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

ANDRES CASAS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

MYERS POWER PRODUCTS, INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: CIVDS1920109

Honorable David S. Cohn
Department S26

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Alexandra Rose); Declaration of
Proposed Class Representative (Andres
Casas); and [Proposed] Order filed
concurrently herewith]

Date: March 1, 2023
Time: 10:00 a.m.
Department: S26

Complaint Filed: July 10, 2019
FAC Filed: December 20, 2019
Trial Date: None Set

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

PLEASE TAKE NOTICE that on March 1, 2023 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable David S. Cohn in Department S26 of the Superior Court of California for the County of San Bernardino, located at San Bernardino Justice Center, 247 West Third Street, San Bernardino, California 92415, Plaintiff Andres Casas (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting Plaintiff Andres Casas leave to file the proposed Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Second Amended Complaint”), which is attached as “**EXHIBIT 1**” 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 Stipulation for Leave to File Second Amended Complaint and Class Action and PAGA Settlement and Release of Claims (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Alexandra Rose, 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 Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Andres Casas as Class Representative;
- Preliminarily appointing Edwin Aiwasian, Arby Aiwasian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Notice”), attached as “**EXHIBIT 2**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;

- Directing the mailing of the 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 Award for Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

This Motion is made pursuant to Rule 3.764, 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.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Alexandra Rose) and Proposed Class Representative (Andres Casas) 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: February 1, 2023

LAWYERS for JUSTICE, PC

By:



Alexandra Rose
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Andres Casas (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Stipulation for Leave to File Second Amended Complaint and Class Action and PAGA Settlement and Release of Claims (“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 Myers Power Products, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Fund of four million one hundred thousand dollars and no cents (\$4,100,000.00).¹ The Gross Settlement Fund includes the following: (1) Individual Settlement Shares to Participating Class Members which will be distributed from the Net Settlement Fund²; (2) the Enhancement Award of ten thousand dollars and no cents (\$10,000.00) to Plaintiff³; (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 Fund, or \$1,435,000.00 if the Gross Settlement Fund is \$4,100,000.00, and reimbursement of litigation costs and expenses not to exceed fifty thousand dollars and no cents (\$50,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed fifteen thousand dollars and no cents (\$15,000.00);⁵ and (5) the amount of one hundred fifty thousand dollars and no cents (\$150,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$112,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e.,

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Alexandra Rose (“Rose Decl.”), ¶ 11. If, on the date of preliminary approval of the Settlement, the number of Workweeks for all Class Members exceeds 62,946 by more than 10% (i.e., 69,240) (the “Buffer”), then at Defendant’s option: (a) the Gross Settlement Fund will be increased by the amount of the Gross Settlement Fund divided by 62,946 for each additional Workweek over the Buffer; or (b) Defendant may elect to end the Class Period on the date at which the Workweeks reached 69,240; or (c) the Parties will confer on whether any of the terms of this Settlement should be changed, and if an agreement cannot be reached as to whether any terms should be changed and in what manner within ten (10) court days after learning that the Buffer would be exceeded, then Defendant may give notice that it is terminating the Settlement within two (2) court days thereafter. *See id.*, ¶¶ 22.a, 22.b & 22.c.

² *Id.*, ¶¶ 13 & 26.

³ *Id.*, ¶ 18.

⁴ *Id.*, ¶ 17.

⁵ *Id.*, ¶ 20.

\$37,500.00) will be distributed to all current and former non-exempt, hourly-paid employees employed by Defendant, who are working or who worked in the State of California at any time during the time period from July 10, 2018 through and including the date of preliminary approval by the Court of the Settlement Agreement (“Aggrieved Employees”).⁶

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

All current and former non-exempt, hourly-paid employees employed by Defendant, who are working or who worked in the State of California at any time during the time period from July 10, 2015 through and including the date of preliminary approval by the Court of the Settlement Agreement, and expressly excluding therefrom any individual who, as of the date the Court grants preliminary approval of the Settlement Agreement, has filed a separate lawsuit of any type as a named plaintiff against Defendant, alleging the same or similar claims being released by the Settlement and/or who has previously released such claims (“Class” or “Class Members”).⁷

Based on information provided by Defendant, as of September 2021, the Class was estimated to consist of approximately 507 individuals who worked approximately 62,946 Workweeks.⁸

Class Members who do not submit a timely and valid Request for Exclusion (“Participating Class Members”) will receive a share of the Net Settlement Fund (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks they each worked Defendant as a non-exempt, hourly-paid employee in California during the Class Period (“Workweeks”).⁹

The Settlement resolves the Released Class Claims of Plaintiff and Participating Class Members, and the Released PAGA Claims of the State of California and Aggrieved Employees, against the Released Parties.¹⁰

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⁶ Settlement Agreement, ¶¶ 4 & 16. “PAGA Period” is defined as the time period from July 10, 2018 through and including the date of preliminary approval by the Court of the Settlement Agreement. *See id.*, ¶ 4.

⁷ Settlement Agreement, ¶ 3. “Class Period” is defined as the time period from July 10, 2015 through and including the date of preliminary approval by the Court of the Settlement Agreement. *Ibid.*

⁸ Rose Decl., ¶ 9.

⁹ Settlement Agreement, ¶¶ 23 & 26.

¹⁰ *See id.* at § 34, 35, and 36, for the full scope of the “Released Class Claims,” and *id.* at § 34 for the definition of the “Released Parties.”

1 In order to efficiently present the Court with adequate information to determine whether
2 to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the
3 filing of this single consolidated memorandum, although it exceeds the page limit established
4 by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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

6 Defendant is in the business of designing and manufacturing electrical distribution
7 products, medium voltage switchgear, powerhouses, and other power and emergency lighting
8 products. Defendant operates several locations within the United States, including one
9 California location in Ontario, California. Plaintiff Andres Casas is a former employee of
10 Defendant.

11 On July 10, 2019, Plaintiff filed a Class Action Complaint for Damages in the San
12 Bernardino County Superior Court ("Court"), thereby commencing the above-captioned lawsuit
13 ("Action").

14 On December 20, 2019, Plaintiff filed a First Amended Class Action Complaint for
15 Damages ("First Amended Complaint").

16 On January 23, 2020, Defendant filed a Demurrer and Motion to Strike Portions of
17 Plaintiff's First Amended Complaint.

18 On February 27, 2020, Plaintiff filed an Opposition to Defendant's Demurrer and Motion
19 to Strike Portions of Plaintiff's First Amended Complaint.

20 On March 4, 2020, Defendant filed a Reply to Plaintiff's Opposition to Defendant's
21 Demurrer and Plaintiff's Opposition to Defendant's Motion to Strike Portions of Plaintiff's First
22 Amended Complaint.

23 On March 11, 2020, the Court filed a Ruling on Demurrers and Motion to Strike, which
24 overruled Defendant's Demurrer and granted in part and denied in part Defendant's Motion to
25 Strike.

26 On September 2, 2020, Defendant filed an Answer to Plaintiff's First Amended
27 Complaint.

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*, failing to pay all overtime and minimum wages, 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 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. 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.

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.

On December 28, 2021, Plaintiff provided written notice to the LWDA by online submission and to Defendant by certified mail, of the specific provisions of the California Labor Code that Defendant violated ("LWDA Notice").

The Parties have actively litigated the Action since it was commenced on July 10, 2019. On September 21, 2021, the Parties participated in a formal, full-day mediation conducted by Lynn S. Frank, 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. REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and the intent of the Parties, the Parties agree that leave should be granted for Plaintiff Andres Casas to file an amended complaint in the Action in order to, *inter alia*, add a cause of action for violation of PAGA (Labor Code section 2698, *et seq.*) on behalf of Plaintiff and aggrieved employees, solely for

purposes of resolution of the Action.¹¹ As such, Plaintiff Andres Casas respectfully requests leave to file the proposed Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Second Amended Complaint” or “Operative Complaint”) so that, for settlement purposes only, the Operative Complaint in the Action formally asserts the causes of action and allegations that have been investigated, litigated, mediated, and ultimately settled, by the Parties, and so that the terms of the Settlement may be effectuated.¹²

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Fund to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid Request for Exclusion (i.e., “Participating Class Members”) and the Released PAGA Claims of the State of California and the Aggrieved Employees with respect to the Released Parties.¹³ Subject to approval by the Court, the Net Settlement Fund will be calculated by deducting the following amounts from the Gross Settlement Fund: (1) attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Fund (i.e., \$1,435,000.00 if the Gross Settlement Fund is \$4,100,000.00) and reimbursement of costs and expenses in an amount not to exceed fifty thousand dollars and no cents (\$50,000.00) to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs, which are currently estimated not to exceed fifteen thousand dollars and no cents (\$15,000.00) to the Settlement Administrator (“Settlement Administration Costs”); (3) one hundred fifty thousand dollars and no cents (\$150,000.00) allocated to penalties under PAGA (“PAGA Amount”); and (4) payment in the amount of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff Andres Casas (“Enhancement Award”).¹⁴ The Parties have agreed to request that the Court appoint Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

¹¹ Rose Decl., ¶ 8; Settlement Agreement, ¶ 8.

¹² Settlement Agreement, ¶ 8.

¹³ *Id.*, ¶ 12.

¹⁴ *Id.*, ¶¶ 13, 16, 17, 18, & 20.

1 The Settlement Administrator will determine each Class Member's Individual
2 Settlement Share, in accordance with the Settlement Agreement, by multiplying the Net
3 Settlement Fund by a fraction, the numerator of which is the Class Member's individual number
4 of Workweeks, and the denominator of which is the total number of Workweeks of all Class
5 Members.¹⁵

6 The Settlement Administrator will determine each Aggrieved Employee's *pro rata* share
7 of the twenty-five percent (25%) portion of the PAGA Amount ("Aggrieved Employees
8 Payment") that an Aggrieved Employee is eligible to receive for the PAGA Settlement
9 ("Individual PAGA Payment"), in accordance with the Settlement Agreement, by multiplying
10 the Aggrieved Employees Payment by a fraction, the numerator of which is the Aggrieved
11 Employee's total number of pay periods worked for Defendant as a non-exempt, hourly-paid
12 employee in California during the PAGA Period ("Pay Periods"), and the denominator of which
13 is the total number of Pay Periods of all Aggrieved Employees.¹⁶

14 Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as
15 wages (the "Wages Portion"), twenty percent (20%) as civil or statutory penalties, thirty percent
16 (30%) as statutory and other non-wage damages, and thirty percent (30%) as interest.¹⁷ The
17 penalties, statutory and other non-wage damages, and interest portions are collectively referred
18 to as the "Non-Wages Portions."¹⁸ The Wages Portion will be reported on IRS Form W-2 and
19 the Non-Wages Portions will be reported on IRS Form 1099 (if applicable).¹⁹ Participating
20 Class Members will be issued payment of their Individual Settlement Share subject to reduction
21 for required employee-side payroll taxes, contributions, and withholding with respect to the
22 Wages Portion of each Individual Settlement Share (the net payment is referred to as an
23 "Individual Settlement Payment").²⁰ Each Individual PAGA Payment will be allocated as 100%

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25
26 ¹⁵ Settlement Agreement, ¶ 26.

27 ¹⁶ *Id.*, ¶¶ 16, 23 & 27

28 ¹⁷ *Id.*, ¶ 31.a.

¹⁸ *Ibid.*

¹⁹ *Id.*, ¶ 31.d.

²⁰ *Id.*, ¶ 31.b.

penalties, which will be reported on IRS Form 1099 (if applicable).²¹ Defendant will pay the employer's share of payroll taxes with respect to the Wages Portion of Individual Settlement Shares ("Employer Taxes") separately and in addition to the Gross Settlement Fund.²²

The Individual Settlement Payment and Individual PAGA Payment checks will be negotiable for one hundred eighty (180) calendar days from the date of issuance.²³ If an Individual Settlement Payment and/or Individual PAGA Payment check is returned as undeliverable within ninety (90) calendar days, then, within five (5) days of receipt of the undeliverable check, the Settlement Administrator shall undertake a skip-trace search for an alternative mailing address and re-mail the undeliverable check to an alternative mailing address (if one is located), under a cover letter or post card indicating that the undeliverable check will continue to be valid and negotiable for ninety (90) calendar days after the date of re-mailing.²⁴ In the event that any checks mailed to Participating Class Members and Aggrieved Employees are not cashed, deposited, or otherwise negotiated within the 180-day period, then the checks shall be canceled by the Settlement Administrator, and the funds associated with such cancelled checks shall be transmitted by the Settlement Administrator pursuant to governing law to the California State Controller's Office Unclaimed Property Division to be held there for the benefit of such Participating Class Members and/or Aggrieved Employees under California's escheatment laws.²⁵

Class Members may request to opt out of and be excluded from the Class Settlement by submitting a written request ("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 to Class Members ("Response Deadline").²⁶ A Request for Exclusion must: (i) include the full name, current mailing address, telephone number, signature, and last four digits of the Social Security number of the Class Member seeking exclusion; (ii) include the case name

²¹ Settlement Agreement, ¶ 31.a.

²² *Id.*, ¶ 12.

²³ *Id.*, ¶ 33.c.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Id.*, ¶¶ 28 & 28.a.

1 and number of the Action; (iii) include a statement that the Class Member seeks to be excluded
2 from the Class Settlement which is the same or substantially similar to the following language:
3 “I elect to opt-out of the *Casas v. Myers Power Products, Inc.* class action settlement. I
4 understand that by doing so, I will not participate in the class settlement, and will not receive
5 payment of an Individual Settlement Share;” and (iv) be submitted by mail to the Settlement
6 Administrator at the specified address, postmarked on or before the Response Deadline.²⁷ Any
7 Class Member who qualifies as an Aggrieved Employee will still be bound by the release of
8 Released PAGA Claims and will still be issued an Individual PAGA Payment irrespective of
9 whether they opt out of the Class Settlement.²⁸

10 Class Members may object to the Class Settlement, as long as they have not submitted a
11 Request for Exclusion (i.e., Participating Class Members), by submitting a written objection
12 (“Objection”) to the Settlement Administrator, which must: (i) include the full name, current
13 mailing address, telephone number, signature, and last four digits of the Social Security number
14 of the objecting Class Member; (ii) include the case name and number of the Action; (iii) include
15 a statement indicating the legal and factual grounds for the objection; (iv) include a statement
16 indicating whether the objecting Class Member is represented by counsel and identifying any
17 such counsel; (v) include a statement indicating whether the objecting Class Member intends to
18 appear for and wishes to be heard at the Final Approval Hearing; and (vi) be submitted by mail
19 to the Settlement Administrator at the specified address, postmarked on or before the Response
20 Deadline.²⁹ Participating Class Members will also have the right to appear at the Final Approval
21 Hearing in order to orally present objections to the Court, whether or not they have submitted a
22 written objection.³⁰

23 Class Members may dispute the number of Workweeks credited to them, as reflected in
24 their Notices, by submitting a written dispute (“Workweeks Dispute”) to the Settlement
25 Administrator on or before the Response Deadline, which must: (i) include the full name, current

26 ²⁷ Settlement Agreement, ¶ 28.a.

27 ²⁸ *Ibid.*

28 ²⁹ *Id.*, ¶ 28.b.

³⁰ *Ibid.*

mailing address, telephone number, signature, and last four digits of the Social Security number of the disputing Class Member; (ii) include the case name and number of the Action; (iii) include a statement indicating that the Class Member seeks to dispute the number of Workweeks credited to him or her, the time period(s) he or she worked for Defendant in a non-exempt, hourly-paid position in California during the Class Period, and the number of Workweeks that he or she contends should be credited to him or her; (iv) include documentation and/or other facts supporting the Class Member's position; and (v) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³¹

V. 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

³¹ Settlement Agreement, ¶ 28.c.

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 **VI. 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 10, 2019. Both sides investigated the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial, prior to reaching the settlement.³²

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 a large volume of documents and data produced by Defendant.³³ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, Class Members’ time and pay data, job descriptions, checklists, internal memorandum, agreements (including, but not limited to, Defendant’s Confidentiality Agreement), and forms (including, but not limited to, Defendant’s Employee Action Form and Acknowledgement and Receipt of Factory Rules & Regulations), among other information and documents.³⁴ Class Counsel interviewed Plaintiff and conducted investigations to gather facts and circumstances surrounding Plaintiff and putative class members’ employment and identify potential witnesses.³⁵ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, motion practice, and the production of documents

³² Rose Decl., ¶¶ 11-13.

³³ *Id.*, ¶ 12.

³⁴ *Ibid.*

³⁵ *Ibid.*

1 and data in the course of litigation and prior to the mediation.³⁶ Class Counsel also drafted
2 pleadings, drafted opposition papers in connection with motion practice (e.g., Defendant's
3 demurrer and motion to strike portions of first amended complaint), and drafted the mediation
4 brief and prepared for and attended court proceedings, settlement negotiations, and the
5 mediation, among other tasks.³⁷

6 The Parties engaged in extensive settlement negotiations and participated in a formal,
7 full-day mediation conducted by Lynn S. Frank, Esq., a well-respected mediator experienced in
8 mediating complex labor and employment matters.³⁸ Prior to and during the mediation and
9 settlement discussions, the Parties exchanged extensive information and engaged in discussions
10 regarding their evaluations of the case and various aspects of the case, including but not limited
11 to, the risks and delays of further litigation, the risks to the Parties of proceeding with class
12 certification and/or representative adjudication, the law relating to off-the-clock theory, meal
13 and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the
14 evidence produced and analyzed, and the possibility of appeals, among other things.³⁹ During
15 all settlement discussions, the Parties conducted their negotiations at arm's length in an
16 adversarial position.⁴⁰ Arriving at a settlement that was acceptable to both Parties was not easy.
17 Defendant and its counsel felt strongly about their ability to prevail on the merits and at
18 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
19 certification and prevail at trial.⁴¹ After conducting investigations, significant informal
20 discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the
21 Parties have agreed that the matter is well-suited for settlement given the legal issues relating to
22 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further
23 litigation.⁴²

24
25 ³⁶ Rose Decl., ¶ 12.

26 ³⁷ *Ibid.*

27 ³⁸ *Id.*, ¶ 11.

28 ³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶¶ 11, 16-18.

⁴² *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.⁴³ The Parties have had the opportunity to interview and obtain information from percipient witnesses.⁴⁴ 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 rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁶

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

The Settlement, which provides for a Gross Settlement Fund of four million one hundred thousand dollars and no cents (\$4,100,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁷ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.⁴⁸ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, the State of California, and the Aggrieved Employees.⁵⁰

Assuming that the Attorneys' Fees and Costs, Enhancement Award, PAGA Amount, 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 Fund that is

⁴³ Rose Decl., ¶¶ 11, 16-18.

⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁶ *Id.*, ¶¶ 6-7.

⁴⁷ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 16-18.

⁵⁰ *Id.*, ¶¶ 11, 13, & 21.

currently estimated to be two million four hundred forty thousand dollars and no cents (\$2,440,000.00).⁵¹ Additionally, 75% of the PAGA Amount, which is \$112,500.00 out of \$150,000.00, will be distributed to the LWDA and 25% of the PAGA Amount, which is \$37,500.00 out of \$150,000.00, will be distributed to the Aggrieved Employees.⁵² As discussed in Part IV, *supra*, the entire Net Settlement Fund will be fully paid out to the Participating Class Members and the PAGA Amount will be fully paid out to the LWDA and Aggrieved Employees, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Share will be calculated based on their Workweeks and the amount of each Aggrieved Employee's Individual PAGA Payment will be based on their Pay Periods.⁵³ 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, the State of California, and the Aggrieved Employees.⁵⁴ 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 a large volume of documents, data, and

⁵¹ Rose Decl., ¶ 14.

⁵² *Ibid.*

⁵³ Settlement Agreement, ¶¶ 26 & 27.

⁵⁴ Rose Decl., ¶¶ 11, 13, & 21.

information in the course of litigation and prior to mediation.⁵⁵ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.⁵⁶ As outlined in the Declaration of Alexandra Rose, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁷

VII. 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.⁵⁸ 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.

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⁵⁵ Rose Decl., ¶¶ 11-13 & 18.

⁵⁶ *Id.*, ¶ 18.

⁵⁷ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁸ Settlement Agreement, ¶ 3.

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

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

9 This action involves a class of over five hundred and seven (507) individuals.⁵⁹ This
10 class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-
11 35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder
12 is not practical at that point). Further, all Class Members can and will be identified by Defendant
13 to the Settlement Administrator through a review of Defendant’s employment records regarding
14 non-exempt, hourly-paid employees in California during the Class Period. As such, the Class
15 is ascertainable and sufficiently numerous.

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

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

26
27
28 ⁵⁹ Rose Decl., ¶ 9.

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

6 Here, common issues of fact and law predominate as to each of the claims alleged and
7 asserted in the Operative Complaint. Based on the documents and information obtained through
8 informal discovery and exchange of information in this case, Plaintiff contends that Class
9 Members were subject to the same or similar job duties and uniform operations and employment
10 practices, policies, and procedures during the time period at issue.⁶⁰ Plaintiff’s claims arise from
11 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
12 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
13 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
14 to timely pay wages during employment and upon termination of employment, failing to provide
15 compliant wage statements, failing to keep requisite payroll records, and failing to reimburse
16 necessary business-related expenses.⁶¹

17 Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect
18 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶²
19 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
20 compensation due to them from Defendant during the time period at issue.⁶³

21 Plaintiff maintains that the outcome of this litigation would be determined by
22 Defendant’s alleged uniform operations and employment policies and procedures that applied
23 across non-exempt, hourly-paid employees employed by Defendant in California during the
24 Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

25
26 _____
27 ⁶⁰ Rose Decl., ¶ 16.

28 ⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

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

Class Counsel has litigated the matter for several years since the above-captioned action was commenced, and was actively preparing the matter for class certification and trial.⁶⁴ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery. Class Counsel reviewed a large volume of documents and data⁶⁵, 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 in the course of litigation and prior to mediation.⁶⁶ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁷

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

The Settlement establishes a Gross Settlement Fund of four million one hundred thousand dollars and no cents (\$4,100,000.00), 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 Fund (i.e., \$1,435,000.00 if the Gross Settlement Fund is \$4,100,000.00) and an amount not to exceed fifty thousand dollars and no cents (\$50,000.00) for costs and expenses.⁶⁹ The attorneys' fees provided for by the Settlement are 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, and (6) the other cases

⁶⁴ Rose Decl., ¶¶ 11-13.

⁶⁵ *Id.*, ¶ 12.

⁶⁶ *Ibid.*

⁶⁷ *Id.*, ¶ 11.

⁶⁸ *Id.*, ¶¶ 6-7.

⁶⁹ Settlement Agreement, ¶ 17.

that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed 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.⁷⁰

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

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*

⁷⁰ Settlement Agreement, Exh. C.

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

10 Class Counsel has borne all of the risks and costs of litigation and will not receive any
11 compensation until recovery is obtained.⁷¹

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

17 **IX. THE PROPOSED NOTICE IS ADEQUATE**

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

23 The proposed Notice⁷² describes the Settlement, the deadlines and procedures to submit
24 an Objection, Request for Exclusion, and/or Workweeks Dispute, and the date and time set for
25 the Final Approval Hearing.⁷³

26
27 ⁷¹ Rose Decl., ¶ 19.

28 ⁷² Settlement Agreement, Exh. C.

⁷³ *Ibid.*

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

The proposed 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 Notice.

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

The Parties have selected Simpluris to administer the Settlement.

The Settlement Administrator will mail the Notice to each Class Member by First-Class U.S. mail.⁷⁷ The Settlement Administrator will receive and process Requests for Exclusion, Objections, and Workweeks Disputes.⁷⁸

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payment; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual

⁷⁴ Settlement Agreement, Exh. C.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Id.*, ¶ 25.

⁷⁸ *Ibid.*

Settlement Shares; mail the Individual Settlement Payment checks to Participating Class Members and Individual PAGA Payment check to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Award, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁷⁹ The amount not to exceed fifteen thousand dollars and no cents (\$15,000.00) has been allocated toward Settlement Administration Costs, and the final amount that is approved and awarded by the Court will be paid out of the Gross Settlement Fund.⁸⁰

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the 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.

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 Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸¹

Within thirty (30) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide a list to the Settlement Administrator, which shall include the following most up to date information about each Class Member as reflected in Defendant's personnel records in an electronic format: (a) full name; (b) most current mailing address; (c) telephone number; (d) Social Security Number; (e) hire date of record with Defendant and termination date of record (if applicable); (f) number of Workweeks; and (g) number of Pay Periods (collectively, the "Class List").⁸² Upon entry of the Court's order granting preliminary approval of the Settlement, the restrictions on the use and disclosure of the Class List shall be deemed to be a protective order entered by the Court subject to full

⁷⁹ Settlement Agreement, ¶ 20.; Rose Decl., ¶ 15.

⁸⁰ Settlement Agreement, ¶ 20.

⁸¹ *Id.*, ¶ 25.

⁸² *Id.*, ¶ 23.

enforcement by the Parties to the Settlement Agreement and the Court, and by taking on the administration of the Settlement, the Settlement Administrator agrees that it and its employees, agents, and representatives are bound by such protective order.⁸³

Within ten (10) business days of its receipt of the Class List, the Settlement Administrator will update addresses contained in the Class List by conducting a skip-trace search and will send the Notice to the Class Members, by first-class mail, at their most current address of record or such other address as located by the Settlement Administrator.⁸⁴ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, Workweeks Dispute, and/or Objection.⁸⁵ Class Members who receive a re-mailed Notice shall have their Response Deadline extended by fifteen (15) calendar days.⁸⁶

Within ten (10) business days following the occurrence of the Effective Date, Defendant will transfer the Gross Settlement Fund, plus the amount of the Employer Taxes, to a qualified settlement fund account established by the Settlement Administrator.⁸⁷ Within ten (10) business days after receiving the Gross Settlement Fund, the Settlement Administrator will distribute: (a) Individual Settlement Payments to Participating Class Members; (b) Individual PAGA Payments to Aggrieved Employees, (c) the Enhancement Award to the Class Representative; (d) Attorneys' Fees and Costs to Class Counsel; (e) the LWDA Payment to the LWDA; and (f) Settlement Administration Costs to itself.⁸⁸

The Individual Settlement Payment and Individual PAGA Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days after the date of issuance.⁸⁹ Checks that are not negotiated within the 180-day period will be cancelled.⁹⁰ In the event that any checks mailed to Participating Class Members and Aggrieved Employees are not cashed, deposited, or otherwise negotiated within the 180-day period, then the checks shall be canceled

⁸³ Settlement Agreement, ¶ 23.

⁸⁴ *Id.*, ¶ 25.

⁸⁵ *Id.*, ¶ 28.

⁸⁶ *Ibid.*

⁸⁷ *Id.*, ¶ 29.

⁸⁸ *Id.*, ¶ 30.

⁸⁹ *Id.*, ¶ 33.c.

⁹⁰ *Ibid.*

by the Settlement Administrator, and the funds associated with such cancelled checks shall be transmitted by the Settlement Administrator pursuant to governing law to the California State Controller's Office Unclaimed Property Division to be held there for the benefit of such Participating Class Members and/or Aggrieved Employees under California's escheatment laws.⁹¹

XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT AWARD

Plaintiff Andres Casas respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Award in an amount up to ten thousand dollars and no cents (\$10,000.00).⁹² 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 Award 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.⁹³ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit facilitate the pursuit of the claims.⁹⁴ Accordingly, it is appropriate and just for

⁹¹ Settlement Agreement, ¶ 33.c.

⁹² *Id.*, ¶ 18.

⁹³ Rose Decl., ¶ 20; Declaration of Andres Casas in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Casas Decl."), ¶¶ 3-4.

⁹⁴ Rose Decl., ¶ 20; Casas Decl., ¶¶ 3-4.

Plaintiff to receive an Enhancement Award for his services in this action, in addition to his individual settlement payment.

XIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to file the Second Amended Complaint; grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Andres Casas as Class Representative; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Award, PAGA Amount, and Settlement Administration Costs; approve the proposed 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 six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: February 1, 2023

LAWYERS for JUSTICE, PC

By:



Alexandra Rose
Attorneys for Plaintiff