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

RENE LABRADO, individually, and on
behalf of other members of the general public
similarly situated; AMY PUGH, 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,

Plaintiffs,

v.

JTH TAX INC. DBA LIBERTY TAX
SERVICE, a California corporation; and
DOES 1 through 100, inclusive,

Defendant.

Case No.: BC715076

Honorable Maren E. Nelson
Department SSC17

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Yasmin Hosseini); Declarations of
Proposed Class Representatives (Rene
Labrado and Amy Pugh); and [Proposed]
Order filed concurrently herewith]

Date: April 14, 2022
Time: 10:00 a.m.
Department: SSC17

Complaint Filed: July 30, 2018
FAC Filed: December 9, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on April 14, 2022 at 10:00 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 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Rene Labrado and Amy Pugh (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Yasmin Hosseini, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Rene Labrado and Amy Pugh as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payments for Plaintiffs, and Settlement Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini) and Proposed Class Representatives (Rene Labrado and Amy Pugh) 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: March 22, 2022

LAWYERS for JUSTICE, PC

By: _____


Yasmin Hosseini
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Rene Labrado and Amy Pugh (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant JTH Tax Inc. d/b/a Liberty Tax Service (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Total Settlement Amount of One Million One Hundred Twenty-Five Thousand Dollars (\$1,125,000.00).¹ The Total Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) Enhancement Payments of Ten Thousand Dollars (\$10,000.00) to Plaintiff Rene Labrado and Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Amy Pugh (\$17,500 total)³; (3) Attorneys' Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Total Settlement Amount (i.e., \$393,750.00), and reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars (\$35,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in an amount not to exceed Twelve Thousand Dollars (\$12,000.00);⁵ and (5) the amount of One Hundred Thousand Dollars (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.⁶

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), § 7.hh.

² § 7.r.

³ § 12.

⁴ § 11.

⁵ § 13.

⁶ § 14.

1 Plaintiffs also seek to provisionally certify the following Class for settlement purposes,
2 which Defendant does not oppose:

3 All current and former non-exempt employees employed by Defendant within
4 the State of California at any time during the period from July 30, 2014 through
August 22, 2021 (“Class” or “Class Members”).⁷

5 The Class is estimated to consist of approximately nine hundred and twenty-four (924)
6 individuals.⁸

7 Class Members who do not submit a timely and valid request to be excluded from the
8 Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount
9 (“Individual Settlement Share”) on a *pro rata* basis based upon the number of calendar weeks
10 each Settlement Class Member was employed by Defendant during the period from July 30,
11 2014 through August 22, 2021 (“Workweeks”).⁹

12 The Settlement, if granted preliminary and final approval by the Court, will operate to
13 resolve the Plaintiffs’ and the Settlement Class Members’ Released Claims, and of the State of
14 California’s PAGA Released Claims with respect to employment of Plaintiffs and Settlement
15 Class Members.¹⁰

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

17 Defendant provides tax preparation services, such as tax filing and assistance with tax
18 returns all over the United States and Canada. Plaintiffs Rene Labrado and Amy Pugh are former
19 employees of Defendant.

20 On July 30, 2018, Plaintiff Rene Labrado filed a Class Action Complaint for Damages
21 in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned
22 lawsuit (“Action”).

23 On September 9, 2019, Defendant filed an Answer to Plaintiff Rene Labrado's Class
24 Action Complaint and a Cross-Complaint against Plaintiff Rene Labrado, and thereafter, on
25

26 ⁷ Settlement Agreement, § 7.d. “Class Period” is defined as the period of time from July 30, 2014 through August
22, 2021. *See id.*, § 7.f.

27 ⁸ Hosseini Decl., ¶ 9.

⁹ Settlement Agreement, §§ 7.gg, 7.r., and 7.ii.

28 ¹⁰ *See id.* at § 7.aa for the full scope of the “Released Claims,” *id.* at § 7.bb for the definition of the “Released
Parties,” and *id.* at § 7.x for the definition of “PAGA Released Claims.”

1 October 22, 2019, Defendant filed an Amended Answer to Plaintiff Rene Labrado's Class
2 Action Complaint and an Amended Cross-Complaint.

3 On November 21, 2019, Cross-Defendant Rene Labrado filed an Answer to Defendant's
4 Unverified Amended Cross-Complaint.

5 On August 6, 2021, the Court granted Plaintiff Rene Labrado's Joint Notice of
6 Settlement and Stipulation to Vacate Class Certification-Related Deadlines and Dismiss Cross-
7 Complaint.

8 On November 29, 2021, Plaintiffs filed a First Amended Class Action Complaint for
9 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
10 2698, *Et Seq.* ("Operative Complaint").

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

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

25 On September 3, 2019, Plaintiff Rene Labrado propounded multiple sets of discovery
26 including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One
27 & Two); and Form Interrogatories, (Set One), on Defendant. On May 14, 2020, Plaintiffs
28 propounded additional sets of Requests for Production of Documents, (Set Two); and Special

Interrogatories, (Set Three) on Defendant, and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on October 28, 2019 and July 10, 2020, Defendant responded to Plaintiff Rene Labrado's discovery requests.

The Parties have actively litigated the Action since it was commenced on July 30, 2018. On May 24, 2021, the Parties participated in a formal, full-day mediation conducted by Steve Rottman, 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, Defendant will pay a Total Settlement Amount of One Million One Hundred Twenty-Five Thousand Dollars (\$1,125,000.00) to resolve the Released Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Member) with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., \$393,750.00) and reimbursement of costs and expenses in an amount not to exceed Thirty-Five Thousand Dollars (\$35,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed Twelve Thousand Dollars (\$12,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Allocation (i.e., \$75,000.00 out of \$100,000.00) ("LWDA Payment"); and (4) payments in the amount of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Rene Labrado and up to Seven Thousand Five Hundred Dollars (7,500.00) to Plaintiff Amy Pugh (for a combined total of \$17,500)

¹¹ Settlement Agreement, § 7.hh.

1 (“Enhancement Payments”).¹² The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or
2 “Settlement Administrator”) to handle the notice and settlement administration process.

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

- 6 a. After Preliminary Approval of the Settlement, the Settlement Administrator will
7 divide the Net Settlement Amount by the Workweeks of all Class Members to yield
8 the “Estimated Workweek Value,” and multiply each Class Member’s individual
9 Workweeks by the Estimated Workweek Value to yield his or her estimated
10 Individual Settlement Share that he or she may be eligible to receive under the
11 Settlement.¹³
- 12 b. After Final Approval of the Settlement, the Settlement Administrator will divide the
13 final Net Settlement Amount by the Workweeks of all Settlement Class Members to
14 yield the “Estimated Workweeks Value,” and multiply each Settlement Class
15 Member’s individual Workweeks by the Final Workweeks Value to yield his or her
16 Individual Settlement Share.¹⁴

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

- 20 a. The Settlement Administrator will divide the PAGA Employee Amount, i.e., 25% of
21 the PAGA Allocation, by the total number of Workweeks of all Settlement Class
22 Members to yield the “PAGA Workweek Value,” and multiply each Settlement Class
23 Member’s individual Workweeks by the PAGA Workweek Value to yield his or her
24 estimated Individual PAGA Payment.¹⁵

25 Each Settlement Class Member’s Individual Settlement Share will be allocated as
26 follows: one-third (1/3) as wages, which will be reported on an IRS Form W-2; and the
27 remaining two-thirds (2/3) as penalties, interest, and other non-wage damages, which will be
28 reported on an IRS Form 1099.¹⁶ Settlement Class Members will be issued payment of their
Individual Settlement Share subject to reduction for the employee’s share of taxes and
withholdings with respect to the wage portion of each Individual Settlement Share (the net
payment is referred to as an “Individual Settlement Payment”). Each Individual PAGA Payment

¹² *Id.*, §§ 10; see also, §§ 11, 13, 14, and 12.

¹³ *Id.*, § 15.a.

¹⁴ *Id.*, § 15.b.

¹⁵ *Id.*, § 16.

¹⁶ Settlement Agreement, § 27.

will be allocated as one hundred percent (100%) penalties, interest, and non-wage damages.¹⁷ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares ("Employer Taxes") in addition to the Total Settlement Amount.¹⁸

The Individual Settlement Payment checks issued to Settlement Class Members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁹ Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.²⁰ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to Legal Aid at Work, after the Court enters an Order approving the Parties' stipulation to amend the Final Approval Order and Judgment.²¹

Any Class Members wishing to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing ("Request for Exclusion"), indicating that they want to exclude themselves.²² To be timely, the Class Member must mail a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice ("Response Deadline").²³ A Request for Exclusion must: (a) state the case name and number of the Action; (b) be signed by the Class Member; (c) state the full name, address, telephone number, and the last four (4) digits of the Social Security Number of the Class Member requesting exclusion; (d) state that the Class Member does not wish to be included in the Settlement; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁴ Class Members who submit a valid and timely Request for Exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment.²⁵

¹⁷ *Ibid.*

¹⁸ Settlement Agreement, § 7.hh.

¹⁹ *Id.*, § 21.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, § 22.

²³ *Id.*, § 7.dd.

²⁴ Settlement Agreement, § 7.cc.

²⁵ *Id.*

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.²⁶ Settlement Class Members who wish to object to the Settlement must submit their objection in writing (a “Notice of Objection”) to the Settlement Administrator on or before the Response Deadline.²⁷ The Notice of Objection must: (a) state the case name and number of the Action (b) state his or her full name, signature, address, telephone number, and the last four (4) digits of his or her Social Security number; (c) state all grounds for the objection accompanied by any legal or factual support for such objection; (d) state the full name, address, and telephone number of any legal representative representing him or her with respect to the objection; (e) copies of any papers, briefs, or other documents upon which the objection is based; and (f) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁸

Class Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.²⁹ The letter must: (a) state the case name and number of the Action; (b) be signed by the Class Member; (c) states the full name, address, telephone number, and the last four (4) digits of Social Security number of the disputing Class Member; (d) states that the Class Member disputes the number of Workweeks credited to him or her; (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her is correct, and (f) is returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³⁰

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to

²⁶ *Id.*, § 24.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Id.*, § 20.

³⁰ *Ibid.*

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

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

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

22 In considering a potential class settlement, a court need not reach any ultimate
23 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
24 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495
25 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San*
26 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required
27 for the trial court to grant provisional class certification and preliminary approval; the court may
28

grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties actively litigated the Action since it was commenced on July 30, 2018. 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

³¹ Hosseini Decl., ¶¶ 11-13.

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.³² The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs and other Class Members' employment records, a detailed sampling of Class Members' time and pay data, list of stores and offices with seasonal hours and schedules, multiple versions of Defendant's Employee Manual, multiple iterations of Defendant's Code of Conduct, company policy acknowledgements, internal memoranda, job descriptions, Defendant's operations and employment practices, procedures, and policies (including but not limited to Defendant's Owned & Operated Office Supervisor Bonus Plan Program Guidelines, Annual Company Store and Office Bonus Plan, New Hire/Rehire Training, Personal Cell Phone Stipend Policy, Electronic Communications & Remote Access Policy, and Purchasing Policy), among other information and documents.³³ Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.³⁴ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses thereto, noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties, and worked with Plaintiff Rene Labrado to provide responses to multiple sets of discovery requests that were propounded by Defendant.³⁵ Class Counsel prepared for and took the deposition of Defendant's Person Most Knowledgeable witnesses and prepared for and defended the deposition of Plaintiff Rene Labrado.³⁶ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁷ Class Counsel also drafted Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁸

³² Hosseini Decl., ¶ 12.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation on May 24, 2021, conducted by Steve Rottman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁹ Prior to and during the mediation and settlement discussions, the Parties exchanged extensive information and engaged in 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 law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴¹ Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴² After conducting investigations, significant formal and informal discovery and exchange of information, 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 Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴³

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.⁴⁴ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁵ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and

³⁹ *Id.*, ¶ 11.

⁴⁰ Hosseini Decl., ¶ 11.

⁴¹ *Ibid.*

⁴² *Id.*, ¶¶ 11, 16-18.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

rest periods, wage-and-hour law and enforcement, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁶ 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.⁴⁷

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

The Settlement, which provides for a Total Settlement Amount of One Million One Hundred Twenty-Five Thousand Dollars (\$1,125,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁸ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵⁰ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵¹

Assuming that the Attorneys' Fees and Costs, Enhancement Payments, LWDA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Five Hundred Sixty-Six Thousand Seven Hundred Fifty Dollars (\$566,750.00).⁵² Additionally, 25% of the PAGA Allocation (i.e., the Employee PAGA Amount), which is \$25,000 out of \$100,000, will be distributed to Settlement Class Members. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share and Individual PAGA Payment will be

⁴⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁷ Hosseini Decl., ¶¶ 6-7.

⁴⁸ Hosseini Decl., ¶¶ 11, 13, 14 & 21.

⁴⁹ *Id.*, ¶¶ 11-13.

⁵⁰ *Id.*, ¶¶ 16-18.

⁵¹ *Id.*, ¶¶ 11, 13, & 21.

⁵² *Id.*, ¶ 14.

1 calculated based on his or her Workweeks.⁵³ There is no reason to doubt the fairness of the
2 proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even
3 at the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis
4 [to warrant approval], particularly if recommended by experienced and competent class
5 counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
6 127 F.Supp.2d 418, 429-30.

7 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
8 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members and
9 State of California.⁵⁴ Although the recommendations of Class Counsel are not conclusive, the
10 Court can properly take the recommendations into account, particularly if Class Counsel appears
11 to be competent, and has experience with this type of litigation, and investigation have been
12 completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant
13 preliminary approval of the Settlement.

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

15 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
16 conducted extensive formal and informal discovery and exchanged a large volume of
17 documents, data, and information prior to mediation.⁵⁵ The discovery and information that Class
18 Counsel obtained from Defendant, Plaintiffs, and other sources allowed Class Counsel to
19 develop valuation models in order to evaluate the potential value and merit of the claims, and
20 perform a complete evaluation of Defendant's defenses thereto.⁵⁶ As outlined in the Declaration
21 of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim
22 pursuant to *Kullar* prior to entering into the Settlement.⁵⁷

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

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25
26 ⁵³ Settlement Agreement, §§ 15-16.

27 ⁵⁴ Hosseini Decl., ¶¶ 11, 13, & 27.

28 ⁵⁵ *Id.*, ¶¶ 11-13 & 18.

⁵⁶ *Id.*, ¶ 18.

⁵⁷ *Id.*, ¶¶ 11-13, 16-18 & 21-26.

1 For settlement purposes, the requisites for establishing class certification are met, and
2 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁵⁸
3 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
4 one of a common or general interest, of many persons, or when the Parties are numerous, and it
5 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
6 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
7 “both [1] an ascertainable class and [2] a well-defined community of interest among class
8 members.” *Id.*

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

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

18 “Ascertainability is required in order to give notice to putative class members as to whom
19 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
20 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
21 by describing a set of common characteristics sufficient to allow a member of that group to
22 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
23 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
24 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

25 This action involves a class of approximately nine hundred and twenty-four (924)
26 individuals.⁵⁹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126

27
28 ⁵⁸ Settlement Agreement, § 36.a.

⁵⁹ Hosseini Decl., ¶ 9.

Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding its non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶⁰ Plaintiffs’ claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum

⁶⁰ Hosseini Decl., ¶ 16.

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.⁶¹

Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶² As a result of the alleged conduct, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶³

Plaintiffs maintain 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 who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over three years, and was actively preparing the matter for class certification and trial.⁶⁴ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant (and reviewing Defendant's responses thereto), working with Plaintiff Rene Labrado to respond to multiple sets of discovery requests propounded on him, noticing and taking the depositions of Defendant's Person Most Knowledgeable designees, and preparing for and defending the deposition of Plaintiff Rene Labrado. Class Counsel reviewed a large volume of documents and data⁶⁵ and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages/valuation calculations, and met

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Hosseini Decl., ¶¶ 11-13.

⁶⁵ *Id.*, ¶ 12.

1 and conferred with Defendant's counsel regarding the pleadings, discovery, and the production
2 of documents and data prior to mediation.⁶⁶ Counsel for the Parties also undertook extensive
3 settlement discussions, which included participating in a formal, full-day mediation.⁶⁷

4 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
5 experience to obtain a great result for the Class.⁶⁸

6 The Settlement establishes a Total Settlement Amount of One Million One Hundred
7 Twenty-Five Thousand Dollars (\$1,125,000.00), and provides for Class Counsel to apply to the
8 Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount up to thirty-five
9 percent (35%) of the Total Settlement Amount (i.e., \$393,750.00) and an amount not to exceed
10 Thirty-Five Thousand Dollars (\$35,000.00) for costs and expenses.⁶⁹ The attorneys' fees
11 provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in
12 bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel
13 dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the
14 results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement
15 that Class Counsel has achieved for the Class Members and State of California, and (6) the other
16 cases that Class Counsel had to turn down in order to devote its time and efforts to this matter.
17 The proposed Class Notice provides Class Members with information about the amount
18 allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and
19 Costs will be sought, as provided for by the Settlement.⁷⁰

20 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
21 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
22 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
23 "experienced trial judge is the best judge of the value of professional services rendered in his
24 court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
25 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result

26 ⁶⁶ *Ibid.*

27 ⁶⁷ *Id.*, ¶ 11.

28 ⁶⁸ *Id.*, ¶¶ 6-7.

⁶⁹ Settlement Agreement, §§ 7.hh. and 12.

⁷⁰ *Id.*, Exh. A.

1 achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
2 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
3 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
4 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
5 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
6 settlement fund and the settlement agreement provides that the defendant agrees to paying the
7 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

26 Class Counsel has borne all of the risks and costs of litigation and will not receive any
27 compensation until recovery is obtained in the Action.⁷¹

28
⁷¹ Hosseini Decl., ¶ 19.

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

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

The proposed Class Notice⁷² describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Settlement, mail a Request for Exclusion from the Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷³

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.⁷⁴ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁵ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payment are calculated and the number of Workweeks credited to them.⁷⁶

⁷² Settlement Agreement, Exh. A.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

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

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT

ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. Mail.⁷⁷ With respect to any undeliverable Class Notices returned to the Settlement Administrator on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice to the Class Member within five (5) calendar days.⁷⁸ The Response Deadline to submit a Request for Exclusion, Notice of Objection, or dispute regarding Workweeks for Class Members to whom a Class Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be fifteen (15) calendar days from the original forty-five (45) calendar day deadline.⁷⁹ The Settlement Administrator will receive and process Requests for Exclusion, Notice of Objections, and any disputes regarding Workweeks.⁸⁰

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares 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 and Individual PAGA Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payments, and LWDA Payment; and perform such other tasks necessary to effectuate the terms

⁷⁷ Settlement Agreement, § 19.a.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Id.*, §§ 22, 24 and 20.

of the Settlement Agreement.⁸¹ The Settlement Administration Costs are currently estimated to be Twelve Thousand Dollars (\$12,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁸²

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸³

Within thirty (30) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) last known full name; (2) last known mailing address; (3) Social Security Number; and (4) Workweeks (collectively, "Class Data and List").⁸⁴

Within fourteen (14) calendar days of receipt of the Class Data and List, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail the Class Notice to all Class Members via First-Class U.S. Mail.⁸⁵ If a Class Notice is returned to the Settlement Administrator as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.⁸⁶ Class Members will have until the applicable Response

⁸¹ *Ibid.*; Hosseini Decl., ¶ 15.

⁸² Settlement Agreement, §§ 11 and 13.

⁸³ Settlement Agreement, § 19.a.

⁸⁴ *Id.*, § 7.c.

⁸⁵ *Id.*, § 19.a.

⁸⁶ *Ibid.*

1 Deadline to mail a Request for Exclusion, mail a dispute regarding Workweeks, and/or to serve
2 a Notice of Objection.⁸⁷

3 Defendant will make a one-time deposit of the Total Settlement Amount, together with
4 an amount sufficient to pay Employer Taxes, into a settlement account to be established by the
5 Settlement Administrator, within fifteen (15) calendar days after the Effective Date.⁸⁸ Within
6 seven (7) calendar days of the funding of the Total Settlement Amount, the Settlement
7 Administrator will issue payments due under the Settlement and approved by the Court, as
8 follows: (a) the Individual Settlement Payments to Settlement Class Members; (b) Individual
9 PAGA Payments to Settlement Class Members; (c) LWDA Payment to the Labor and
10 Workforce Development Agency; (d) Enhancement Payments to Plaintiffs; (e) Attorneys' Fees
11 and Costs to Class Counsel; and (f) Settlement Administration Costs to itself.⁸⁹

12 The Individual Settlement Payment checks will remain negotiable for one hundred and
13 eighty (180) calendar days from the date of their issuance.⁹⁰ Checks that are not negotiated
14 within the 180-day period will be cancelled.⁹¹ The funds associated with such cancelled checks
15 will be tendered by the Settlement Administrator to Legal Aid at Work.⁹²

16 **XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR**
17 **ENHANCEMENT PAYMENTS**

18 Plaintiffs Rene Labrado and Amy Pugh respectfully request that the Court appoint them
19 as the Class Representatives and preliminarily approve the Enhancement Payments in an amount
20 up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Rene Labrado and Seven Thousand Five
21 Hundred Dollars (\$7,500.00) to Plaintiff Amy Pugh (for a combined total of \$17,500).⁹³ It is
22 within the Court's discretion to award payment to a class representative for their efforts and
23 work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving
24 \$50,000 participation award to a single class representative). The factors that courts may

25 ⁸⁷ *Id.*, §§ 22, 24 and 20.

26 ⁸⁸ Settlement Agreement, § 10.

27 ⁸⁹ *Id.*, § 10.

28 ⁹⁰ *Id.*, § 21.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Id.*, § 12.

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 Payments are fair and appropriate. Plaintiffs 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. For example, Plaintiff Rene Labrado expended effort to review and provide responses to multiple sets of discovery requests that were propounded by Defendant and to prepare for and attend deposition, while Plaintiff Amy Pugh provided important information in connection with the claims (including and not limited to, claims under PAGA) and mediation.⁹⁴ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁹⁵ Accordingly, it is appropriate and just for Plaintiffs to each receive Enhancement Payments for their services on behalf of the Class, in addition to their Individual Settlement Payments and/or Individual PAGA Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request 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 Plaintiffs Rene Labrado and Amy Pugh as Class Representatives; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payments, LWDA Payment, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by

⁹⁴ Hosseini Decl., ¶ 20; Declaration of Rene Labrado in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Labrado Decl."), ¶¶ 4-5; Declaration of Amy Pugh in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Pugh Decl."), ¶ 4.

⁹⁵ Hosseini Decl., ¶ 20; Labrado Decl., ¶¶ 3-6; Pugh Decl., ¶¶ 3-6.

the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately six (6) months.

Dated: March 22, 2022

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiffs