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

RAHMAD PERRY, individually, and on  
behalf of other members of the general public  
similarly situated and on behalf of other  
aggrieved employees pursuant to the  
California Private Attorneys General Act,

Plaintiff,

vs.

BELLA BRU NATOMAS LLC, a California  
limited liability company; and DOES 1  
through 100, inclusive,

Defendants.

Case No.: 34-2020-00281583-CU-OE-GDS

Honorable Jill H. Talley  
Department 25

**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  
(Janardana Burns); Declaration of Proposed  
Class Representative (Rahmad Perry); and  
[Proposed] Order filed concurrently  
herewith]

Date: May 31, 2022  
Time: 1:30 p.m.  
Department: 25

Complaint Filed: July 8, 2020  
FAC Filed: February 14, 2022  
Trial Date: None Set

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

**PLEASE TAKE NOTICE** that on May 31, 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 720 9th St, Sacramento, CA 95814, Plaintiff Rahmad Perry (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Janardana Burns, 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 Payment to Plaintiff, and Settlement Administration Expenses to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Rahmad Perry as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members and PAGA Employees;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

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 (Janardana Burns) and Proposed Class Representative (Rahmad Perry) 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: May 10, 2022

**LAWYERS for JUSTICE, PC**

By:



Janardana Burns  
Attorneys for Plaintiff

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Rahmad Perry (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“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 Bella Bru Natomas, LLC (“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 Three Hundred Twenty Four Thousand Four Hundred Dollars (\$324,400.00).<sup>1</sup> The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount<sup>2</sup>; (2) the Enhancement Payment of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff<sup>3</sup>; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of up to thirty-five percent (35%) of the Gross Settlement Amount, or \$113,540.00, and reimbursement of litigation costs and expenses not to exceed Sixteen Thousand Dollars (\$16,000.00)<sup>4</sup>; (4) the Settlement Administration Expenses to the Settlement Administrator in the amount not to exceed nine thousand dollars and no cents (\$9,000.00);<sup>5</sup> and (5) the amount of Sixty Thousand Dollars (\$60,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”) (the “PAGA Fund”), of which 75% (i.e., \$45,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$15,000.00) will be distributed to PAGA Employees.<sup>6</sup>

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<sup>1</sup> Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Janardana Burns (“Burns Decl.”), § 1.15.

<sup>2</sup> *Id.*, § 1.19.

<sup>3</sup> *Id.*, § 1.13.

<sup>4</sup> *Id.*, § 1.3.

<sup>5</sup> *Id.*, § 14.1.

<sup>6</sup> *Id.*, § 1.24.

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

All current and former hourly or non-exempt individuals who worked for Defendant in the State of California at any time during the period from July 8, 2016 through the date on which the Court grants preliminary approval of the Settlement (“Class” or “Class Members”).<sup>7</sup>

The Class is estimated to consist of approximately two hundred forty-one (241) individuals.<sup>8</sup>

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 Payment”) on a *pro rata* basis based upon the number of weeks each Class Member was employed by Defendant in California as an hourly-paid and/or non-exempt employee in California during the relevant Class Period and/or PAGA Period, less the number of workweeks for any applicable leaves of absence or gaps in employment (“Workweeks” and “PAGA Workweeks” respectively).<sup>9</sup>

The Settlement resolves the Released Class Claims of Plaintiff and Participating Class Members, and the Released PAGA Claims of Plaintiff and PAGA Employees, against the Released Parties.<sup>10</sup>

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

Defendant is a café and catering organization operating in Sacramento, California. Plaintiff Rahmad Perry is a former employee of Defendant.

On July 8, 2020, Plaintiff filed a Class Action Complaint for Damages in the Sacramento County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On September 16, 2020, Defendant filed an Answer to Plaintiff’s Class Action Complaint for Damages, and thereafter, on October 1, 2020, Defendant filed a First Amended Answer to Plaintiff’s Class Action Complaint for Damages.

<sup>7</sup> Settlement Agreement, § 1.5. “Class Period” is defined as the time from July 8, 2016 through the date on which the Court grants preliminary approval of the Settlement. *See id.*, § 1.7.

<sup>8</sup> Burns Decl., ¶ 9.

<sup>9</sup> Settlement Agreement, §§ 1.29, 1.17, & 1.41.

<sup>10</sup> *See id.* at §§ 1.35-1.36, for the full scope of the “Released Class Claims” and “Released PAGA Claims,” and *id.* at § 1.37 for the definition of the “Released Parties.”

1 On February 14, 2022, Plaintiff filed a First Amended Class Action Complaint for  
2 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §  
3 2698, *Et Seq.* (“Operative Complaint”).

4 Plaintiff’s core allegation is that Defendant has violated the California Labor Code and  
5 Industrial Welfare Commission Wage Orders by engaging in a uniform practice and procedure,  
6 with respect to Plaintiff, Class Members, and PAGA Employees, of, *inter alia*, failing to pay  
7 wages (including minimum and regular wages), failing to provide compliant meal and rest  
8 periods and associated premium pay, failing to timely pay wages during employment, failing to  
9 timely pay wages upon termination of employment and waiting-time penalties, failing to provide  
10 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse  
11 necessary business expenses, and thereby engaged in unfair business practices in violation of  
12 California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to  
13 civil penalties recoverable under PAGA. Plaintiff contends that he, and the Class Members, are  
14 entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant  
15 to PAGA), and attorneys’ fees.

16 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind  
17 associated with any of Plaintiff’s allegations in the Action, and further denies that Plaintiff’s  
18 claims or the Action are appropriate for class treatment or representative adjudication for any  
19 purpose other than for settlement purposes only.

20 On September 28, 2020, Plaintiff propounded multiple sets of discovery including  
21 Requests for Production of Documents, (Sets One and Two); Special Interrogatories, (Sets One,  
22 Two, and Three); and Form Interrogatories, (Set One), on Defendant, and noticed the deposition  
23 of Defendant's person most knowledgeable regarding job duties and organizational structure of  
24 Defendant. Thereafter, on November 17, 2020, February 12, 2021, April 22, 2021, and May 4,  
25 2021, Defendant responded to Plaintiff's discovery requests.

26 Defendant, in turn, propounded Requests for Production of Documents and noticed the  
27 deposition of Plaintiff. Thereafter, on October 22, 2020, Plaintiff responded and objected to  
28 Defendant’s discovery and deposition requests.

The Parties have actively litigated the Action since it was commenced on July 8, 2020. On November 3, 2021, the Parties participated in a formal, full-day mediation conducted by Warren Jackson, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

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

The Settlement provides for a Gross Settlement Amount of Three Hundred Twenty Four Thousand Four Hundred Dollars (\$324,400.00) on a non-reversionary basis. It was represented to Class Counsel at mediation, which took place on November 3, 2021, that for the period of July 8, 2016 to November 3, 2021, there were approximately 14,586 Workweeks. The Settlement provides that if it is determined that the total number of Workweeks during the period July 8, 2016 to the date that is thirty (30) calendar days before the date on which the Court grants Preliminary Approval ("Escalation Period") exceed 14,586 by more than ten percent (10%) (i.e., more than 16,044 Workweeks ("Workweeks Threshold")), then the Gross Settlement Amount will be increased on a *pro rata* basis by the same number of percentage points above the Workweeks Threshold. For example, if the number of Workweeks during the Escalation Period exceed the Workweeks Threshold by 2%, then, the Gross Settlement Amount will increase by 2%.<sup>11</sup> Parties will provide the total number of Workweeks for the Escalation Period to the Court at the hearing on the motion for preliminary approval.

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., Participating Class Members) and Released PAGA Claims of Plaintiff and PAGA Employees with respect to the Released Parties.<sup>12</sup> 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 amount not to exceed One Hundred Thirteen Thousand Five Hundred Forty Dollars

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<sup>11</sup> Settlement Agreement, § 9.

<sup>12</sup> *Id.*, § 1.29.

1 (\$113,540.00) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of costs and  
2 expenses in an amount not to exceed Sixteen Thousand Dollars (\$16,000.00) to Class Counsel  
3 (collectively referred to as the “Attorneys’ Fees and Costs”); (2) Settlement Administration  
4 Expenses, which are currently estimated not to exceed Nine Thousand Dollars (\$9,000.00) to  
5 the Settlement Administrator (“Settlement Administration Expenses”); (3) PAGA Fund in the  
6 amount of Sixty Thousand Dollars (\$60,000.00), of which seventy-five (75%), or \$45,000, will  
7 be paid to the State of California Labor and Workforce Development Agency (“LWDA  
8 Payment”) and twenty-five percent (25%), or \$15,000, will be distributed to PAGA Employees  
9 (“PAGA Employee Amount”); and (4) payment in the amount of up to Seven Thousand Five  
10 Hundred Dollars (\$7,500.00) to Plaintiff Rahmad Perry (“Enhancement Payment”).<sup>13</sup> The  
11 Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to  
12 handle the notice and settlement administration process.

13 The Parties have agreed that the Settlement Administrator will determine each  
14 Participating Class Member’s share of the available Net Settlement Amount (“Individual  
15 Settlement Payment”), in accordance with the Settlement Agreement and as follows:

- 16 a. The Settlement Administrator will calculate the total number of Workweeks worked  
by all Participating Class Members (“Total Workweeks”).<sup>14</sup>
- 17 b. The Settlement Administrator will divide each Participating Class Member’s  
18 respective individual Workweeks by the Total Workweeks, and multiply the  
19 resulting figure by the Net Settlement Amount to yield each Participating Class  
Member’s Individual Settlement Payment.<sup>15</sup>

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

- 23 c. The Settlement Administrator will calculate the total number of PAGA Workweeks  
worked by all PAGA Employees (“Total PAGA Workweeks”).<sup>16</sup>
- 24 d. The Settlement Administrator will divide each PAGA Employees respective PAGA  
25 Workweeks by the Total PAGA Workweeks and multiply the resulting figure by the  
PAGA Employee Amount to yield each PAGA Employee’s Individual PAGA  
Payment.<sup>17</sup>

26 <sup>13</sup> Settlement Agreement, §§ 1.3, 14.1, 12.1, & 1.13.

27 <sup>14</sup> *Id.*, § 10.1.

28 <sup>15</sup> *Ibid.*

<sup>16</sup> *Id.*, § 12.2.

<sup>17</sup> *Ibid.*

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages (the "wage portion"), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.<sup>18</sup> Participating Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment (the net payment is referred to as an "Individual Settlement Payment").<sup>19</sup> The Parties further agree that the Individual PAGA Payments distributed to each PAGA Employee will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if necessary). 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.<sup>20</sup>

The Individual Settlement Payment checks issued to Participating Class Members and Individual PAGA Payment checks to PAGA Employees will be negotiable for one hundred eighty (180) calendar days from the date of issuance of the check.<sup>21</sup> Individual Settlement Payment and/or Individual PAGA Payment checks that are not negotiated within the 180-day period will be cancelled.<sup>22</sup> All funds from associated with such cancelled checks will be transmitted by the Settlement Administrator to the Saint John's Program For Real Change.<sup>23</sup>

Class Members who wish 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.<sup>24</sup> To be timely, the Class Member must mail a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice ("Response Deadline").<sup>25</sup> A Request for Exclusion

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<sup>18</sup> Settlement Agreement, § 16.1.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Id.*, § 15.4.

<sup>22</sup> *Id.*, § 15.4.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Id.*, § 7.4.

<sup>25</sup> *Id.*, § 1.38.

must include: (a) the case name and number of the Action; (b) the Class Member's full name, signature, address, telephone number, and last four (4) digits of Social Security Number; (c) a written statement indicating that he or she does not wish to be included in the Settlement; and (d) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.<sup>26</sup> Class Members who submit a valid and timely Request for Exclusion will not be bound by the terms of the Class Settlement.<sup>27</sup> Consistent with applicable law, all PAGA Employees will be bound by the PAGA Settlement; if a PAGA Employee is also a Class Member, he or she will still be bound to the PAGA Settlement, irrespective of whether he or she opts out of the Class Settlement.

Only Class Members who do not exclude themselves from the Settlement (i.e., Participating Class Members) have standing to object to the Class Settlement.<sup>28</sup> Participating Class Members who wish to object to the Class Settlement may submit their objection in writing ("Objection") to the Settlement Administrator on or before the Response Deadline.<sup>29</sup> The Objection must include: (a) the case name and number of the Action; (b) the objector's full name, signature, address, telephone number, and last four (4) digits of Social Security Number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) copies of any papers, briefs, or other documents upon which the objection is based; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.<sup>30</sup> Any Participating Class Member who fails to timely submit their Objection in the manner specified herein may still appear and object to the Class Settlement at the Final Approval Hearing.

Class Members and PAGA Employees who wish to dispute the number of Workweeks and/or PAGA Workweeks credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator ("Workweeks Dispute").<sup>31</sup> The letter must include: (a)

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<sup>26</sup> Settlement Agreement, § 1.39.

<sup>27</sup> *Id.* § 7.4.

<sup>28</sup> *Id.*, § 7.3.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Id.*, § 7.3.

<sup>31</sup> *Id.*, § 1.42.

the case name and number of the Action; (b) the Class Member's or PAGA Employee's full name, signature, address, telephone number, and last four (4) digits of his or her Social Security Number; (c) a written statement indicating that he or she wishes to dispute the number of Workweeks and/or PAGA Workweeks attributed to him or her and indicating the number(s) of Workweeks and/or PAGA Workweeks the Class Member contends is correct; (d) any supporting documentation showing that the number(s) of Workweeks and/or PAGA Workweeks attributed to him or her is incorrect and supporting the number(s) of Workweeks and/or PAGA Workweeks he or she contends is correct; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.<sup>32</sup>

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

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

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<sup>32</sup> Settlement Agreement, § 1.42.

1 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement  
2 class.

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

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

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

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

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

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

The Parties actively litigated the Action since it was commenced on July 8, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.<sup>33</sup>

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.<sup>34</sup> The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff and other Class Members’ and PAGA Employees’ employment records, a detailed sampling of Class Members’ and PAGA Employees’ time and pay data, list of stores and offices with seasonal hours and schedules, multiple versions of Defendant’s Employee Handbook and Training Manual, multiple iterations of Defendant’s Code of Conduct, company policy acknowledgments, internal memoranda, job descriptions, Defendant’s operations and employment practices, procedures, and policies (including but not limited to Defendant’s Pay Period and Work Week Policy, Overtime Policy, Timekeeping Policy for Non-Exempt Employees, Off-the Clock Work Policy for Non-Exempt Employees, Attendance Policy, and Expense Reimbursement Policy), among other information and documents.<sup>35</sup> Class Counsel interviewed Plaintiff and other Class Members and PAGA Employees to gather facts and to

<sup>33</sup> Burns Decl., ¶¶ 11-13.

<sup>34</sup> *Id.*, ¶ 12.

<sup>35</sup> *Ibid.*

1 identify potential witnesses.<sup>36</sup> Class Counsel propounded multiple sets of formal written  
2 discovery requests on Defendant, reviewed Defendant's responses and supplemental responses  
3 thereto, and noticed the depositions of Defendant's Person Most Knowledgeable designees  
4 regarding organizational structure and job duties.<sup>37</sup> Counsel for the Parties also met and  
5 conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and  
6 the production of documents and data prior to the mediation.<sup>38</sup> Class Counsel also drafted  
7 Plaintiff's mediation brief and prepared for and attended court proceedings, settlement  
8 negotiations, and the mediation, among other tasks.<sup>39</sup>

9 The Parties engaged in extensive settlement negotiations and participated in a formal  
10 full-day mediation conducted by Warren Jackson, Esq.<sup>40</sup> Prior to and during the mediation, the  
11 Parties exchanged class information and engaged in an intensive discussion regarding their  
12 evaluations of the case and various aspects of the case, including but not limited to, the risks and  
13 delays of further litigation, the risks to the Parties of proceeding with class certification and/or  
14 representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-  
15 and-hour enforcement, and PAGA representative claims, as well as the evidence produced and  
16 analyzed, and the possibility of appeals, among other things.<sup>41</sup> During all settlement discussions,  
17 the Parties conducted their negotiations at arm's length in an adversarial position.<sup>42</sup> Arriving at  
18 a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt  
19 strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class  
20 Counsel believed that they would be able to obtain class certification and prevail at trial.<sup>43</sup> After  
21 conducting investigations, significant informal discovery the Parties have agreed that the matter  
22 is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well  
23 as the costs and risks to both sides that would attend further litigation.<sup>44</sup>

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24 <sup>36</sup> Burns Decl., ¶ 12.

25 <sup>37</sup> *Ibid.*

26 <sup>38</sup> *Ibid.*

27 <sup>39</sup> *Ibid.*

28 <sup>40</sup> *Id.*, ¶ 11.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Id.*, ¶¶ 11, 16-18.

<sup>44</sup> *Ibid.*

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.<sup>45</sup> The Parties have had the opportunity to interview and obtain information from their respective witnesses.<sup>46</sup> Counsel for the Parties have also reviewed documents and information relating to Plaintiff's, Class Members', and PAGA Employees' 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, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.<sup>47</sup> The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.<sup>48</sup>

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

The Settlement, which provides for a Gross Settlement Amount of Three Hundred Twenty Four Thousand Four Hundred Dollars (\$324,400.00), represents a fair, adequate, and reasonable resolution of the matter.<sup>49</sup> The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.<sup>50</sup> The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.<sup>51</sup> Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class and PAGA Employees.<sup>52</sup>

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA Fund, and Settlement Administration Expenses are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for distribution of a Net Settlement

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<sup>45</sup> Burns Decl., ¶¶ 11, 16-18.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Id.*, ¶¶ 11-13 & 16-18.

<sup>48</sup> *Id.*, ¶¶ 6-7

<sup>49</sup> *Id.*, ¶¶ 11, 13, 14 & 21.

<sup>50</sup> *Id.*, ¶¶ 11-13.

<sup>51</sup> *Id.*, ¶¶ 16-18.

<sup>52</sup> *Id.*, ¶¶ 11, 13, & 21.

Amount that is currently estimated to be One Hundred Thirty Three Thousand Three Hundred Sixty Dollars (\$133,360.00), to Participating Class Members.<sup>53</sup> The Settlement also provides for distribution of the PAGA Employee Amount of \$15,000 to PAGA Employees.

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 Payment will be calculated based on his or her Workweeks and the amount of each PAGA Employee's Individual PAGA Payment will be calculated based on his or her PAGA Workweeks.<sup>54</sup> 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 believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members and PAGA Employees.<sup>55</sup> Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged thousands of pages of documents, data, and information prior to entering into the Settlement.<sup>56</sup> The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to

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<sup>53</sup> Burns Decl., ¶ 14.

<sup>54</sup> Settlement Agreement, § 10.1.

<sup>55</sup> Burns Decl., ¶¶ 11, 13, & 21.

<sup>56</sup> *Id.*, ¶¶ 11-13 & 18.

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.<sup>57</sup> As outlined in the Declaration of Janardana Burns, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.<sup>58</sup>

**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.<sup>59</sup> 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, 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

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<sup>57</sup> Burns Decl., ¶ 18.

<sup>58</sup> *Id.*, ¶¶ 11-13 & 16-18.

<sup>59</sup> Settlement Agreement, § 5.

1 identify himself or herself as having a right to recover based on the description.” *Bartold v.*  
2 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be  
3 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

4 This action involves a class of approximately Two Hundred Forty-One (241)  
5 individuals.<sup>60</sup> This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126  
6 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity  
7 requirement as joinder is not practical at that point). Further, all Class Members can and will  
8 be identified by Defendant to the Settlement Administrator through a review of Defendant's  
9 employment records regarding non-exempt employees in California during the Class Period. As  
10 such, the Class is ascertainable and sufficiently numerous.

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

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

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

26 Here, common issues of fact and law predominate as to each of the claims alleged and  
27 asserted in the Operative Complaint. Based on the documents and information obtained through  
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<sup>60</sup> Burns Decl., ¶ 9.

informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.<sup>61</sup> Plaintiff's claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.<sup>62</sup>

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.<sup>63</sup> 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.<sup>64</sup>

Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees 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 one year, and was actively preparing the matter for class certification and trial.<sup>65</sup> The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery, 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.

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<sup>61</sup> Burns Decl., ¶ 16.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Id.*, ¶¶ 11-13.

Class Counsel reviewed thousands of pages of documents and data<sup>66</sup> and also interviewed and obtained information from Plaintiff and other Class Members and PAGA Employees, 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.<sup>67</sup> Counsel for the Parties also undertook extensive settlement discussions<sup>68</sup>

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.<sup>69</sup>

The Settlement establishes a Gross Settlement Amount of Three Hundred Twenty Four Thousand Four Hundred Dollars (\$324,400.00), 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-five percent (35%) of the Gross Settlement Amount (i.e., \$113,540.00) and an amount not to exceed Sixteen Thousand Dollars (\$16,000.00) for costs and expenses.<sup>70</sup> 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 and PAGA Employees, 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 PAGA 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.<sup>71</sup>

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.*

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<sup>66</sup> Burns Decl., ¶ 12.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Id.*, ¶ 11.

<sup>69</sup> *Id.*, ¶¶ 6-7.

<sup>70</sup> Settlement Agreement, §§ 1.15, 1.3, & 13.1.

<sup>71</sup> Settlement Agreement, Exh. A.

1 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the  
2 “experienced trial judge is the best judge of the value of professional services rendered in his  
3 court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney  
4 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result  
5 achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing  
6 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to  
7 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should  
8 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace  
9 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a  
10 settlement fund and the settlement agreement provides that the defendant agrees to paying the  
11 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.<sup>72</sup>

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

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

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

The proposed Class Notice<sup>73</sup> describes the Settlement, the deadlines and procedures to submit an Objection to the Class Settlement, a Request for Exclusion from the Class Settlement, and/or a Workweeks Dispute, and the date and time set for the Final Approval Hearing.<sup>74</sup>

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.<sup>75</sup> The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.<sup>76</sup> The proposed Class Notice also apprises the Class Members

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<sup>72</sup> Burns Decl., ¶ 19.

<sup>73</sup> Settlement Agreement, Exh. A.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

of, *inter alia*, how their Individual Settlement Payment is calculated and the number of Workweeks credited to them.<sup>77</sup>

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

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

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member and PAGA Employee by First-Class U.S. mail in English and Spanish.<sup>78</sup> 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 within five (5) calendar days of receiving the undeliverable Class Notice.<sup>79</sup> With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace search, and will then perform a single re-mailing to any addresses located indicating the date of the re-mailing on the Class Notice, within five (5) calendar days of receiving the undeliverable Class Notice.<sup>80</sup> 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.<sup>81</sup> The Settlement Administrator will receive and process Requests for Exclusion, Objections, and any Workweeks Disputes.<sup>82</sup>

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<sup>77</sup> Settlement Agreement, Exh. A.

<sup>78</sup> *Id.*, § 7.2(b).

<sup>79</sup> *Id.*, § 7.2(d).

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> *Id.*, § 14.3.

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to Participating Class Members and Individual PAGA Payment checks to PAGA Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and PAGA Fund; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.<sup>83</sup> The Settlement Administration Costs are currently estimated to be Nine Thousand Dollars (\$9,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.<sup>84</sup>

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 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 and PAGA Employees based on Defendant's records.<sup>85</sup>

Within thirty (30) calendar days of the Preliminary Approval Order, Defendant will provide the Settlement Administrator with the full name, last known mailing address, Social Security Number, employment dates, and such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks in a readable Microsoft Excel spreadsheet (collectively the "Class List and Data").<sup>86</sup>

Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members and PAGA Employees via First-

<sup>83</sup> Settlement Agreement, § 14.2; Burns Decl., ¶ 15.

<sup>84</sup> Settlement Agreement, § 14.1.

<sup>85</sup> *Id.*, § 7.2.

<sup>86</sup> *Id.*, §§ 7.2(a).

Class U.S. Mail.<sup>87</sup> 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.<sup>88</sup> If no forwarding address is provided, then 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 and/or PAGA Employee.<sup>89</sup> Class Members and PAGA Employees will have until the applicable Response Deadline to mail a Request for Exclusion, mail a Workweeks Dispute, and/or to submit an Objection.<sup>90</sup>

Defendant will fund the Gross Settlement Amount in three (3) different payments, together with an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be established by the Settlement Administrator as follows:

(a) Within fifteen (15) calendar days after preliminary court approval, but no earlier than May 1, 2022, Defendant shall provide the Settlement Administrator with One Hundred Thousand Dollars (\$100,000.00).

(b) Within fifteen (15) calendar days of final court approval, but no earlier than August 1, 2022, Defendant shall provide the Settlement Administrator with an additional One Hundred Thousand Dollars (\$100,000.00).

(c) Within nine (9) months of final court approval, Defendant shall provide the Settlement Administrator with One Hundred and Twenty-Four Thousand and Four Hundred Dollars (\$124,400.00).<sup>91</sup>

Within fifteen (15) calendar days after receipt of the full Gross Settlement Amount from Defendant, the Settlement Administrator shall make the following payments: (1) Individual Settlement Payments to Participating Class Members; (2) Individual PAGA Payments to PAGA Employees; (3) the Enhancement Payment to Plaintiff; (4) the Attorneys' Fees and Costs to

<sup>87</sup> Settlement Agreement, § 7.2(b).

<sup>88</sup> *Id.*, § 7.2(d).

<sup>89</sup> *Ibid.*

<sup>90</sup> *Id.*, § 1.38.

<sup>91</sup> *Id.*, § 15.2.

Class Counsel; (5) the LWDA Payment to the LWDA; and (6) Settlement Administration Expenses to the Settlement Administrator.<sup>92</sup>

The Individual Settlement Payment checks and Individual PAGA Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.<sup>93</sup> Checks that are not negotiated within the 180-day period will be cancelled.<sup>94</sup> The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to the Saint John's Program For Real Change.<sup>95</sup>

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

Plaintiff Rahmad Perry respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to Seven Thousand Five Hundred Dollars (\$7,500.00).<sup>96</sup> 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.<sup>97</sup> Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that

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<sup>92</sup> Settlement Agreement, § 15.3.

<sup>93</sup> *Id.*, § 15.4.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Id.*, § 11.

<sup>97</sup> Burns Decl., ¶ 20; Declaration of Rahmad Perry in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Perry Decl."), ¶ 4.

would facilitate the pursuit of class and PAGA claims.<sup>98</sup> Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class, State of California, and PAGA Employees 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 Rahmad Perry as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment, and Settlement Administration Expenses; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately one hundred eighty (180) days; and permit the filing of a memorandum that exceeds the page limit.

Dated: May 10, 2022

**LAWYERS for JUSTICE, PC**

By:



Janardana Burns  
Attorneys for Plaintiff

<sup>98</sup> Burns Decl., ¶ 20; Perry Decl., ¶¶ 3-6.