⁸ *Id.*, § I.26.

²⁹ *Id.*, §§ I.10 & III.10.

³⁰ *Id.*, § I.10.

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

3 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
4 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
5 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
6 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
7 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*
8 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair
9 and reasonable, whether certification of the class was proper, and whether the attorney fee award
10 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
11 decision to approve a class action settlement may be reversed only upon a strong showing of
12 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
13 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

26 In considering a potential class settlement, a court need not reach any ultimate
27 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
28 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.

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

3 The Parties actively litigated the Action since it was commenced on September 17, 2018.
4 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
5 the claims, and Class Counsel was actively preparing the case for class certification and trial.³¹

6 Prior to engaging in mediation, Class Counsel conducted significant investigation and
7 formal and informal discovery regarding the facts of the case, including and not limited to, the
8 exchange, review, and analysis of thousands of pages of documents and data produced by
9 Defendants.³² The volume of data and documents that Class Counsel reviewed and analyzed
10 included and was not limited to: Plaintiff’s employment records, a detailed sampling of
11 Settlement Class Members’ time and pay data, Defendant Bostik, Inc.’s alternative workweek
12 election letter, multiple iterations of Defendant Bostik, Inc.’s Employee Handbook, company
13 policy acknowledgements, forms (including, but not limited to, Defendant Arkema Inc.’s
14 Vacation/Time Off Request Form), internal memoranda, job descriptions, Defendant Bostik
15 Inc.’s operations and employment practices, procedures (including, but not limited to,
16 Defendant Bostik Inc.’s Timeclock Rules), and policies (including, but not limited to, Defendant
17 Bostik Inc.’s Non-Exempt Overtime Pay Policy, Travel and Entertainment policy, Emergency
18 Shut-Down Pay policy, Uniforms & Personal Protective Equipment (PPE) policy, and Dress
19 Code policy), among other information and documents.³³ Class Counsel interviewed Plaintiff
20 and other Settlement Class Members to gather facts and to identify potential witnesses.³⁴ Class
21 Counsel propounded multiple sets of formal written discovery requests on Defendant Arkema
22 Inc (specifically, Requests for Production of Documents (Set One), Special Interrogatories (Sets
23 One and Two), and Form Interrogatories-General (Set One)) and noticed the depositions of
24 Defendant Arkema Inc.’s Person Most Knowledgeable designees.³⁵ Counsel for the Parties also
25 met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings,

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³¹ Rose Decl., ¶¶ 11-13.

27 ³² Rose Decl., ¶ 12.

28 ³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

discovery, and the production of documents and data prior to the mediation.³⁶ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation on August 2, 2021 conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁸ 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, 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, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their 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.⁴¹ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴²

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³⁶ Rose Decl., ¶ 12.

³⁷ *Ibid.*

³⁸ *Id.*, ¶ 11.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 11, 16-18.

⁴² *Ibid.*

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴³ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Settlement Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁶

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

The Settlement, which provides for a Gross Settlement Fund of One Million One Hundred Thousand Dollars (\$1,100,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁷ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁸ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Settlement Class.⁵⁰

Assuming that the Class Counsel Award, Class Representative Service Award, PAGA Payment, and Settlement Administrator Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Fund that

⁴³ Rose Decl., ¶¶ 11, 16-18.

⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁶ *Id.*, ¶¶ 2-7.

⁴⁷ *Id.*, ¶¶ 11, 13, 14 & 27.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 16-18.

⁵⁰ *Id.*, ¶¶ 11, 13, & 27.

is currently estimated to be Five Hundred Sixteen Thousand Five Hundred Dollars (\$516,500.00).⁵¹ As discussed in Part III, *supra*, the entire Net Settlement Fund will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Payment will be calculated based on his or her Compensable Work Weeks.⁵² 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 believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Settlement Class Members.⁵³ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁴ The discovery and information that Class Counsel obtained from Defendants 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 Defendants' defenses thereto.⁵⁵ As outlined in the Declaration of

⁵¹ Rose Decl., ¶ 14.

⁵² Settlement Agreement, § III.17.b

⁵³ Rose Decl., ¶¶ 11, 13, & 27.

⁵⁴ *Id.*, ¶¶ 11-13 & 18.

⁵⁵ *Id.*, ¶ 18.

Alexandra Rose, 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 SETTLEMENT CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Settlement 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 “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

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

A. The Settlement 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.*

⁵⁶ Rose Decl., ¶¶ 11-13, 16-18, 21-26.

⁵⁷ Settlement Agreement, § II.2.

1 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
2 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

3 This action involves a class of approximately one hundred thirty (130) individuals.⁵⁸
4 This class is sufficiently numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
5 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as
6 joinder is not practical at that point). Further, all Settlement Class Members can and will be
7 identified by Defendants to the Settlement Administrator through a review of Defendants'
8 employment records regarding non-exempt employees in California during the Class Period. As
9 such, the Settlement Class is ascertainable and sufficiently numerous.

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

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

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

25 Here, common issues of fact and law predominate as to each of the claims alleged and
26 asserted in the Operative Complaint. Based on the documents and information obtained through
27 formal and informal discovery and exchange of information in this case, Plaintiff contends that
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⁵⁸ Rose Decl., ¶ 9.

Settlement Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁵⁹ Plaintiff's claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiff and the Settlement Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁰

Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect to Plaintiff and the Settlement Class Members were substantially the same during the time period at issue.⁶¹ As a result, Plaintiff claims that all of the Settlement Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.⁶²

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

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL AWARD

Class Counsel has litigated the matter for over three years and was actively preparing the matter 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 formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant Arkema Inc. (specifically, Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Form Interrogatories-General (Set One)) and noticed

⁵⁹ Rose Decl., ¶ 16.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Id.*, ¶¶ 11-13.

the depositions of Defendant Arkema Inc.'s Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data⁶⁴ and also interviewed and obtained information from Plaintiff and other Settlement Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, 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 Settlement Class.⁶⁷

The Settlement establishes a Gross Settlement Fund of One Million One Hundred Thousand Dollars (\$1,100,000.00), and provides for Class Counsel to apply to the Court for the Class Counsel Award, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Fund (i.e., \$385,000.00) and an amount not to exceed Thirty-Four Thousand Dollars (\$34,000.00) for costs and expenses.⁶⁸ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Settlement 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 Settlement Class Members with information about the amount allocated toward the Class Counsel Award, and that an award of the Class Counsel Award will be sought, as provided for by the Settlement.⁶⁹

⁶⁴ Rose Decl., ¶ 12.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 2-7.

⁶⁸ Settlement Agreement, § III.21.

⁶⁹ *Id.*, Exh. A.

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

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

21 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
22 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
23 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
24 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
25 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
26 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
27 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
28 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.⁷⁰

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 Class Counsel Award 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 Notice⁷¹ describes the Settlement, the deadlines and procedures to submit a Notice of Objection, Request for Exclusion, and/or Compensable Work Weeks 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

⁷⁰ Rose Decl., ¶ 19.

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

⁷³ *Ibid.*

1 final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Settlement Class
2 Members and PAGA Members of, *inter alia*, how their Individual Settlement Payment and
3 Individual PAGA Payment is calculated and the number of Compensable Work Weeks credited
4 to them.⁷⁵

5 The proposed Class Notice satisfies all due process requirements and complies with the
6 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
7 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The
8 essentials of due process of law in class suits would appear to be afforded by fair representation
9 in the assertion of claims of class members against the opposing parties in any lawsuit, and
10 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

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

13 The Parties have selected Simpluris to administer the Settlement.

14 The Settlement Administrator will mail the Class Notice to each Settlement Class
15 Member and PAGA Member by First-Class U.S. mail.⁷⁶ Any Class Notice returned to the
16 Settlement Administrator as undeliverable on or before the Response Deadline shall be re-
17 mailed once to the forwarding address affixed thereto.⁷⁷ If no forwarding address is provided,
18 the Settlement Administrator shall promptly attempt to determine a correct address by use of
19 skip-tracing, or other search using the name, address and/or Social Security number of the
20 Settlement Class Member (or PAGA Member) whose Class Notice was undeliverable, and shall
21 then re-mail all returned, undeliverable Class Notices within five (5) calendar days of receiving
22 notice that a Class Notice was undeliverable.⁷⁸ Settlement Class Members (or PAGA Members)
23 who receive a re-mailed Class Notice shall have their Response Deadline extended by fifteen
24

25
26 ⁷⁴ Settlement Agreement, Exh. A.

27 ⁷⁵ *Ibid.*

28 ⁷⁶ *Id.*, § III.8.

⁷⁷ *Id.*, § III.9.

⁷⁸ *Ibid.*

(15) calendar days from the date of re-mailing.⁷⁹ The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and Compensable Work Weeks Disputes.⁸⁰

The Settlement Administrator will calculate 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 Payments; mail the Individual Settlement Payment checks to Participating Class Members and Individual PAGA Payment checks to PAGA Members; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Award, Class Representative Service Award, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸¹ The Settlement Administrator Costs are currently estimated to not exceed Seven Thousand Dollars (\$7,000.00) and will be paid out of the Gross Settlement Fund, subject to approval by the Court.⁸²

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Class Notice to the Settlement 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 Settlement Class Members based on Defendants' records.⁸³

Within seven (7) business days after the date on which the Court grants preliminary approval of the Settlement, Defendants will provide the Settlement Administrator with the following information for each Settlement Class Member: last known full name; last known mailing address; last known telephone number; Social Security number; email, if available;

⁷⁹ Settlement Agreement, § III.9.

⁸⁰ *Id.*, § III.11, III.12, & III.13.

⁸¹ *Id.*, § III.23.; Rose Decl., ¶ 15.

⁸² Settlement Agreement, §§ III.22.

⁸³ *Id.*, § III.8.

1 dates employed as a non-exempt employee of Defendants in California during the Class Period;
2 and Compensable Work Weeks (collectively, "Class Information").⁸⁴

3 Within thirty (30) calendar days of Preliminary Approval, the Settlement Administrator
4 will mail the Class Notice to all Settlement Class Members and PAGA Members via regular
5 First-Class U.S. Mail.⁸⁵ Any Class Notice returned to the Settlement Administrator as
6 undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding
7 address affixed thereto.⁸⁶ If no forwarding address is provided, the Settlement Administrator
8 shall promptly attempt to determine a correct address by use of skip-tracing, or other search
9 using the name, address and/or Social Security number of the Settlement Class Member (or
10 PAGA Member) whose Class Notice was undeliverable, and shall then re-mail all returned,
11 undeliverable Class Notices within five (5) calendar days of receiving notice that a Class Notice
12 was undeliverable.⁸⁷ Settlement Class Members will have until the applicable Response
13 Deadline to submit a Request for Exclusion, Compensable Work Weeks Dispute, and/or Notice
14 of Objection.⁸⁸

15 No later than fourteen (14) calendar days after the Effective Date, Defendants shall
16 provide the Gross Settlement Fund and an amount sufficient to pay Employer Taxes to the
17 Settlement Administrator.⁸⁹ Within seven (7) calendar days of the receipt of the Gross
18 Settlement Fund, the Settlement Administrator will distribute: (a) Individual Settlement
19 Payments to Participating Class Members; (b) Individual PAGA Payments to PAGA Members;
20 (c) LWDA Payment to the LWDA; (d) Class Representative Service Award to Plaintiff; (e)
21 Class Counsel Award to Class Counsel; and (f) Settlement Administrator Costs to itself.⁹⁰

22 ///

23 ///

24
25 _____
26 ⁸⁴ Settlement Agreement, §§ I.4 & III.7.

27 ⁸⁵ *Id.*, § III.8.

28 ⁸⁶ *Id.*, § III.9.

⁸⁷ *Ibid.*

⁸⁸ *Id.*, §§ III.10, III.12, & III.13.

⁸⁹ *Id.*, § III.15.

⁹⁰ *Ibid.*

Individual Settlement Payment and Individual PAGA Payment checks will be valid and negotiable for one hundred and eighty (180) days from the date of issuance, and thereafter will be cancelled.⁹¹ The funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment or Individual PAGA Payment checks (“leftover funds”) will be transmitted to the California State Controller’s Office Unclaimed Property Division in the name of the Participating Class Members and PAGA Members who did not negotiate their checks.⁹² If, for some reason, the Court does not approve the treatment of leftover funds, the Parties agree the leftover funds will be transmitted to Bet Tzedek Employment Rights Project.⁹³

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE AWARD

Plaintiff Christopher Rodriguez respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Service Award in an amount up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff.⁹⁴ It is within the Court’s discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Class Representative Service Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁵

⁹¹ Settlement Agreement, § III.19.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Id.*, § III.20.

⁹⁵ Rose Decl., ¶ 20; Declaration of Christopher Rodriguez in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Rodriguez Decl.”), ¶ 4.

Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Settlement Class.⁹⁶ Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Service Award for his services on behalf of the Settlement Class, in addition to his Individual Settlement Payment and Individual PAGA Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Settlement Class for settlement purposes; preliminary appoint and designate Edwin Aiwasian, Arby Aiwasian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Christopher Rodriguez as Class Representative; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for the Class Counsel Award, Class Representative Service Award, PAGA Payment, and Settlement Administrator 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: June 1, 2022

LAWYERS for JUSTICE, PC

By: _____


Alexandra Rose
Attorneys for Plaintiff

⁹⁶ Rose Decl., ¶ 20; Rodriguez Decl., ¶¶ 3-5.