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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

NAKITA CLARK, DAWN STEPHENSON,
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,

vs.

WITTMAN ENTERPRISES, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 34-2019-00251989-CU-OE-GDS

Honorable Jill H. Talley
Department 25

CLASS ACTION

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

[Declarations of Proposed Class Counsel
(Yasmin Hosseini); Declaration of Proposed
Class Representatives (Nakita Clark and
Dawn Stephenson); and [Proposed] Order
filed concurrently herewith]

Date: November 15, 2022
Time: 1:30 p.m.
Department: 25

Complaint Filed: March 6, 2019
FAC Filed: March 29, 2019
SAC Filed: July 18, 2019
TAC Filed: February 4, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on November 15, 2022 at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Jill H. Talley in Department 25 of the Superior Court of California for the County of Sacramento, located at Gordon D. Schaber Sacramento County Courthouse, 720 9th Street Sacramento, California 95814, Plaintiffs Nakita Clark and Dawn Stephenson (“Plaintiffs” or “Class Representatives”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the 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 Administration Costs to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Nakita Clark and Dawn Stephenson as Class Representatives;
- Preliminarily appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Yasmin Hosseini of 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 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 Payments for each Plaintiff, and Administration Costs to Administrator.

This motion is made pursuant to Rule 3.769 and 3.113(e) 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, and permit the Court to extend the page limit for memoranda.

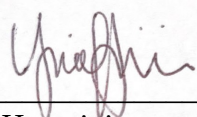
Pursuant to Local Rule 1.06(A), the Court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If a party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If the parties do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

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 (Nakita Clark and Dawn Stephenson) 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: October 21, 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 Nakita Clark and Dawn Stephenson (together, “Plaintiffs” or “Class Representatives”) seek preliminary approval of the 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 Wittman Enterprises Inc., (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle the Action for a Gross Settlement Amount of Four Hundred Eighty Thousand Dollars (\$480,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payments of Seven Thousand Five Hundred Dollars (\$7,500.00) each to Plaintiffs (\$15,000 total)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of one-third (1/3) of the Gross Settlement Amount, or \$160,000.00, and reimbursement of litigation costs and expenses in the amount up to Twenty-Two Thousand Dollars (\$22,000.00)⁴; (4) the Administration Costs to the Administrator in the amount not to exceed Ten Thousand Dollars (\$10,000.00)⁵; and (5) the Fifty Thousand Dollars (\$50,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Payment”), of which seventy-five percent (75%) or Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) will be paid to the Labor and Workforce Development Agency (“LWDA Payment”) and 25% (i.e., \$12,500.00) will be distributed to Participating Class Members as a part of the Net Settlement Amount.⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), § II.2.18.

² *Id.*, § II.2.20.

³ *Id.*, §§ II.2.15 & III.3.4.

⁴ *Id.*, § III.3.2.

⁵ *Id.*, § II.2.3 & III.3.5.

⁶ *Id.*, § II.2.24 & III.3.6.

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from March 6, 2015, to the date of Preliminary Approval (“Class” or “Class Members”).⁷

The Class is estimated to consist of approximately three hundred and twenty-four (324) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Participating Class Member”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the actual weeks worked during the Class Period by a Class Member, which will be initially calculated by Defendant by dividing the total number of hours worked by class members by forty (40) (“Qualifying Workweeks”).⁹

The Settlement resolves the Released Claims of Plaintiffs, Participating Class Members, and the State of California, against the Released Parties.¹⁰

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is an EMS billing specialist, providing products and services to ensure that EMS providers are reimbursed timely for the services they provide. Plaintiffs Nakita Clark and Dawn Stephenson are former employees of Defendant.

On March 6, 2019, Plaintiff Nakita Clark filed a Class Action Complaint for Damages in the Sacramento County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On March 29, 2019, Plaintiff Nakita Clark filed a First Amended Class Action Complaint for Damages, adding Dawn Stephenson as a named plaintiff.

On July 18, 2019, Plaintiffs filed the Second Amended Class Action Complaint for Damages, removing the allegation of unreimbursed business expenses pursuant to Labor Code sections 2800 and 2802.

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⁷ Settlement Agreement, § II.2.8.

⁸ Hosseini Decl., ¶ 9.

⁹ Settlement Agreement, §§ II.2.20, II.2.25, & II.2.28.

¹⁰ See *id.* at § II.2.29, for the full scope of the “Released Claims,” and *id.* at § II.2.30 for the definition of the “Released Parties.”

1 On October 1, 2019, Defendant filed an Answer to Plaintiffs' Class Action Complaint.

2 On June 6, 2019, Plaintiffs propounded multiple sets of discovery including Requests
3 for Production of Documents, (Set One); Special Interrogatories, (Sets One & Two); and Form
4 Interrogatories, (Set One), on Defendant and noticed the deposition of Defendant's person most
5 knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on
6 July 31, 2019, Defendant responded and objected to Plaintiffs' discovery requests. On August
7 1, 2019, Defendant propounded Form Interrogatories-Employment on both Plaintiffs, and, on
8 September 9, 2019, both Plaintiffs responded and objected to Defendant's discovery requests.
9 On August 27, 2020, Plaintiffs propounded additional sets of Requests for Production of
10 Documents, (Set Two); and Special Interrogatories, (Set Three) on Defendant, Requests for
11 Admissions (Set One). Thereafter, on September 15, 2020, September 30, 2020, October 8,
12 2020, and November 12, 2020, Defendant filed responses and amended responses to Plaintiffs'
13 discovery requests. Furthermore, Class Counsel prepared for and took the deposition of
14 Defendant's Chief Executive Officer, Corrinne Wittman-Wong, on December 15, 2020.

15 On September 1, 2021, Plaintiffs each provided written notice to the Labor and
16 Workforce Development Agency ("LWDA") and Defendant (together, "LWDA Letters"),
17 giving notice of their intent to pursue civil penalties under the California Private Attorneys
18 General Act, California Labor Code § 2698, Et Seq. ("PAGA"), on behalf of themselves and the
19 State of California.

20 On February 4, 2022, Plaintiffs filed a Third Amended Complaint for Damages and
21 Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698 et seq., adding a
22 PAGA cause of action ("Operative Complaint").

23 Plaintiffs' core allegation is that Defendant has violated the California Labor Code by
24 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
25 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
26 and rest periods and associated premium pay, failing to timely pay wages during employment
27 and upon termination of employment, failing to provide compliant wage statements, failing to
28 maintain requisite payroll records, and thereby engaged in unfair business practices in violation

of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to civil penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the Action since it was commenced on March 6, 2019. On February 19, 2020, the Parties participated in a formal, full-day mediation conducted by David L. Perrault, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters, which did not yield an immediate settlement. After continued settlement negotiations, and with the continued aid of the mediator and his evaluations, 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 Gross Settlement Amount 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., Participating 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 Gross Settlement Amount: (1) attorneys' fees up to one-third (1/3) of the Gross Settlement Amount (\$160,000.00 if the Gross Settlement Amount remains \$480,000.00), and reimbursement of costs and expenses in an amount up to Twenty Two Thousand Dollars (\$22,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) administration costs, which are currently estimated not to exceed Ten Thousand Dollars (\$10,000.00) to the Administrator ("Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Payment (i.e., \$37,500.00 out of \$50,000.00) ("LWDA Payment") and twenty-five percent (25%), or

¹¹ Settlement Agreement, § II.2.18.

\$12,500.00, will be part of the Net Settlement Amount for distribution to Participating Class Members; and (4) payment in the amount of up to Seven Thousand Five Hundred (\$7,500.00) each to Plaintiffs (for a combined total of \$15,000.00) (“Enhancement Payments”).¹² The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Administrator”) to handle the notice and settlement administration process.

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

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

The Individual Settlement Shares will be allocated as follows: twenty-five percent (25%) as wages, which will be reported on an IRS Form W-2; and seventy-five percent (75%) to interest, penalties, and non-wage damages, which will be reported on an IRS Form 1099.¹⁵ Individual Settlement Shares will be paid out to Settlement Class Members subject to reduction for the employee’s share of taxes, withholdings, and contribution with respect to the wages portion of the Individual Settlement Shares, and the net payment is referred to as “Individual Settlement Payment.”¹⁶ The Administrator will withhold the employee’s share of taxes and withholdings with respect to the wages portion of Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).¹⁷ The Administrator shall also

¹² Settlement Agreement, §§ III.3.2, III.3.4, III.3.5 & III.3.6.

¹³ *Id.*, § III.3.7.1.

¹⁴ *Id.*, § III.3.7.2.

¹⁵ *Id.*, § IV.4.13.

¹⁶ *Id.*, §§ II.2.19 & IV.4.13.

¹⁷ *Ibid.*.

1 provide Defendant with appropriate documentation establishing that the
2 Defendant's/employer's share of any and all payroll taxes (including but not limited to, FICA,
3 FUTA, and SDI contributions) has been paid from the GSA, subject to the Court's approval.¹⁸

4 Each Individual Settlement Payment check shall remain valid and negotiable for one
5 hundred and eighty (180) calendar days from the date of their mailing, and thereafter, shall be
6 cancelled.¹⁹ All funds associated with such cancelled checks will be distributed by the
7 Administrator, in accordance with California Code of Civil Procedure section 384, to Legal Aid
8 at Work, after the Court enters an order approving the Parties' stipulation to amend the Final
9 Approval Order and Judgment.²⁰ Participating Class Members whose Individual Settlement
10 Payment checks are cancelled shall, nevertheless, be bound by this Settlement Agreement.²¹

11 Any Class Member wishing to be excluded from the Settlement must submit a written
12 letter indicating a request to be excluded to the Administrator ("Request for Exclusion").²² To
13 be timely, a Request for Exclusion shall be deemed to have been submitted on the date
14 postmarked by the U.S. Postal Service or other delivery service and must be postmarked one or
15 before the date that is sixty (60) calendar days from the date of the initial mailing of the Class
16 Notice ("Response Deadline").²³ The Request for Exclusion must: (a) state the case name and
17 number of the Action, (b) signed by the Class Member, (c) state the full name, address, telephone
18 number, and the last four digits of the Social Security Number of the Class Member requesting
19 exclusion, (d) state that the Class Member does not wish to be included in the Settlement, and
20 (e) be returned by mail to the Administrator at the specified address, postmarked on or before
21 the Response Deadline.²⁴ Any Class Member who submits a timely and valid Request for
22 Exclusion will not be a Participating Class Member and will not have any right to object, appeal,
23 or comment on the Settlement.²⁵

24
25 ¹⁸ Settlement Agreement, § IV.4.14.

26 ¹⁹ *Id.*, § IV.4.20.

27 ²⁰ *Ibid.*

28 ²¹ *Ibid.*

²² *Id.*, § IV.4.8.

²³ *Id.*, § II.2.32 & IV.4.8.2.

²⁴ *Id.*, § II.2.31.

²⁵ *Id.*, § IV.4.8.1.

Class Members who have not opted out of the Settlement (i.e., Participating Class Members) may object to the Settlement by submitting a valid and timely written objection to the Administrator (“Objection”).²⁶ Participating Class Members who wish to object to the Settlement may submit his or her Objection on or before the Response Deadline or directly present his or her Objection orally to the Court at the Final Approval Hearing.²⁷ An Objection must: (a) state the case name and number of the Action; (b) state the objecting Class Member’s full name, address, telephone number, and the last four 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 the Class Member with respect to the objection; (e) contain copies of any papers, briefs, or other documents upon which the objection is based; (f) be signed by the Class Member; and (g) be returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.²⁸

Class Members will have an opportunity to dispute the number of Qualifying Workweeks to which they have been credited, as reflected in their respective Class Notice.²⁹ In order to dispute Qualifying Workweeks, Class Members may submit a written letter to the Administrator that: (a) states the case name and number of the Action; (b) is signed by the Class Member; (c) states the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member; (d) states that the Class Member disputed the number of Qualifying Workweeks credited to him or her and what he or she contend is the correct number that should be credited to him or her; (e) includes information and/or attaches documentation demonstrating that the number of Qualifying Workweeks that he or she contends should be credited to him or her is correct, and; (f) is returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.³⁰

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²⁶ Settlement Agreement, § IV.4.10.

²⁷ *Id.*, § IV.4.10.1.

²⁸ *Id.*, § II.2.23.

²⁹ *Id.*, § IV.4.11.

³⁰ *Ibid.*

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

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

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

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

26 In considering a potential class settlement, a court need not reach any ultimate
27 conclusions on the issues of fact and law which underlie the merits of the dispute and need not
28 engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495

1 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San*
2 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required
3 for the trial court to grant provisional class certification and preliminary approval; the court may
4 grant such relief upon an informal application by the settling parties and may conduct any
5 necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

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

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

19 The proponent of the settlement has the burden to show that it is fair and reasonable.
20 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the
21 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
22 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
23 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at
24 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
25 1151.

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

3 The Parties actively litigated the Action since it was commenced on March 6, 2019.
4 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of
5 the claims, and Class Counsel was actively preparing the case for class certification and trial.³¹

6 Prior to engaging in mediation, Class Counsel conducted significant investigation and
7 formal and informal discovery regarding the facts of the case, including and not limited to, the
8 exchange, review, and analysis of thousands of pages of documents and data produced by
9 Defendant.³² The volume of data and documents that Class Counsel reviewed and analyzed
10 included and was not limited to: Plaintiffs' and other Class Members' employment records, a
11 detailed sampling of Class Members' time and pay data, new hire information checklists,
12 multiple iterations of Defendant's Employee Handbook, Defendant's confidential financial
13 information (including but not limited to, pay statements, earning statements) company policy
14 acknowledgements (including but not limited to, Handbook Acknowledgement, At-Will
15 Employment Agreement, Acknowledgment of Receipt of Code of Safe Practices), internal
16 memoranda, job descriptions, Defendant's operations and employment practices, procedures,
17 and policies (including but not limited to, Electronic Device Policy, Cell Phone Usage, Meal
18 Break Waiver Form, Telephone Monitoring Consent, Electronic and Telephone Monitoring
19 Consent, Employee Orientation Checklist, Annual Confidentiality Statement, Vacation and Sick
20 Benefit Agreement Letter, and Guidelines for Dress) among other information and documents.³³
21 Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify
22 potential witnesses.³⁴ Class Counsel propounded multiple sets of formal written discovery
23 requests on Defendant, reviewed Defendant's responses and amended responses thereto, and
24 worked with Plaintiffs to provide responses to discovery requests that were propounded by
25 Defendant. Class Counsel noticed the depositions of Defendant's person most knowledgeable,
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27 ³¹ Hosseini Decl., ¶¶ 11-13.

28 ³² *Id.*, ¶ 12.

³³ *Ibid.*

³⁴ *Ibid.*

1 and prepared for and took the deposition of the Chief Executive Officer (identified as a person
2 most knowledgeable).³⁵ Counsel for the Parties also met and conferred on numerous occasions,
3 e.g., to discuss issues relating to the pleadings, discovery, *Belaire-West* process, and the
4 production of documents and data prior to the mediation.³⁶ Class Counsel also drafted Plaintiffs'
5 mediation brief and prepared for and attended court proceedings, settlement negotiations, and
6 the mediation, among other tasks.³⁷

7 The Parties engaged in extensive settlement negotiations and participated in a formal,
8 full-day mediation conducted by David L. Perrault, Esq., a well-respected mediator experienced
9 in mediating complex labor and employment matters.³⁸ Prior to and during the mediation and
10 settlement discussions, the Parties exchanged class information and engaged in an intensive
11 discussion regarding their evaluations of the case and various aspects of the case, including but
12 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
13 with class certification and/or representative adjudication, the law relating to off-the-clock
14 theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative
15 claims, as well as the evidence produced and analyzed, and the possibility of appeals, among
16 other things.³⁹ During all settlement discussions, the Parties conducted their negotiations at
17 arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was acceptable to both
18 Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the
19 merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to
20 obtain class certification and prevail at trial.⁴¹ After conducting investigations, significant
21 formal and informal discovery, extensive settlement negotiations, and with the aid of the
22 mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given
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25 ³⁵ Hosseini Decl., ¶ 12.

26 ³⁶ *Ibid.*

27 ³⁷ *Ibid.*

28 ³⁸ *Id.*, ¶ 11.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 11, 16-18.

the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴²

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

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

The Settlement, which provides for a Gross Settlement Amount of Four Hundred Eighty Thousand Dollars (\$480,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁷ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁸ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁰

Assuming that the Attorneys' Fees and Costs, Enhancement Payments, PAGA Payment, and Administration Costs are approved by the Court and paid in the full amounts provided for

⁴² Hosseini Decl., ¶¶ 11, 16-18.

⁴³ *Id.*, ¶¶ 11, 16-18.

⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁶ *Id.*, ¶¶ 6-7.

⁴⁷ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 16-18.

⁵⁰ *Id.*, ¶¶ 11, 13, & 21.

by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Two Hundred Thirty-Five Thousand Five Hundred Dollars (\$235,500.00).⁵¹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Share will be calculated based on his or her Qualifying Workweeks.⁵² There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members and the State of California.⁵³ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.⁵⁴ The discovery and information that Class Counsel obtained from Defendant, Plaintiffs, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁵ As outlined in the Declaration

⁵¹ Hosseini Decl., ¶ 14.

⁵² Settlement Agreement, §§ II.2.20 & III.3.7.

⁵³ Hosseini Decl., ¶¶ 11 & 13.

⁵⁴ *Id.*, ¶¶ 11-13 & 18.

⁵⁵ *Id.*, ¶ 18.

of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

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

⁵⁶ Hosseini Decl., ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, § IV.4.1.1.

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

3 This action involves a class of approximately three hundred and twenty-four (324)
4 individuals.⁵⁸ This class is sufficiently numerous. See *Rose v. City of Hayward* (1981) 126
5 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
6 requirement as joinder is not practical at that point). Further, all Class Members can and will
7 be identified by Defendant to the Administrator through a review of Defendant's employment
8 records. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

24 Here, common issues of fact and law predominate as to each of the claims alleged and
25 asserted in the Operative Complaint. Based on the documents and information obtained through
26 formal and informal discovery and exchange of information in this case, Plaintiffs contend that
27 Class Members were subject to the same or similar job duties and uniform operations and
28

⁵⁸ Hosseini Decl., ¶ 9.

1 employment practices, policies, and procedures during the time period at issue.⁵⁹ Plaintiffs'
2 claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to
3 Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
4 wages for all hours worked, failing to provide compliant meal and rest periods and associated
5 premium pay, failing to timely pay wages during employment and upon termination of
6 employment, failing to provide complaint wage statements, and failing to keep requisite payroll
7 records.⁶⁰

8 Plaintiffs also contend that Defendant's payroll and recordkeeping practices with respect
9 to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶¹
10 As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all
11 compensation due to them from Defendant during the time period at issue.⁶²

12 Plaintiffs maintain that the outcome of this litigation would be determined by
13 Defendant's alleged uniform operations and employment policies and procedures that applied
14 across its hourly-paid or non-exempt employees who worked in California during the Class
15 Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

18 Class Counsel have litigated the matter for over three (3) years and was actively
19 preparing the matter for class certification and trial.⁶³ The ongoing work has been extensive,
20 demanding, and ultimately successful in achieving a substantial settlement resolution. Class
21 Counsel conducted extensive investigations into the facts of the case and formal and informal
22 discovery, including, and not limited to, propounding multiple formal written discovery requests
23 onto Defendant. Class Counsel also noticed and took the depositions of Defendant's Person
24 Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and
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26 ⁵⁹ Hosseini Decl., ¶ 16.

27 ⁶⁰ *Ibid.*

28 ⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Id.*, ¶¶ 11-13.

1 data⁶⁴ and also interviewed and obtained information from Plaintiffs and other Class Members,
2 researched applicable law, undertook damages/valuation calculations, and met and conferred
3 with Defendant's counsel regarding the pleadings, discovery, and the production of documents
4 and data prior to mediation.⁶⁵ Counsel for the Parties also undertook extensive settlement
5 discussions, which included participating in a formal, full-day mediation.⁶⁶

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

8 The Settlement establishes a Gross Settlement Amount of Four Hundred Eighty Thousand
9 Dollars (\$480,000.00), and provides for Class Counsel to apply to the Court for an award up to
10 one-third (1/3) of the Gross Settlement Amount (i.e., \$160,000.00) for attorneys' fees, and an
11 amount up to Twenty Two Thousand Dollars (\$22,000.00) for reimbursement of actual litigation
12 costs and expenses (collectively "Attorneys' Fees and Costs").⁶⁸ The attorneys' fees provided
13 for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and
14 litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the
15 case, (3) the skill and determination that Class Counsel have shown, (4) the results that Class
16 Counsel have achieved throughout the litigation, (5) the value of the Settlement that Class
17 Counsel have achieved for the Class Members, and (6) the other cases that Class Counsel had
18 to turn down in order to devote their time and efforts to this matter. The proposed Class Notice
19 provides Class Members with information about the amount allocated toward the Attorneys'
20 Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided
21 for by the Settlement.⁶⁹

22 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
23 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
24 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
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26 ⁶⁴ Hosseini Decl., ¶ 12.

27 ⁶⁵ *Ibid.*

28 ⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 6-7.

⁶⁸ Settlement Agreement, § III.3.2.

⁶⁹ *Id.*, Exh. A.

“experienced trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

1 Class Counsel have borne all of the risks and costs of litigation and will not receive any
2 compensation until recovery is obtained.⁷⁰

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

8 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.**

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

14 The proposed Class Notice⁷¹ describes the Settlement, the deadlines and procedures to
15 submit an Objection to the Settlement, Request for Exclusion, and/or mail a dispute regarding
16 Qualifying Workweeks, and the date and time set for the Final Approval Hearing.⁷²

17 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
18 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class
19 members to make an informed decision about their participation." *Manual for Complex*
20 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
21 proceedings to date and the terms and conditions of the Settlement in an informative and
22 coherent manner.⁷³ The proposed Class Notice recognizes that the Court has not yet granted
23 final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members
24 of, *inter alia*, how their Settlement Share is calculated, and the number of Qualifying
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26 ⁷⁰ Hosseini Decl., ¶ 19.

27 ⁷¹ Settlement Agreement, Exh. A.

28 ⁷² *Id.*, Exh. A.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

Workweeks credited to them.⁷⁵

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

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement.

The Administrator will mail the Class Notice in English to each Class Member by First-Class U.S. Mail.⁷⁶ Any Class Notice returned to the Administrator within the thirty (30) calendar days of initial mailing with a forwarding address shall be re-mailed by the Administrator within five (5) calendar days.⁷⁷ The Administrator shall conduct a skip-trace address search for any Class Member’s Class Notice that is returned without a forwarding address and shall, upon obtaining a new or different address, re-mail the Class Member’s Class Notice within five (5) calendar days.⁷⁸ The Administrator will receive and process Requests for Exclusion, Objections, and any disputes regarding Qualifying Workweeks.⁷⁹

The Administrator will calculate the amounts of the Individual Settlement Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Participating 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 of the Settlement Agreement.⁸⁰ The Administration Costs are currently

⁷⁵ Settlement Agreement, Exh. A.

⁷⁶ *Id.*, § IV.4.3.

⁷⁷ *Id.*, § IV.4.3.1.

⁷⁸ *Ibid.*

⁷⁹ *Id.*, §§ IV.4.8, IV.4.10 & IV.4.11.

⁸⁰ *Id.*, § III.3.5.; Hosseini Decl., ¶ 15.

1 estimated not to exceed Ten Thousand Dollars (\$10,000.00) and will be paid out of the Gross
2 Settlement Amount, subject to approval by the Court.⁸¹

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

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

8 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
9 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
10 entails mailing of the Class Notice, in the form approved by the Court, to all known and
11 reasonably ascertainable Class Members based on Defendant's records.⁸²

12 Within twenty-one (21) calendar days following entry of the Preliminary Approval
13 Order, Defendant will produce the Class List and Data to the Administrator formatted in a
14 readable Microsoft Office Excel spreadsheet and will include each Class Member's full name,
15 last known mailing address, Social Security Number, start and end dates worked for Defendant
16 as an hourly-paid or non-exempt employee who worked for Defendant within the State of
17 California at any time during the Class Period, and such information as is necessary for the
18 Administrator to calculate Qualifying Workweeks (collectively, "Class List and Data").⁸³

19 Within fourteen (14) calendar days following receipt of the Class List and Data from
20 Defendant, the Administrator will perform a search based on the National Change of Address
21 Database or any other similar services available, such as provided by Experian, for information
22 to update and correct any known or identifiable address changes, and will mail a Class Notice
23 in English to all Class Members via First-Class U.S. Mail, using the most current, known mailing
24 address identified by the Administrator.⁸⁴ Any Class Notice returned to the Administrator within
25 thirty (30) calendar days of initial mailing with a forwarding address shall be re-mailed by the
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27 ⁸¹ Settlement Agreement, § III.3.5.

28 ⁸² *Ibid.*

⁸³ *Id.*, § IV.4.2.1.

⁸⁴ *Id.*, § IV.4.3.

1 Administrator within five (5) calendar days.⁸⁵ The Administrator shall conduct a skip-trace
2 address search for any Class Member's Class Notice that is returned without a forwarding
3 address and shall, upon obtaining a new or different address, re-mail the Class Member's Class
4 Notice within five (5) calendar days.⁸⁶ Class Members will have until the applicable Response
5 Deadline to mail a Request for Exclusion, Objections, or mail a dispute regarding Qualifying
6 Workweeks.⁸⁷

7 Within thirty (30) calendar days of the Effective Date, Defendant will make a one-time
8 deposit of the full Gross Settlement Amount (i.e., GSA) of Four Hundred Eighty Thousand
9 Dollars (\$480,000.00), to the Administrator.⁸⁸ The Administrator shall be authorized to establish
10 a Qualified Settlement Funds ("QSF") pursuant to IRS rules and regulations in which the Gross
11 Settlement Amount will be placed and from which payments required by the Settlement
12 Agreement will be made.⁸⁹ Within seven (7) calendar days of the funding of the GSA, the
13 Administrator will issue payments due under the Settlement and approved by the Court, as
14 follows: (a) Individual Settlement Payments to Participating Class Members; (b) LWDA
15 Payment to the Labor and Workforce Development Agency; (c) Enhancement Payments to
16 Plaintiffs; (d) Attorneys' Fees and Costs to Class Counsel; and (e) the Administration Costs to
17 the Administrator.⁹⁰

18 Each Individual Settlement Payment check shall remain valid and negotiable for one
19 hundred and eighty (180) calendar days from the date of their mailing, and thereafter, shall be
20 cancelled.⁹¹ All funds associated with such cancelled checks will be distributed by the
21 Administrator, in accordance with California Code of Civil Procedure section 384, to Legal Aid
22 at Work, after the Court enters an order approving the Parties' stipulation to amend the Final
23 Approval Order and Judgment.⁹² The Parties and their counsel each represent that they do not
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25 ⁸⁵ Settlement Agreement, § IV.4.3.1.

26 ⁸⁶ *Ibid.*

27 ⁸⁷ *Id.*, §§ IV.4.8, IV.4.10 & IV.4.11.

28 ⁸⁸ *Id.*, § III.3.1.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Id.*, § IV.4.20.

⁹² *Ibid.*

have a financial interest in or otherwise have a relationship with Legal Aid at Work that creates or could create a conflict of interest.⁹³

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR ENHANCEMENT PAYMENTS

Plaintiffs Nakita Clark and Dawn Stephenson respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Payments in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) each to Plaintiffs Nakita Clark and Dawn Stephenson (for a combined total of \$15,000).⁹⁴ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The 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.⁹⁵ For example, Plaintiffs expended effort to review and provide responses to discovery requests that were propounded by Defendant. Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would benefit the Class.⁹⁶ Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Payment for their services on behalf of the Class, in addition to their Individual Settlement Payments.

⁹³ Settlement Agreement, § IV.4.20.

⁹⁴ *Id.*, § II.2.15 & III.3.4.

⁹⁵ Hosseini Decl., ¶ 20; Declaration of Nakita Clark in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Clark Decl."), ¶ 4; and Declaration of Dawn Stephenson in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Stephenson Decl."), ¶ 4.

⁹⁶ Hosseini Decl., ¶ 20; Clark Decl., ¶¶ 3-6; and Stephenson Decl., ¶¶ 3-6.

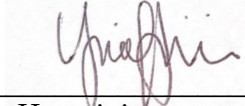
XII. CONCLUSION

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 Nakita Clark and Dawn Stephenson as Class Representatives; appoint Simpluris, Inc. as Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payments, PAGA Payment, and Administration Costs; approve the proposed Class Notice; direct the Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: October 21, 2022

LAWYERS *for* JUSTICE, PC

By: _____


Yasmin Hosseini
Attorneys for Plaintiffs