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

CHRISTOPHER MEJIA, individually, and
on behalf of other members of the general
public similarly situated,

Plaintiff,

v.

TP-LINK USA CORPORATION DBA TP-
LINK NORTH AMERICA, INC.; and DOES
1 through 100, inclusive,

Defendants.

Case No.: CIVDS1906246

Honorable David S. Cohn
Department S26

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Yasmin Hosseini); Declaration of
Proposed Class Representative
(Christopher Mejia); and [Proposed]
Order filed concurrently herewith]

Date: July 6, 2022
Time: 9:00 a.m.
Department: S26

Complaint Filed: February 27, 2019
Trial Date: None Set

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

PLEASE TAKE NOTICE that on July 6, 2022 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable David S. Cohn in Department S26 of the Superior Court of California for the County of San Bernardino, located at 247 W 3rd Street, San Bernardino, California 92415, Plaintiff Christopher Mejia (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting leave to file the [Proposed] First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“First Amended Complaint” or “Operative Complaint”) which is attached “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- 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 (“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 (“PAGA Allocation”), Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Administrative Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Christopher Mejia as Class Representative;
- Preliminarily appointing Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement (“Class Notice”), attached as “**EXHIBIT B**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members and Aggrieved Employees;

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

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which provides for 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 (Yasmin Hosseini) and Proposed Class Representative (Christopher Mejia) 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 14, 2022

LAWYERS for JUSTICE, PC

By: _____



Yasmin Hosseini
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Christopher Mejia (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant TP-Link USA Corporation dba TP-Link North America, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of five hundred thousand dollars and no cents (\$500,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of nine thousand dollars and no cents (\$9,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-eight percent (38%) of the Gross Settlement Amount, or \$190,000.00, and reimbursement of litigation costs and expenses not to exceed forty thousand dollars and no cents (\$40,000.00)⁴; (4) the Administrative Costs to the Settlement Administrator in the amount not to exceed ten thousand dollars and no cents (\$10,000.00);⁵ and (5) the amount of fifty thousand dollars and no cents (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$37,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$12,500.00) will be distributed to Aggrieved Employees on *pro rata* basis, based on the number of PAGA Pay Periods they were employed by Defendant during the PAGA Period.⁶

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

² § I.T.

³ § XIV.

⁴ § XIII.A.

⁵ § I.A.

⁶ § I.AA.

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

All current and former hourly-paid and/or non-exempt employees who worked for Defendant within the State of California at any time during the period from February 27, 2015 through Preliminary Approval, excluding persons who have signed individual settlement/termination and release agreement with Defendant (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately one hundred and sixty-one (161) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (“Settlement Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendant in California in an hourly-paid and/or non-exempt position during the period from February 27, 2015 through Preliminary Approval (“Class Workweeks”).⁹ All current and former hourly-paid and/or non-exempt employees who worked for Defendant within the State of California at any time during the period from September 8, 2020 through Preliminary Approval (“Aggrieved Employees”) will receive a share of the 25% portion of the PAGA Allocation (“Individual PAGA Payment”) on a *pro rata* basis based upon the first and last date each Aggrieved Employee worked during the PAGA Period and calculating the number of pay periods between those two dates (“PAGA Pay Periods”).¹⁰

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiff and Settlement Class Members and the Released PAGA Claims of Plaintiff and PAGA Members, against the Releasees.¹¹

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⁷ Settlement Agreement, § I.F. “Class Period” is defined as the period of time from February 27, 2015 through Preliminary Approval. *See id.*, § I.H.

⁸ Hosseini Decl., ¶ 9.

⁹ Settlement Agreement, §§ I.PP, I.T., X.A. and I.Q.

¹⁰ *Id.*, § I.DD.

¹¹ *See id.* at § I.II., for the full scope of the “Released Class Claims,” § I.JJ for the full scope of the “Released PAGA Claims,” and *id.* at § I.KK for the definition of the “Releasees.”

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

2 Defendant sells networking devices and accessories such as routers, adapters, and
3 modems. Plaintiff Christopher Mejia is a former employee of Defendant.

4 On February 27, 2019, Plaintiff filed a Class Action Complaint for Damages in the San
5 Bernardino County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
6 (“Action”).

7 On June 3, 2019, Defendant filed an Answer to Plaintiff’s Class Action Complaint, and
8 thereafter, on August 7, 2019, Defendant filed an Amended Answer to Plaintiff’s Class Action
9 Complaint.

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

21 The Parties have agreed that Plaintiff will seek leave to file a First Amended Class Action
22 Complaint for Damages and Enforcement Under the Private Attorneys General Act, California
23 Labor Code § 2698, *Et Seq.* (“First Amended Complaint” or “Operative Complaint”) to add a
24 PAGA cause of action.

25 Defendant has denied, and continues 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.

On May 6, 2019, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One), on Defendant. On May 3, 2018, Plaintiff 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 July 22, 2019, October 22, 2020, October 29, 2020 and January 15, 2021 Defendant responded to Plaintiff's discovery requests.

The Parties have actively litigated the Action since it was commenced on February 27, 2019. On August 21, 2021, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On September 8, 2021, Plaintiff served a letter on the California Labor & Workforce Development Agency and Defendant, that provided notice of his intent to seek civil penalties for alleged violations of the California Labor Code, under PAGA.

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

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Member) and the Released PAGA Claims of Plaintiff and Aggrieved Employees with respect to the Releasees.¹² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an

¹² Settlement Agreement, §§ VII.A.1.-2.)

amount not to exceed one hundred ninety thousand dollars and no cents (\$190,000.00) (i.e., up to 38% of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed forty thousand dollars and no cents (\$40,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs, which are currently estimated not to exceed ten thousand dollars and no cents (\$10,000.00) to the Settlement Administrator (“Administrative Costs”); (3) payment to the LWDA of its 75% share of the PAGA Allocation (i.e., \$37,500.00 out of \$50,000.00) (“LWDA Payment”) and twenty-five percent (25%), or 12,500.00, will be distributed to the Aggrieved Employees on a *pro rata* basis (“Employee PAGA Amount”); and (4) payment in the amount of up to nine thousand dollars and no cents (\$9,000.00) each to Plaintiff Christopher Mejia (“Enhancement Payment”).¹³ 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 Settlement Class Member’s share of the available Net Settlement Amount (“Individual Settlement Share”), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will divide the Net Settlement Amount by the total number of Class Workweeks for all Settlement Class Members to yield the “Class Workweek Value”. The Class Workweek Value is multiplied by the number of each Settlement Class Member’s Class Workweeks during the Class Period, as determined by the Settlement Administrator, to yield his or her Individual Settlement Share.¹⁴

The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employee’s share of the available 25% portion of the PAGA Allocation (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will divide the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period to yield the “PAGA Workweek Value”. Then, the PAGA Workweek Value is multiplied by the number of PAGA Pay Periods worked by each individual Aggrieved Employee during the PAGA Period, as determined by the Settlement Administrator, to yield his or her Individual PAGA Payment.¹⁵

¹³ *Id.*, §§ I.Q. and I.W.; see also, §§ XIII.A., VIII., XV., and XIV.

¹⁴ Settlement Agreement, § XI.A.2.

¹⁵ *Id.*, § XI.B.2.

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: 33.33% as wages (the "wage portion"), which will be reported on an IRS Form W-2; and the remaining 66.67% as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099, if applicable.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").¹⁷ The Parties further agree that the Individual PAGA Payments distributed to each Aggrieved Employee will be allocated as one hundred percent (100%) penalties, will be paid without reduction for taxes and withholdings, and will be reported on an IRS Form 1099, if applicable.¹⁸ 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 Gross Settlement Amount.¹⁹

The Individual Settlement Payment checks issued to Settlement Class Members and Individual PAGA Payment checks issued to Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days from the date of issuance.²⁰ Individual Settlement Payment checks and Individual PAGA Payment checks that are not negotiated within the 180-day period will be cancelled.²¹ The funds from associated with such cancelled checks will be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500, et seq., for the benefit of that Settlement Class Member and/or Aggrieved Employee.²²

Class Members who wishes to be excluded from the Class Settlement (i.e., opt out) must submit a written request for exclusion ("Request for Exclusion") to the Settlement Administrator.²³ To be timely, the Class Member must mail a written request for exclusion to

¹⁶ *Id.*, § XVI.A.2.

¹⁷ *Ibid.*

¹⁸ *Id.*, § XVI.A.3.

¹⁹ *Id.*, § XVI.A.5.

²⁰ Settlement Agreement, § XI.D.2.

²¹ *Ibid.*

²² *Ibid.*

²³ *Id.*, § IX.C.

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”).²⁴ In the event that the Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member will be extended by fifteen (15) calendar days.²⁵ A Request for Exclusion must: (a) contain the case name and number of the Action, (b) be signed by the Class Member or his or her authorized representative, (c) contain the full name, telephone number, and the last four (4) digits of the Social Security Number of the Class Member requesting exclusion, (d) clearly state that the Class Member does not wish to be included in the Class Settlement, and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁶ Class Members who submit a valid and timely request for exclusion will not be bound by the terms of the Class Settlement and Final Approval Order and Judgment.²⁷ However, consistent with applicable law, Aggrieved Employees will not be allowed to exclude themselves from the PAGA Settlement. Aggrieved Employees will receive their Employee PAGA Amount, and be bound by the PAGA Settlement and judgment based thereon, regardless of whether they exclude themselves from the Class Settlement.²⁸

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) have standing to object to the Class Settlement.²⁹ Settlement Class Members who wish to object to the Class Settlement may submit his or her objection in writing (“Objection”) to the Settlement Administrator on or before the Response Deadline or directly present his or her objection orally to the Court at the Final Approval Hearing.³⁰ An Objection must: (a) state the case name and number of the Action, (b) be signed by the Class Member or his or her authorized representative, (c) contain the full name address, telephone number, and the last four digits of the Social Security Number of the objecting Class Member, (d) state the

²⁴ *Id.*, § I.LL.

²⁵ *Ibid.*

²⁶ *Id.*, § IX.C.1.

²⁷ *Id.*, § IX.C.2.

²⁸ Settlement Agreement, § IX.C.1.

²⁹ *Id.*, § IX.B.1.

³⁰ *Ibid.*

specific legal and factual basis for each objection, and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³¹

Class Members and/or Aggrieved Employees who wish to dispute the number of Class Workweeks and/or PAGA Pay Periods to which they have been credited, as reflected in their respective Class Notices, may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.³² The letter must: (a) contain the case name and number of the Action, (b) be signed by the Class Member and/or Aggrieved Employee or his or her authorized representative, (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member and/or Aggrieved Employee, (d) state that the Class Member and/or Aggrieved Employee disputes the number of Class Workweeks and/or PAGA Pay Periods credited to him or her and what he or she contends is the correct number that should be credited to him or her, (e) includes information and/or attaches documentation demonstrating that the number of Class Workweeks and/or PAGA Pay Periods that he or she contends should be credited to him or her is correct, and (f) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³³

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's

³¹ *Ibid.*

³² *Id.*, § IX.D.

³³ *Ibid.*

1 decision to approve a class action settlement may be reversed only upon a strong showing of
2 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
3 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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

25 The trial court has broad powers to determine whether a proposed settlement is fair under
26 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
27 this fairness determination, courts must consider several relevant factors, including “the strength
28 of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the

1 risk of maintaining class action status through trial, the amount offered in settlement, the extent
2 of discovery completed and the stage of the proceedings, the experience and view of counsel,
3 the presence of a governmental participant, and the reaction of the class members to the
4 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive
5 and the court is free to engage in a balancing and weighing of the factors depending on the
6 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give
7 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d
8 at 1027 (citation omitted).

9 The proponent of the settlement has the burden to show that it is fair and reasonable.
10 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
11 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
12 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
13 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
14 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
15 1151.

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

18 The Parties actively litigated the Action since it was commenced on February 27, 2019.
19 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
20 the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁴

21 Prior to engaging in mediation, Class Counsel conducted significant investigation and
22 formal and informal discovery regarding the facts of the case, including and not limited to, the
23 exchange, review, and analysis of thousands of pages of documents and data produced by
24 Defendant.³⁵ The volume of data and documents that Class Counsel reviewed and analyzed
25 included and was not limited to: Plaintiff and other Class Members’ employment records, a
26 detailed sampling of Class Members time and pay data, multiple iterations of Defendant’s
27

28 ³⁴ Hosseini Decl., ¶¶ 11-13.

³⁵ *Id.*, ¶ 12.

Employee Handbook, company policy acknowledgements, internal memoranda, job descriptions, Defendant's operations and employment practices, procedures, and policies, (including but not limited to Defendant's Warehouse Steel-Toed Shoes Policy, Footwear Authorization Form, Meal Break Waiver – 2nd Meal, Incoming Withholding for Support, Mutual Arbitration Agreement, Employee Mobile Phone Reimbursement policy, Dress Codes and Other Personal Standards policy, Meal and Rest Periods policy, Employee Travel policy, Employee Purchase Program and Policy, Employee Application, Employee Orientation Checklist, Forklift Safety Training Services, Inc. – Written Test, Termination and Release Agreement, Employee Termination Checklist, Defendant's Organization Charts, Employee Confidentiality & Nondisclosure Policy, Employee Telecommuting Policy Acknowledgement, Harassment Discrimination & Retaliation Prevention Policy Acknowledgement, and Company Policies Acknowledgement), among other information and documents.³⁶ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³⁷ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto, and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure, job duties, and affirmative defenses.³⁸ 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.³⁹ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴⁰

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁴¹ Prior to and during the mediation and

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Hosseini Decl., ¶ 11.

1 settlement discussions, the Parties exchanged class information and engaged in an intensive
2 discussion regarding their evaluations of the case and various aspects of the case, including but
3 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
4 with class certification and/or representative adjudication, the law relating to off-the-clock
5 theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as
6 well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴²
7 During all settlement discussions, the Parties conducted their negotiations at arm's length in an
8 adversarial position.⁴³ Arriving at a settlement that was acceptable to both Parties was not easy.
9 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
10 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
11 certification and prevail at trial.⁴⁴ After conducting investigations, significant formal and
12 informal discovery, extensive settlement negotiations, and with the aid of the mediator's
13 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
14 issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that
15 would attend further litigation.⁴⁵

16 The Settlement takes into account the strengths and weaknesses of each side's position
17 and the uncertainty of how the case might have concluded at certification and trial.⁴⁶ The Parties
18 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁷
19 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's,
20 Class Members', and Aggrieved Employees' employment with Defendant and performed
21 significant research into the law concerning class certification, PAGA representative actions,
22 off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and
23 Defendant's defenses thereto, as well as facts discovered.⁴⁸ The Parties have reached the
24 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class

25 ⁴² *Id.*, ¶ 11.

26 ⁴³ *Ibid.*

27 ⁴⁴ *Id.*, ¶¶ 11, 16-18.

28 ⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Hosseini Decl., ¶¶ 11-13, 16 & 27.

Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁹

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

The Settlement, which provides for a Gross Settlement Amount of five hundred thousand dollars and no cents (\$500,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁵⁰ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁵¹ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵² Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵³

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Allocation, and Administrative Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be two hundred one thousand dollars and no cents (\$201,000.00).⁵⁴ Additionally, 25% of the PAGA Allocation (i.e., Employee PAGA Amount), which is \$12,500 out of \$50,000, will be distributed to Aggrieved Employees. 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 each Aggrieved Employee's Individual PAGA Payment will be calculated based on his or her Class Workweeks and PAGA Pay Periods, respectively.⁵⁵ 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

⁴⁹ *Id.*, ¶¶ 2-7.

⁵⁰ *Id.*, ¶¶ 11, 13, 14 & 27.

⁵¹ *Id.*, ¶¶ 11-12.

⁵² *Id.*, ¶¶ 18-19.

⁵³ *Id.*, ¶¶ 11, 13, & 27.

⁵⁴ Hosseini Decl., ¶ 14.

⁵⁵ Settlement Agreement, §§ XI.A.2. and XI.B.2.

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

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, Aggrieved Employees, and the State of California.⁵⁶ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁷ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant’s defenses thereto.⁵⁸ As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁹

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶⁰ 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

⁵⁶ Hosseini Decl., ¶¶ 11, 13, & 27.

⁵⁷ Hosseini Decl., ¶¶ 11-13 & 18.

⁵⁸ *Id.*, ¶ 18.

⁵⁹ *Id.*, ¶¶ 11-13 & 16-18.

⁶⁰ Settlement Agreement, § IV.

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

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately one hundred and sixty-one (161) individuals.⁶¹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding hourly-paid and/or non-exempt employees in California during the Class Period, excluding persons who have signed individual settlement agreements with Defendant. As such, the Class is ascertainable and sufficiently numerous.

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⁶¹ Hosseini Decl., ¶ 9.

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

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

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

16 Here, common issues of fact and law predominate as to each of the claims alleged and
17 asserted in this lawsuit. Based on the documents and information obtained through formal and
18 informal discovery and exchange of information in this case, Plaintiff contends that Class
19 Members were subject to the same or similar job duties and uniform operations and employment
20 practices, policies, and procedures during the time period at issue.⁶² Plaintiff’s claims arise from
21 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
22 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
23 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
24 to timely pay wages during employment and upon termination of employment, failing to provide
25 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse
26 necessary business-related expenses.⁶³

27
28 ⁶² Hosseini Decl., ¶ 16.

⁶³ *Ibid.*

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁴ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁶⁵

Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its hourly-paid and/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.⁶⁶ 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. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data⁶⁷ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁸ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁹

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷⁰

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Hosseini Decl., ¶¶ 11-13.

⁶⁷ *Id.*, ¶ 12.

⁶⁸ *Ibid.*

⁶⁹ *Id.*, ¶ 11.

⁷⁰ *Id.*, ¶¶ 6-7.

The Settlement establishes a Gross Settlement Amount of five hundred thousand dollars and no cents (\$500,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Gross Settlement Amount (i.e., \$190,000.00) and an amount not to exceed forty thousand dollars and no cents (\$40,000.00) for costs and expenses.⁷¹ 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 Class Members, Aggrieved Employees, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members and Aggrieved Employees with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷²

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

⁷¹ Settlement Agreement, §§ I.Q and XIII.A.

⁷² Settlement Agreement, Exh. A.

1 settlement fund and the settlement agreement provides that the defendant agrees to paying the
2 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

21 Class Counsel has borne all of the risks and costs of litigation and will not receive any
22 compensation until recovery is obtained.⁷³

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

28 ⁷³ Hosseini Decl., ¶ 19.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

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

The proposed Class Notice⁷⁴ describes the Settlement, the deadlines and procedures to submit an Objection to the Class Settlement, Request for Exclusion from the Class Settlement, and/or dispute regarding Class Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.⁷⁵

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.⁷⁶ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁷ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share and, if applicable, their Individual PAGA Payment, are calculated and the number of Class Workweeks and/or PAGA Pay Periods credited to them.⁷⁸

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

⁷⁴ Settlement Agreement, Exh. A.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT

ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement. The Settlement Administrator will mail the Class Notice to each Class Member and Aggrieved Employee by First-Class U.S. mail.⁷⁹ Any undeliverable Class Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.⁸⁰ With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁸¹ The Response Deadline to submit a Request for Exclusion, Objection, or dispute regarding Class Workweeks and/or PAGA Pay Periods for Class Members and Aggrieved Employees to whom a Class Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be forty-five (45) calendar days from the initial mailing of the Class Notice.⁸² The Settlement Administrator will receive and process Requests for Exclusion, objections, and any disputes regarding Class Workweeks and/or PAGA Pay Periods.⁸³

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 checks to Settlement Class Members and Individual PAGA Payment checks to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys’ Fees and Costs, Enhancement Payment, and PAGA Allocation; and perform such

⁷⁹ Settlement Agreement, § IX.A.3.

⁸⁰ Settlement Agreement, § IX.A.6.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Id.*, § VIII.

other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁴ The Administrative Costs are currently estimated to be ten thousand dollars and no cents (\$10,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁵

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁶

Within ten (10) 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 and Aggrieved Employee: (1) full name; (2) last known home address; (3) Social Security Number; (4) start and end dates of employment with Defendant, and (5) number of Class Workweeks and, if applicable, PAGA Pay Periods each individual worked for Defendant within the State of California during the Class Period and/or PAGA Period (collectively, "Class List").⁸⁷

Within fifteen (15) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁸ If a Class Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address.⁸⁹ If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts

⁸⁴ *Ibid.*; Hosseini Decl., ¶ 15.

⁸⁵ Settlement Agreement, §§ I.A., and VIII.

⁸⁶ Settlement Agreement, § IX.A.3.

⁸⁷ *Id.*, §§ I.E. and IX.A.2.

⁸⁸ *Id.*, § IX.A.3.

⁸⁹ *Id.*, § IX.A.6.

1 to obtain an updated mailing address, including but not limited to conducting one skip-trace,
2 and re-mail the Class Notice to the Class Member and/or Aggrieved Employee.⁹⁰ Class
3 Members and Aggrieved Employees will have until the applicable Response Deadline to mail a
4 Request for Exclusion, dispute regarding Class Workweeks and/or PAGA Pay Periods, and/or
5 Objection to the Settlement Administrator.⁹¹

6 Defendant will make a one-time deposit of the Gross Settlement Amount, together with
7 an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be
8 established by the Settlement Administrator, within twenty-one (21) calendar days after the
9 Effective Date.⁹² Within thirty (30) calendar days of the Effective Date, the Settlement
10 Administrator will distribute: (1) the Individual Settlement Shares to Settlement Class Members;
11 (2) the Court-approved Enhancement Payment to Plaintiff; (3) the Court-approved Attorneys'
12 Fees and Costs to Class Counsel; (4) the LWDA Payment to the LWDA; (5) the Individual
13 PAGA Payments to Aggrieved Employees; and (5) the Court-approved Administrative Costs to
14 itself.⁹³

15 The Individual Settlement Payment checks and Individual PAGA Payment checks will
16 remain negotiable for one hundred and eighty (180) calendar days from the date of their
17 issuance.⁹⁴ Checks that are not negotiated within the 180-day period will be cancelled.⁹⁵ The
18 funds associated with such cancelled checks will distributed to the Controller of the State of
19 California to be held pursuant to the Unclaimed Property Law, California Civil Code section
20 1500, *et seq.*, for the benefit of that Settlement Class Member and/or Aggrieved Employee.⁹⁶

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

23 Plaintiff Christopher Mejia respectfully requests that the Court appoint him as the Class
24 Representative and preliminarily approve the Enhancement Payment in an amount up to nine

25 ⁹⁰ *Ibid.*

26 ⁹¹ *Id.*, §§ IX.B., IX.C, and IX.D.

27 ⁹² Settlement Agreement, § XI.C.

28 ⁹³ *Id.*, § XI.D.

⁹⁴ *Id.*, § XI.D.2.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

thousand dollars and no cents (\$9,000.00) to Plaintiff.⁹⁷ It is within the Court’s discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁸ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁹⁹ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the 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 Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Christopher Mejia as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys’ Fees and Costs, Enhancement Payment, PAGA Allocation, and Administrative 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

⁹⁷ *Id.*, § XIV.

⁹⁸ Hosseini Decl., ¶ 20; Declaration of Christopher Mejia in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Mejia Decl.”), ¶ 4.

⁹⁹ Hosseini Decl., ¶ 20; Mejia Decl., ¶¶ 3-6.

Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: June 14, 2022

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiff