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

ROEL GALICIA, individually, and on behalf  
of other members of the general public  
similarly situated,

Plaintiff,

v.

JIF-PAK MANUFACTURING, LLC, a  
California corporation; and DOES 1 through  
100, inclusive,

Defendants.

Case No.: 37-2020-00005233-CU-OE-  
CTL

Honorable Kenneth J. Medel  
Department C-66

**CLASS ACTION**

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

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

Date: February 10, 2023  
Time: 9:30 a.m.  
Department: C-66

Complaint Filed: January 29, 2020  
Trial Date: None Set

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

**PLEASE TAKE NOTICE** that on October 14, 2023 at 9:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Kenneth J. Medel in Department C-66 of the Superior Court of California for the County of Jif-Pak Manufacturing, LLC, located at 330 W Broadway, San Diego, CA 92101, Plaintiff Roel Galicia (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting leave to file the [Proposed] First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“First Amended Complaint” or “Operative Complaint”) which is attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement 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 Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Roel Galicia as Class Representative;
- Preliminarily appointing Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Notice”), attached as “**EXHIBIT B**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;

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

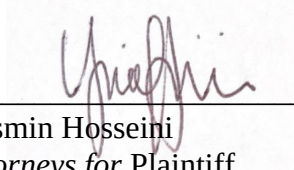
This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini) and Proposed Class Representative (Roel Galicia) 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: January 19, 2023

**LAWYERS for JUSTICE, PC**

By:

  
Yasmin Hosseini  
Attorneys for Plaintiff

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Roel Galicia (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“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 Jif-Pak Manufacturing, 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 two million five hundred thousand dollars and no cents (\$2,500,000.00).<sup>1</sup> The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount;<sup>2</sup> (2) the Enhancement Payment of seven thousand five hundred dollars and no cents (\$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 thirty-five percent (35%) of the Gross Settlement Amount, or \$875,000.00, and reimbursement of litigation costs and expenses not to exceed thirty thousand dollars and no cents (\$30,000.00);<sup>4</sup> (4) the Settlement Administration Costs to the Settlement Administrator in the amount currently estimated not to exceed thirteen thousand dollars and no cents (\$13,000.00);<sup>5</sup> and (5) the amount of one hundred thousand dollars and no cents (\$125,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$93,750.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$31,250.00) will be distributed to Settlement Class Members as a part of the Net Settlement Amount.<sup>6</sup>

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

<sup>1</sup> Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Yasmin Hosseini (“Hosseini Decl.”), ¶ 7.r.

<sup>2</sup> ¶ 7.p. & q.

<sup>3</sup> ¶ 7.m. & 12.

<sup>4</sup> ¶ 11.

<sup>5</sup> ¶ 13.

<sup>6</sup> ¶ 14.

All current and former hourly-paid or non-exempt employees of Defendant in California at any time during the Class Period (“Class” or “Class Members”).<sup>7</sup>

The Class is estimated to consist of approximately eight hundred and ninety-five (895) individuals.<sup>8</sup>

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement 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 Settlement Class Member was employed by Defendant in California in a non-exempt or hourly-paid position during the period from January 29, 2016 through April 20, 2022 (“Workweeks”).<sup>9</sup>

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

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

Defendant is a California corporation which produces netting and casing for meat production and processing. Plaintiff Roel Galicia is a former employee of Defendant.

On January 29, 2020, Plaintiff filed a Class Action Complaint for Damages in the Jif-Pak Manufacturing, LLC County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On March 10, 2020, Defendant filed an Answer to Plaintiff’s Class Action Complaint for Damages.

On April 2, 2020, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One & Two); Special Interrogatories, (Set One, Two, & Three); and Form Interrogatories, (Set One), on Defendant. Thereafter, on June 5, 2020, Defendant responded to Plaintiff’s discovery requests.

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<sup>7</sup> Settlement Agreement, ¶ 7.d. “Class Period” is defined as the period of time from January 29, 2016 through April 20, 2022, or the Settlement End Date (defined below in Paragraph 35), whichever is earlier. *See id.*, ¶ 7.f.

<sup>8</sup> Hosseini Decl., ¶ 9.

<sup>9</sup> Settlement Agreement, ¶ 7.ee.

<sup>10</sup> *See id.* at ¶ 7.x., for the full scope of the “Released Claims,” and *id.* at ¶ 7.y. for the definition of the “Released Parties.”

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, claims under the California Labor Code, California Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law, for failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods and associated premium pay, failure to provide compliant wage statements, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, failure to maintain requisite payroll records, failure to reimburse necessary business-related expenses, unfair or unlawful business practices pursuant California Business and Professions Code § 17200, *et seq.*, and civil penalties pursuant to California Labor Code § 2698, *et seq.* Plaintiff contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

The Parties have agreed that Plaintiff will seek leave to file a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.* ("First Amended Complaint" or "Operative Complaint"), to add a PAGA cause of action. All material allegations in the First Amended Complaint shall be deemed denied by Defendant without the necessity of Defendant filing an Answer to the First Amended Complaint or any other pleading in the Action.

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 January 29, 2020. On January 10, 2022, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator and his evaluations, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

1 **III. REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

2 To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties  
3 agree that leave should be granted for Plaintiff to file an amended complaint in order to, *inter*  
4 *alia*, add a PAGA cause of action. As such, Plaintiff respectfully requests leave to file the First  
5 Amended Complaint (i.e, the Operative Complaint), attached “Exhibit A” to the [Proposed]  
6 Order Granting Preliminary Approval of Class Action Settlement, so that the operative  
7 complaint in this action formally asserts the causes of action and allegations that have been  
8 investigated, litigated, mediated, and ultimately settled, by the Parties, and so that the terms of  
9 the Settlement may be effectuated. The Parties agree that all material allegations in the First  
10 Amended Complaint shall be deemed denied by Defendant without the necessity of Defendant  
11 filing an Answer to the First Amended Complaint or any other pleading in the Action.

12 **IV. SUMMARY OF THE SETTLEMENT TERMS**

13 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to  
14 resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and  
15 valid request to be excluded from the Settlement (i.e., Settlement Class Member) with respect  
16 to the Released Parties.<sup>11</sup> Subject to approval by the Court, the Net Settlement Amount will be  
17 calculated by deducting the following amounts from the Gross Settlement Amount: (1)  
18 attorneys’ fees in an amount not to exceed eight hundred seventy-five thousand dollars and no  
19 cents (\$875,000.00) (i.e., up to 35% of the Gross Settlement Amount) and reimbursement of  
20 costs and expenses in an amount not to exceed thirty thousand dollars and no cents (\$30,000.00)  
21 to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement  
22 administration costs, which are currently estimated not to exceed thirteen thousand dollars and  
23 no cents (\$13,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3)  
24 payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$93,750.00 out of  
25 \$125,000.00) (“LWDA Payment”); and (4) payment in the amount of up to seven thousand five  
26 hundred dollars and no cents (\$7,500.00) to Plaintiff Roel Galicia (“Enhancement Payment”).<sup>12</sup>

27  
28 <sup>11</sup> Settlement Agreement, ¶ 31.

<sup>12</sup> *Id.*, ¶ 11, 12, 13 & 14.

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

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

- a. The Settlement Administrator will calculate each Settlement Class Member’s number of Workweeks and the total aggregate number of Workweeks of all Settlement Class Member (“Total Workweeks”).<sup>13</sup>
- b. The Settlement Administrator will divide the Net Settlement Amount by the number of Total Workweeks, resulting in the “Workweeks Value.” Each Settlement Class Member’s Individual Settlement Payment will then be determined by multiplying each individual Settlement Class Member’s number of Workweeks by his or her Workweeks Value.<sup>14</sup>

Each Individual Settlement Share 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>15</sup> Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement Payment”).<sup>16</sup> 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>17</sup>

The Individual Settlement Payment checks issued to Settlement Class Members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and thereafter, shall be cancelled.<sup>18</sup> After the 180-day check-cashing deadline, the Parties shall file a stipulation to amend the Final Approval Order and Judgment that sets forth the total amount to be paid to Settlement Class Members and the amount of unpaid residue, plus any interest on such funds, to be paid to the *cy pres* recipient identified herein. Pursuant to California Code of

<sup>13</sup> Settlement Agreement, ¶ 15.a.

<sup>14</sup> *Id.*, ¶ 15.b.

<sup>15</sup> *Id.*, ¶ 26.

<sup>16</sup> *Ibid.*

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

<sup>18</sup> *Id.*, ¶ 20.

Civil Procedure Section 384, all funds associated with such cancelled checks will be distributed by the Settlement Administrator to University of San Diego School of Law's free Worker's Rights Clinic, after the Court enters an order approving the Parties' stipulation to amend the Final Approval Order and Judgment.<sup>19</sup> Settlement Class Members whose Individual Settlement Payment checks are cancelled shall, nevertheless, be bound by this Settlement Agreement.<sup>20</sup>

Class Members who wishes to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a letter indicating that they want to exclude themselves.<sup>21</sup> To be timely, the Class Member must mail or fax a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Notice ("Response Deadline").<sup>22</sup> A Request for Exclusion must: (1) contain the case name and number of the Action; (2) contain the Class Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed by the Class Member or his or her authorized representative; (4) contain a clear statement that the Class Member requests to be excluded from the Settlement; and (5) be sent to the Settlement Administrator, postmarked by no later than the Response Deadline.<sup>23</sup> Any Class Member who validly requests to be excluded from the Settlement will not be a Settlement Class Member and will not have any right to object, appeal, or comment on the Settlement.<sup>24</sup>

Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) may either present their objection orally at the Final Approval Hearing or submit a timely and complete Notice of Objection to the Settlement Administrator, by fax or mail, on or before the Response Deadline.<sup>25</sup> The Notice of Objection must contain: (a) the case name and number of the Action; (b) the objector's full name, signature, address, and telephone number; (c) a written statement of all grounds for the objection accompanied by any legal support for

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<sup>19</sup> Settlement Agreement, ¶ 20.

<sup>20</sup> Ibid.

<sup>21</sup> *Id.*, ¶ 21.

<sup>22</sup> *Id.*, ¶ 7.aa.

<sup>23</sup> *Id.*, ¶ 21.

<sup>24</sup> Ibid.

<sup>25</sup> *Id.*, ¶ 23.

1 such objection; and (d) copies of any papers, briefs, or other documents upon which the  
2 objection is based.<sup>26</sup>

3 Class Members will have an opportunity to dispute the number of Workweeks to which  
4 they have been credited, as reflected in their respective Class Notices .<sup>27</sup> The letter must contain:  
5 (a) the case name and number of the Action; (b) signature of the Class Member or his or her  
6 authorized representative; (c) the full name, address, telephone number, and the last four digits  
7 of the Social Security Number of the disputing Class Member; (d) a clear statement that the  
8 Class Member disputes the number of Workweeks credited to him or her and what he or she  
9 contends is the correct number to be credited to him or her; (e) the information and/or  
10 documentation demonstrating that the number of Workweeks that he or she contends should  
11 be credited to him or her are correct and (f) is returned by fax or mail to the Settlement  
12 Administrator at the specified address and/or facsimile number, postmarked or fax-stamped  
13 on or before the Response Deadline.<sup>28</sup>

14 **V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
15 **SETTLEMENTS**

16 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*  
17 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to  
18 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at  
19 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve  
20 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*  
21 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair  
22 and reasonable, whether certification of the class was proper, and whether the attorney fee award  
23 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's  
24 decision to approve a class action settlement may be reversed only upon a strong showing of  
25 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;  
26 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

27 <sup>26</sup> Settlement Agreement, ¶ 23.

28 <sup>27</sup> *Id.*, ¶ 19.

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

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

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

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

## **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including "the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the

1 proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive  
2 and the court is free to engage in a balancing and weighing of the factors depending on the  
3 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give  
4 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d  
5 at 1027 (citation omitted).

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

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

15 The Parties actively litigated the Action since it was commenced on January 29, 2020.  
16 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of  
17 the claims, and Class Counsel was actively preparing the case for class certification and trial.<sup>29</sup>

18 Prior to engaging in mediation, Class Counsel conducted significant investigation and  
19 formal and informal discovery regarding the facts of the case, including and not limited to, the  
20 exchange, review, and analysis of thousands of pages of documents and data produced by  
21 Defendant.<sup>30</sup> The volume of data and documents that Class Counsel reviewed and analyzed  
22 included and was not limited to: Plaintiff and other Class Members’ employment records, a  
23 detailed sampling of Class Members’ time and pay data, new hire information checklists,  
24 Defendant’s Employee Handbook, financial information (including but not limited to pay  
25 statements and earning statements), company policy acknowledgements (Employee’s  
26 Responsibility and Acknowledgment of the Safety Program, Invention Agreement,  
27

28 <sup>29</sup> Hosseini Decl., ¶¶ 11-13.

<sup>30</sup> *Id.*, ¶ 12.

Confidentiality Agreement, Employee Receipt Acknowledgment Form, Acknowledgement of Safety Rules, Acknowledgement of Attendance Policy, Acknowledgement of Lockers Policy, Acknowledgement of PTO Policy, Acknowledgement of Workplace Behavior Policy, Acknowledgement of Safety Shoe Program and Policy, Acknowledgement of Identification Badge Policy, Acknowledgement of Meal & Rest Period Policy, Acknowledgement of Cell Phone Policy, Acknowledgement of Internet Policy, Acknowledgement of Blogging and Social Media Policy, Company Property Agreement, Acknowledgement of Drug and Alcohol Policy, Handbook Acknowledgement Receipt Form, Acknowledgement of Receipt and Promise Regarding Unlawful Discrimination and Harassment), forms (COBRA Qualifying Event, Notice Change of Relationship, ), internal memoranda, job descriptions, Defendant's operations and employment practices, procedures, and policies (Injury and Illness Prevention Program, Safety Rules, Attendance Policy, Lockers Policy, PTO Policy After 2013 for Administrative & Plant Employees, Workplace Behavior Policy, Safety Shoe Program and Policy, Identification Badge Policy, Meal & Rest Period Policy, Cell Phone Policy, Internet Policy, Blogging and Social Media Policy, Drug and Alcohol Policy ), among other information and documents.<sup>31</sup> Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.<sup>32</sup> Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses thereto, and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties.<sup>33</sup> Class Counsel prepared for the deposition of Defendant's Person Most Knowledgeable.<sup>34</sup> Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.<sup>35</sup> Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.<sup>36</sup>

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<sup>31</sup> Hosseini Decl., ¶ 12.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.<sup>37</sup> Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.<sup>38</sup> During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.<sup>39</sup> Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.<sup>40</sup> After conducting investigations, significant formal and informal discovery and exchange of information, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.<sup>41</sup>

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>42</sup> The Parties have had the opportunity to interview and obtain information from their respective witnesses.<sup>43</sup> Counsel for the Parties have also reviewed documents and information relating to Plaintiff's 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

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<sup>37</sup> Hosseini Decl., ¶ 11.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> *Id.*, ¶¶ 11, 16-18.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.<sup>44</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>45</sup>

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

The Settlement, which provides for a Gross Settlement Amount of two million five hundred thousand dollars and no cents (\$2,500,000.00), represents a fair, adequate, and reasonable resolution of the matter.<sup>46</sup> The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.<sup>47</sup> The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.<sup>48</sup> Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.<sup>49</sup>

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be one million four hundred ninety-nine thousand five hundred dollars and no cents (\$1,480,750.00).<sup>50</sup> As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks.<sup>51</sup> There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary

<sup>44</sup> Hosseini Decl., ¶¶ 11-13 & 16-18.

<sup>45</sup> *Id.*, ¶¶ 6-7.

<sup>46</sup> *Id.*, ¶¶ 11, 13, 14 & 22.

<sup>47</sup> *Id.*, ¶¶ 11-13.

<sup>48</sup> *Id.*, ¶¶ 16-18.

<sup>49</sup> *Id.*, ¶¶ 11, 13, & 22.

<sup>50</sup> *Id.*, ¶ 14.

<sup>51</sup> Settlement Agreement, ¶ 14.

1 approval. Even at the final approval stage, “[a]n allocation formula need only have a reasonable,  
2 rational basis [to warrant approval], particularly if recommended by experienced and competent  
3 class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y.  
4 2001) 127 F.Supp.2d 418, 429-30.

5 In light of the foregoing considerations, Class Counsel believes that the Settlement as a  
6 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.<sup>52</sup>  
7 Although the recommendations of Class Counsel are not conclusive, the Court can properly take  
8 the recommendations into account, particularly if Class Counsel appears to be competent, and  
9 has experience with this type of litigation, and investigation have been completed, as is the case  
10 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the  
11 Settlement.

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

13 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116, the Parties  
14 conducted significant formal and informal discovery and exchanged thousands of pages of  
15 documents, data, and information prior to mediation.<sup>53</sup> The discovery and information that Class  
16 Counsel obtained from Defendant, Plaintiff, and other sources allowed Class Counsel to develop  
17 valuation models in order to evaluate the potential value and merit of the claims, and perform a  
18 complete evaluation of Defendant’s defenses thereto.<sup>54</sup>

19 **VII. CERTIFICATION OF THE CLASS IS APPROPRIATE**

20 For settlement purposes, the requisites for establishing class certification are met, and  
21 the Parties have stipulated to conditional certification of the Class for settlement purposes only.<sup>55</sup>  
22 California Code of Civil Procedure Section 382 “authorizes class actions when the question is  
23 one of a common or general interest, of many persons, or when the Parties are numerous, and it  
24 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*  
25 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies  
26

27 <sup>52</sup> Hosseini Decl., ¶¶ 11, 13, & 22.

28 <sup>53</sup> *Id.*, ¶¶ 11-13 & 18.

<sup>54</sup> *Id.*, ¶ 18.

<sup>55</sup> Settlement Agreement, ¶ 33(a).

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

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

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

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

This action involves a class of approximately eight hundred and ninety-five (895) individuals.<sup>56</sup> This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding hourly and non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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<sup>56</sup> Hosseini Decl., ¶ 9.

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

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

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

16           Here, common issues of fact and law predominate as to each of the claims alleged and  
17 asserted in the Operative Complaint. Based on the documents and information obtained through  
18 formal and informal discovery and exchange of information in this case, Plaintiff contends that  
19 Class Members were subject to the same or similar job duties and uniform operations and  
20 employment practices, policies, and procedures during the time period at issue.<sup>57</sup> Plaintiff’s  
21 claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to  
22 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum  
23 wages for all hours worked, failing to provide compliant meal and rest periods and associated  
24 premium pay, failing to timely pay wages during employment and upon termination of  
25 employment, failing to provide complaint wage statements, failing to keep requisite payroll  
26 records, and failing to reimburse necessary business-related expenses.<sup>58</sup>

27  
28           <sup>57</sup> Hosseini Decl., ¶ 16.

<sup>58</sup> *Ibid.*

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.<sup>59</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>60</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.

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

Class Counsel has litigated the matter for over two (2) years, and was actively preparing the matter for class certification and trial.<sup>61</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 formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed thousands of pages of documents and data<sup>62</sup> and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.<sup>63</sup> Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.<sup>64</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>65</sup>

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<sup>59</sup> Hosseini Decl., ¶ 16.

<sup>60</sup> Ibid.

<sup>61</sup> *Id.*, ¶¶ 11-13.

<sup>62</sup> *Id.*, ¶ 12.

<sup>63</sup> Ibid.

<sup>64</sup> *Id.*, ¶ 11.

<sup>65</sup> *Id.*, ¶¶ 6-7.

The Settlement establishes a Gross Settlement Amount of two million five hundred thousand dollars and no cents (\$2,500,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$875,000.00) and an amount not to exceed thirty thousand dollars and no cents (\$30,000.00) for costs and expenses.<sup>66</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 (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 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>67</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. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a

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<sup>66</sup> Settlement Agreement, ¶ 11.

<sup>67</sup> *Id.*, Exh. A.

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

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

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

21 Class Counsel has borne all of the risks and costs of litigation and will not receive any  
22 compensation until recovery is obtained.<sup>68</sup>

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

28 <sup>68</sup> Hosseini Decl., ¶ 19.

1 **IX. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

7 The proposed Class Notice<sup>69</sup> describes the Settlement, the deadlines and procedures to  
8 submit a Notice of Objection to the Settlement, mail a Request for Exclusion from the  
9 Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final  
10 Approval Hearing.<sup>70</sup>

11 The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*,  
12 at § 8.39. “Sufficient information about the case should be provided to enable class members  
13 to make an informed decision about their participation.” *Manual for Complex Litigation* §  
14 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date  
15 and the terms and conditions of the Settlement in an informative and coherent manner.<sup>71</sup> The  
16 proposed Class Notice recognizes that the Court has not yet granted final approval of the  
17 settlement.<sup>72</sup> The proposed Class Notice also apprises the Class Members of, *inter alia*, how  
18 their Individual Settlement Share is calculated and the number of Workweeks credited to them.<sup>73</sup>

19 The proposed Class Notice satisfies all due process requirements and complies with the  
20 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,  
21 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The  
22 essentials of due process of law in class suits would appear to be afforded by fair representation  
23 in the assertion of claims of class members against the opposing parties in any lawsuit, and  
24 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

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26 <sup>69</sup> Settlement Agreement, Exh. A.

27 <sup>70</sup> Ibid.

28 <sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

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

The Parties have selected Simpluris, Inc. to administer the Settlement.

The Settlement Administrator will mail the Notice to each Class Member by First-Class U.S. mail.<sup>74</sup> With respect to Class Notices that are returned as undeliverable and received by the Settlement Administrator on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.<sup>75</sup> The Response Deadline to submit a Request for Exclusion, Notice of Objection, or dispute regarding Workweeks for Class Members to whom a Class Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be fifteen (15) calendar days from the date of the re-mailing or the original forty-five (45) calendar day deadline, whichever is later.<sup>76</sup> The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any disputes regarding Workweeks.<sup>77</sup>

The Settlement 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 Payments; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.<sup>78</sup> The Settlement Administration Costs are currently estimated to be thirteen thousand dollars and no cents (\$13,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.<sup>79</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

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<sup>74</sup> Settlement Agreement, ¶ 18.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> *Id.*, ¶¶ 19 & 21.

<sup>78</sup> Settlement Agreement, ¶ 13; Hosseini Decl., ¶ 15.

<sup>79</sup> Settlement Agreement, ¶ 13.

manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

**XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.<sup>80</sup>

Within twenty-one (21) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) full name, (2) mailing address, (3) telephone number, (4) Social Security Number, (5) the start and end dates of employment as an hourly-paid or non-exempt employee of Defendant in California during the Class Period, and (6) such other information as is necessary for the Settlement Administrator to calculate Workweeks (collectively, "Class Data and List").<sup>81</sup>

Within ten (10) business days of receipt of the Class Data and List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.<sup>82</sup> With respect to Class Notices that are returned as undeliverable and received by the Settlement Administrator on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.<sup>83</sup> Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, mail a dispute regarding Workweeks, and/or to submit a Notice of Objection.<sup>84</sup>

Within thirty (30) calendar days of the entry of the Final Approval Order and Judgment, Defendant will make a deposit of one-half (1/2) of the Gross Settlement Amount (i.e., \$1,250,000) into the qualified settlement account to be established by the Settlement

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<sup>80</sup> Settlement Agreement, ¶ 33.f.

<sup>81</sup> *Id.*, ¶ 7.c.

<sup>82</sup> *Id.*, ¶ 18.a.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Id.*, ¶ 23.

Administrator (“First Installment”).<sup>85</sup> Twelve (12) months after the funding of the First Installment, Defendant will make a second deposit of the remaining one-half (1/2) of the Gross Settlement Amount (i.e., \$1,250,000), plus an amount sufficient to pay Employer Taxes, into the qualified settlement account established by the Settlement Administrator (“Second Installment”).<sup>86</sup>

Within seven (7) calendar days of the Second Installment, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) LWDA Payment to the Labor and Workforce Development Agency; (c) Enhancement Payment to Plaintiff; (d) Attorneys’ Fees and Costs to Class Counsel; and (e) Settlement Administration Costs to itself (the Settlement Administrator). The Settlement Administrator will also undertake filings and remittances in connection with the employee’s share of taxes on the wages portion of Individual Settlement Shares and the Employer Taxes, that are necessary for administration of the Settlement.<sup>87</sup>

The Individual Settlement Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance, and thereafter, shall be cancelled.<sup>88</sup> After the 180-day check-cashing deadline, the Parties shall file a stipulation to amend the Final Approval Order and Judgment that sets forth the total amount to be paid to Settlement Class Members and the amount of unpaid residue, plus any interest on such funds, to be paid to the *cy pres* recipient identified herein. Pursuant to California Code of Civil Procedure Section 384, all funds associated with such cancelled checks will be distributed by the Settlement Administrator to University of San Diego School of Law’s free Worker’s Rights Clinic, after the Court enters an order approving the Parties’ stipulation to amend the Final Approval Order and Judgment.<sup>89</sup>

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<sup>85</sup> Settlement Agreement, ¶ 10.b.

<sup>86</sup> *Id.*, ¶ 10.c.

<sup>87</sup> *Id.*, ¶ 10.d.

<sup>88</sup> *Id.*, ¶ 20.

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

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

Plaintiff Roel Galicia 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 and no cents (\$7,500.00).<sup>90</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>91</sup> Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.<sup>92</sup> Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class and the State of California, in addition to his Individual Settlement Payment.

**XIII. 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 Roel Galicia as Class Representative; appoint Simpluris, Inc. as Settlement

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<sup>90</sup> Settlement Agreement, ¶ 12.

<sup>91</sup> Hosseini Decl., ¶ 20; Declaration of Roel Galicia in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Galicia Decl."), ¶ 4.

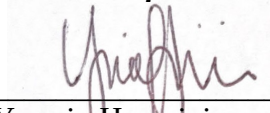
<sup>92</sup> Hosseini Decl., ¶ 20; Galicia Decl., ¶¶ 3-6.

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

Dated: January 19, 2023

**LAWYERS for JUSTICE, PC**

By:

  
\_\_\_\_\_  
Yasmin Hosseini  
Attorneys for Plaintiff