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

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

Plaintiff,

vs.

ARCH HEALTH PARTNERS, an
unknown business entity; PACIFIC
ACCOUNTABLE MANAGEMENT,
LLC, a California limited liability
company; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 37-2019-00041863-CU-OE-CTL

Honorable Timothy Taylor
Department C-72

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Ovsanna
Takvoryan); Declaration of Proposed Class
Representative (Mireya Arteaga); and [Proposed]
Order filed concurrently herewith]

Date: November 18, 2022
Time: 1:30 p.m.
Department: C-72

Complaint Filed August 9, 2019
Trial Date: None Set

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

PLEASE TAKE NOTICE that on November 18, 2022 at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Timothy Taylor in C-72 of the Superior Court of California for the County of San Diego located at 330 West Broadway, San Diego, California 92101, Plaintiff Mireya Arteaga (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class and representative action settlement described herein and as set forth in the Joint Stipulation of Class and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT A**” to the Declaration of Ovsanna Takvoryan, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA Payment”), Class Counsel Fees and Costs, Enhancement Payment, and Settlement Administration Costs;
- Certifying the Class for settlement purposes;
- Appointing Plaintiff Mireya Arteaga as Class Representative;
- Appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT 1**” 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

1 for Class Counsel Fees and Costs, Enhancement Payment, Settlement Administration
2 Costs, and allocation for the PAGA Payment.

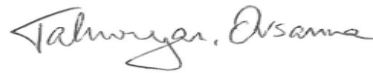
3 This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
4 of Court, which require approval by the Court of a class action settlement, allow the Court to
5 preliminarily certify a class for settlement purposes, and permit the Court to extend the page
6 limit for memoranda.

7 This motion is based upon the following memorandum of points and authorities, the
8 Settlement Agreement, the Declarations of Proposed Class Counsel (Ovsanna Takvoryan) and
9 the Proposed Class Representative (Mireya Arteaga) in support thereof, the pleadings and other
10 records on file with the Court in this matter, and such evidence and oral argument as may be
11 presented at the hearing on this motion.

12 Dated: October 21, 2022

LAWYERS for JUSTICE, PC

13
14 By:



15 Ovsanna Takvoryan
16 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Mireya Arteaga (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Arch Health Partners, Inc. and Pacific Accountable Management, LLC (together, “Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Three Million Two Hundred Fifty Dollars (\$3,250,000).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members; (2) employee’s share of payroll taxes with respect to the wage portion of Individual Settlement Shares; (3) Enhancement Payment to Plaintiff; (4) Class Counsel Fees and Costs to Class Counsel; (5) penalties allocated under the California Labor Code Private Attorneys General Act of 2004 (“PAGA Payment”); and (6) Settlement Administration Costs to Settlement Administrator.²

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

All individuals who are or were employed by Defendants as non-exempt employees within the State of California at any time during the period from August 9, 2015 to July 15, 2022. (“Class” or “Class Members”).³

The Class is estimated to consist of approximately one thousand three hundred and one (1,301) individuals.⁴

Class Members who do not submit a timely and valid Request for Exclusion will receive a share of the Net Settlement Amount on a *pro rata* basis, based upon the number of work weeks

¹ Settlement Agreement, attached as “**EXHIBIT A**” to Declaration of Ovsanna Takvoryan (“Takvoryan Decl.”), ¶ 9.

² *Id.*, ¶ B.15.

³ *Id.*, ¶ B.4.

⁴ Takvoryan Decl., ¶ 9.

each Class Member actually worked for Defendants during the period from August 9, 2015 to July 15, 2022 (“Class Period”).⁵ The Net Settlement Amount refers to the Gross Settlement Amount, less the following amounts subject to approval by the Court: Class Counsel Fees and Costs, Settlement Administration Costs, Enhancement Payment, and PAGA Payment.⁶

Class Members who were employed by Defendants during the period from August 9, 2018 through July 15, 2022 (“PAGA Period”) will receive a *pro rata* share of twenty-five percent (25%) of the PAGA Payment (i.e., \$62,500.00) (“Net PAGA Penalties”) based on the number of work weeks worked by each respective Class Member who is or was employed by Defendants as a non-exempt employee in California during the PAGA Period (“PAGA Aggrieved Employee”).⁷ The remaining seventy-five percent (75%) of the PAGA Payment (i.e., \$187,500.00) shall be paid to the California Labor and Workforce Development Agency (“LWDA Payment”).⁸

The Settlement resolves the Released Claims of Plaintiff and Settlement Class Members against the Released Parties.⁹

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement and provisional certification of the Class for settlement purposes, Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On August 9, 2019, Plaintiff Mireya Arteaga filed a Class Action Complaint for Damages (“Original Complaint”) against Defendants in the San Diego County Superior Court, thereby commencing the above-captioned putative class action (the “Action”). On October 23,

⁵ Settlement Agreement, ¶ C.10.

⁶ *Id.*, ¶ B.18.

⁷ *Id.*, ¶ B.21.

⁸ *Ibid.*

⁹ See *id.* at ¶ B.25, for the full scope of the “Released Claims,” and *id.* at ¶ B.26 for the definition of the “Released Parties.” In light of the binding nature of a PAGA judgment on non-party employees, Class Members employed during the PAGA Period who exclude themselves from the Settlement shall still be bound by the release of any claims under the California Private Attorneys’ General Act that accrued during the PAGA Period and are encompassed within the Released Claims. See *id.* at ¶ C.13.

2019, Defendants filed their answer to the Original Complaint. On November 14, 2019, Defendants filed their Consolidated First Amended Answer to the Original Complaint.

Plaintiff's core allegation is that Defendants have 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 wages due and owing, failing to provide compliant meal period and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination, 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 under the California Business and Professions Code and owe penalties recoverable under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"). Plaintiff contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including, and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated this matter since the Action was commenced on August 9, 2019. The Parties have conducted significant formal and informal discovery and investigation into the claims. Both sides have propounded and responded to multiple sets of formal written discovery requests in various forms. Class Counsel also prepared for and took the deposition of Defendants' Person Most Knowledgeable and prepared for and defended the deposition of Plaintiff. The Parties engaged in extensive discussions about the strengths and weaknesses of Plaintiff's claims and Defendants' defenses thereto, to try to resolve the Action.

On February 15, 2022, the Parties participated in mediation with Mark Rudy, Esq. (the "Mediator"), a respected mediator of complex wage and hour actions, and with the assistance of the Mediator and his evaluations the Parties reached the settlement that is memorialized in the Settlement Agreement.

The Settlement provides for the Parties to stipulate to the filing of an amended complaint adding a cause of action for penalties under PAGA. On April 29, 2022, Plaintiff gave notice to the California Labor and Workforce Development Agency (“LWDA”) to bring a cause of action under PAGA. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff’s notice to the LWDA. On September 8, 2022, the Parties filed a Joint Stipulation and Proposed Order Granting Plaintiff Leave to File a First Amended Complaint.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount in the amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) to resolve the Released Claims of Plaintiff and the Class Members who do not opt out of the Settlement (i.e., Settlement Class Members) with respect to the Released Parties.¹⁰ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Class Counsel Fees and Costs to Class Counsel, which consists of attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$1,137,500.00) and reimbursement of litigation costs and expenses of up to Thirty-Two Thousand Dollars (\$32,000.00) to Class Counsel; (2) Enhancement Payment of up to Twelve Thousand Five Hundred Dollars (\$12,500.00) to Plaintiff; (3) PAGA Payment of Two Hundred Fifty Thousand Dollars (\$250,000.00); and (4) Settlement Administration Costs, which are currently estimated at Fifteen Thousand Dollars (\$15,000.00) to the Settlement Administrator.¹¹ The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.¹²

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

¹⁰ Settlement Agreement, ¶ B.15. Notwithstanding the foregoing, in light of the binding nature of a PAGA judgment on non-party employees, Class Members employed during the PAGA Period who exclude themselves from the Settlement shall still be bound by the release of any claims under the California Private Attorneys’ General Act that accrued during the PAGA Period and are encompassed within the Released Claims. See *id.* at ¶ C.13.

¹¹ *Id.*, ¶¶ B.2, B.12, B.15, B.18, B.21 & B.29.

¹² *Id.*, ¶ B.30.

Settlement Administrator will allocate the Individual Settlement Payments by first dividing the Net Settlement Amount by the total number of work weeks worked by Class Members during the Class Period; that value will then be multiplied by the number of work weeks worked by each respective Class Member during the Class Period.¹³

Class Members are entitled to 100% of the Net Settlement Amount.¹⁴ Defendants maintain no reversionary right to any portion of the Net Settlement Amount.¹⁵ If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payments for each Settlement Class Member so that the amount actually distributed to Class Members equals 100% of the Net Settlement Amount.¹⁶

Each Class Member who worked for Defendants during the PAGA Period (i.e., PAGA Aggrieved Employees) will be entitled to a *pro rata* share of the Net PAGA Penalties (i.e., twenty-five percent (25%) of the PAGA Payment in the amount of \$62,500) in accordance with the Settlement Agreement and as follows: the Settlement Administrator will allocate the Individual PAGA Payments by first dividing the Net PAGA Penalties by the total number of work weeks worked by PAGA Aggrieved Employees during the PAGA Period, that value will then be multiplied by the number of work weeks worked by each respective PAGA Aggrieved Employee during the PAGA Period.¹⁷

PAGA Aggrieved Employees are entitled to 100% of the Net PAGA Penalties.¹⁸ Defendants maintain no reversionary right to any portion of the Net PAGA Penalties.¹⁹

Each Settlement Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) wages, which will be reported on an IRS Form W-2; and eighty percent (80%) non-wages for interest and penalties, which will be reported on an IRS Form 1099.²⁰ Each PAGA Aggrieved Employee's Individual PAGA Payment will be allocated as one

¹³ Settlement Agreement, ¶ C.10.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ *Id.*, ¶ C.9.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ *Id.*, ¶ C.28.

hundred percent (100%) non-wages for penalties, will be reported on an IRS Form 1099, and will be paid out without reduction for any taxes or withholdings.²¹ Settlement Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.²² The employer's share of payroll taxes with respect to the wage portion of the Individual Settlement Payment will be paid by Defendants separately and in addition to the Gross Settlement Amount.²³

The payment checks issued to Settlement Class Members and PAGA Aggrieved Employees will remain valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.²⁴ Those payment checks that are returned as undeliverable or that remain un-cashed for more than one hundred eighty (180) calendar days after issuance will be cancelled and the funds associated with such cancelled checks will be remitted to the Controller of the State of California pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, to be held in trust for those Settlement Class Members and PAGA Aggrieved Employees who did not timely cash their checks, until such time as they claim their property.²⁵

A Class Member who wishes to be excluded from the Settlement must timely submit a valid Request for Exclusion to the Settlement Administrator.²⁶ To be valid and timely, the Class Member must mail or fax a Request for Exclusion to the Settlement Administrator postmarked or fax-stamped on or before the day that is forty-five (45) days from the mailing of the Class Notice ("Response Deadline").²⁷ A Request for Exclusion must: (1) clearly state that the Class Member does not wish to be included in the Settlement; (2) set forth the name, address, telephone number, and last four digits of the Social Security Number of the Class Member requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail to the Settlement Administrator at the specified address indicated in the Class Notice; and (5) be

²¹ Settlement Agreement, ¶ C.29.

²² *Id.*, ¶ C.28.

²³ *Ibid.*

²⁴ *Id.*, ¶ C.25.

²⁵ *Ibid.*

²⁶ *Id.*, ¶ C.19.

²⁷ *Id.*, ¶ C.28.

1 postmarked on or before the Response Deadline.²⁸ The date of the postmark shall be the
2 exclusive means to determine whether a Request for Exclusion is timely.²⁹ By submitting such
3 a Request for Exclusion, a Class Member shall be deemed to have exercised his or her option to
4 opt out of the Settlement and not be bound by the Agreement, except that in light of the binding
5 nature of a PAGA judgment on non-party employees, Class Members employed during the
6 PAGA Period who exclude themselves from this Settlement shall still be bound by the release
7 of any claims under the California Private Attorneys' General Act that accrued during the PAGA
8 Period and are encompassed within the Released Claims.³⁰

9 Only Class Members who do not exclude themselves from the Settlement (i.e.,
10 Settlement Class Members) can object to the Settlement.³¹ Settlement Class Members who wish
11 to object to the Settlement must mail their written objection ("Notice of Objection") to the
12 Settlement Administrator on or before the Response Deadline.³² The Notice of Objection must
13 include: (a) the case name and number of the Action; (b) the objector's full name, signature,
14 address, and telephone number, (c) a written statement of all grounds for the objection
15 accompanied by any legal support for such objection, and (d) copies of any papers, briefs, or
16 other documents upon which the objection is based.³³ The postmark date on the Notice of
17 Objection mailed to the Settlement Administrator will be deemed the exclusive means for
18 determining whether a Notice of Objection is timely.³⁴

19 In the event that Class Members and/or PAGA Aggrieved Employees have a dispute as
20 to the data provided by Defendants regarding the total number of work weeks worked by Class
21 Members and/or regarding the total number of work weeks worked by PAGA Aggrieved
22 Employees, Class Members and PAGA Aggrieved Employees will have the opportunity to
23 provide documentation and/or an explanation.³⁵ Absent evidence rebutting Defendants' records,
24

25 ²⁸ Settlement Agreement, ¶ C.19.

26 ²⁹ *Id.*, ¶ C.19.

27 ³⁰ *Ibid.*

28 ³¹ *Id.*, ¶ C.21.

³² *Id.*, ¶ B.19.

³³ *Ibid.*

³⁴ *Id.*, ¶ C.21.

³⁵ *Ibid.*

Defendants’ records will be presumed determinative.³⁶ If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted.³⁷ The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments as well as the Individual PAGA Payments under the terms of this Agreement, and that determination shall be binding.³⁸

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

³⁶ Settlement Agreement, ¶ C.21.

³⁷ Ibid.

³⁸ Ibid.

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

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

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

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

27 The proponent of the settlement has the burden to show that it is fair and reasonable.
28 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the

1 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
2 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
3 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
4 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
5 1151.

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

8 The Parties actively litigated this matter since it was commenced on August 9, 2019.
9 Both sides used the pre-Settlement time period to investigate the veracity, strength, and scope
10 of the claims, and Class Counsel was actively preparing the matter for a motion for class
11 certification.³⁹

12 Prior to reaching the Settlement, Class Counsel conducted significant investigation into
13 the facts of the case and engaged in extensive formal and informal discovery and review and
14 analysis of a large volume of pages of documents and data produced by Defendants.⁴⁰ The
15 volume of data and documents that Class Counsel reviewed and analyzed included, and was not
16 limited to: Plaintiff and other Class Members' employment records, PowerPoint presentations
17 (such as the 2017 annual training presentation, Time and Attendance Presentation, Employee
18 Benefit presentation, HR tasks and intro to Paycom presentation, Intro to Nextgen EPM
19 presentation), Defendants' Employee Handbooks, internal memoranda, job titles and
20 descriptions, policies (such as Defendants' Unlawful Harassment policy, Nondiscrimination
21 policy, Meal and Rest Period policy, Specimen Collection and Labeling policy, and Conflict of
22 Interest Disclosure), acknowledgement forms (such as Plaintiff and other Class Member's
23 Acknowledgement of Receipt of Employee Handbook, Acknowledgement of Standards of
24 Conduct, Acknowledgement of Injury and Illness Prevention Program Information, HIPAA
25 Privacy Education Form, Acknowledgement of Return of Company Property, and Medicare
26 Fraud, Waste, and Abuse Policy Acknowledgment), Personnel Action Forms, offer letters to
27

28 ³⁹ Takvoryan Decl., ¶¶ 11-13.

⁴⁰ *Id.*, ¶ 12.

Plaintiff and other Class Member, Plaintiff and other Class Member's time and pay data (including, but not limited to, timecards, payroll records, and wage statements), Plaintiff and other Class Member's compensation and employment history (such as employee separation reports, earnings statements, checks, corrective action forms, order of withholding from earnings, employee check listings, performance reviews), meal and break schedule, confidentiality agreements, exercise and fitness center waiver, and official notices by IWC to be posted for employees, among other information and documents.⁴¹ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.⁴² Class Counsel served multiple sets of formal written discovery requests and reviewed Defendants' responses and supplemental response thereto.⁴³ Class Counsel also worked with Plaintiff to prepare responses to requests for production of documents which were propounded by Defendants.⁴⁴ Class Counsel also took the depositions of Defendants' Person Most Knowledgeable designee and prepared for and defended the deposition of Plaintiff.⁴⁵ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, motion practice, and the production of documents and data.⁴⁶ Class Counsel also prepared for and attended court proceedings and settlement negotiations, among other tasks.⁴⁷

The Parties also engaged in extensive settlement negotiations over several months.⁴⁸ Prior to and during the settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the Action and various aspects of the Action, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with representative adjudication and class certification, the law relating to meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as

⁴¹ Takvoryan Decl., ¶ 12.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶ 11.

the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁵⁰ Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their 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.⁵¹ After conducting investigations, extensive formal and informal discovery, multiple depositions, and extensive settlement negotiations, the Parties have agreed that this case 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.⁵²

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/or trial.⁵³ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁵⁴ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendants and performed significant research into the law concerning PAGA representative actions, class certification, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁵⁵ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁵⁶

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

The Gross Settlement Amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) represents a fair, adequate, and reasonable resolution of this case.⁵⁷ The

⁴⁹ Takvoryan Decl., ¶ 11.

⁵⁰ Ibid.

⁵¹ *Id.*, ¶¶ 16-18.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁶ *Id.*, ¶¶ 2-7.

⁵⁷ *Id.*, ¶¶ 11, 13, 14 & 21.

Settlement was calculated using the information and data uncovered during the litigation, case investigation, as well as the formal and informal exchange of information.⁵⁸ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this case.⁵⁹ Moreover, considering all of the facts and circumstances of this case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁶⁰

Assuming that the Class Counsel Fees and Costs, Enhancement Payment, PAGA 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 Eight Hundred and Three Thousand Dollars (\$1,803,000).⁶¹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members and the Net PAGA Penalties will be fully paid out to PAGA Aggrieved Employees. The amount of each Settlement Class Member's Individual Settlement Payment will be calculated based on their weeks worked during the Class Period, and each PAGA Aggrieved Employee's share of the Net PAGA Penalties will be calculated based on their weeks worked during the PAGA Period.⁶² 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.⁶³ 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

⁵⁸ Takvoryan Decl., ¶¶ 11-13.

⁵⁹ *Id.*, ¶¶ 16-18.

⁶⁰ *Id.*, ¶¶ 11, 13, & 21.

⁶¹ *Id.*, ¶ 15.

⁶² Settlement Agreement, ¶¶ C.9 & C.10.

⁶³ Takvoryan Decl., ¶¶ 11, 13, & 21.

has experience with this type of litigation, and significant discovery and investigation have been completed. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery, held multiple depositions, and exchanged thousands of pages of documents, data, and information prior to engaging in settlement discussions.⁶⁴ The discovery and information that Class Counsel obtained from Defendants 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 Defendants' defenses thereto.⁶⁵ As outlined in the Declaration of Ovsanna Takvoryan, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁶⁶

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶⁷ 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

⁶⁴ Takvoryan Decl., ¶¶ 11-13 & 18.

⁶⁵ *Id.*, ¶ 18.

⁶⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁶⁷ Settlement Agreement, ¶ F.1.

the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately one thousand three hundred and one (1,301) individuals.⁶⁸ 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 Defendants to the Settlement Administrator through a review of Defendants’ employment records regarding on-site employees classified as “exempt.” As such, the Class is ascertainable and sufficiently numerous.

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

The community of interest requirement “embodies three factors: (1) predominant common questions of law or fact; (2) class representative with claims or defenses typical of the class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts

⁶⁸ Takvoryan Decl., ¶ 9.

1 focus on the Defendants’ internal policies and “pattern and practice . . . in order to assess whether
2 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
3 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

9 Here, common issues of fact and law predominate as to each of the claims alleged and
10 asserted in this lawsuit. Based on the documents and information obtained through formal and
11 informal discovery and exchange of information in this case, Plaintiff contends that all of the
12 putative class members were subject to the same or similar job duties and uniform operations
13 and employment practices, policies, and procedures during the time period at issue.⁶⁹ Plaintiff
14 also asserted that all of the Class Members were regularly limited in their use of independent
15 discretion and judgment as their decisions were often subject to Defendants’ comprehensive
16 policies and guidelines. Plaintiff’s claims arise from Defendants’ alleged uniform policy and
17 systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to
18 properly pay overtime wages for all hours worked, failing to provide compliant meal and rest
19 periods and associated premium pay, failing to timely pay wages during employment and upon
20 termination of employment, failing to provide compliant wage statements, failing to maintain
21 requisite payroll records, and failing to reimburse necessary business-related expenses.⁷⁰

22 Plaintiff also contends that Defendants’ payroll and recordkeeping practices with respect
23 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁷¹
24 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
25 compensation due to them from Defendants during the time period at issue.⁷²

26
27 ⁶⁹ Takvoryan Decl., ¶ 16.

28 ⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

Plaintiff maintains that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across its employees classified as "exempt" who worked for Defendants within the State of California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES AND COSTS

Class Counsel have litigated the Action for approximately three years and were actively preparing the matter for class certification.⁷³ 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 Defendants and reviewing Defendants' responses thereto, working with Plaintiff to review and respond to request for production of documents propounded by Defendants, taking the depositions of Defendants' Person Most Knowledgeable designee, preparing and defending the deposition of Plaintiff, and reviewing a large volume of pages of documents and data.⁷⁴ Class Counsel also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, engaged in motion practice, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, motion practice, discovery, and the production of documents and data prior to settlement discussions.⁷⁵

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result.⁷⁶

The Settlement establishes a Gross Settlement Amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00), and provides for Class Counsel to apply to the Court for a fee award in an amount up to thirty-five percent (35%) of the Gross Settlement Amount

⁷³ Takvoryan Decl., ¶¶ 11-13.

⁷⁴ *Id.*, ¶ 12.

⁷⁵ *Ibid.*

⁷⁶ *Id.*, ¶¶ 6-7.

(i.e., \$1,137,500) for attorneys’ fees and for reimbursement of actual litigation costs and expenses of up to Thirty-Two Thousand Dollars (\$32,000.00).⁷⁷ The Class Counsel Fees and Costs provided for by the Settlement is commensurate with (1) the risk that Class Counsel took in bringing and litigating this 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 their time and efforts to this matter. The proposed Class Notice provides the Class Members with information about the amount allocated toward attorneys’ fees, and that Class Counsel Fees and Costs will be sought, as provided for by the Settlement.⁷⁸

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

⁷⁷ Settlement Agreement, ¶ B.2.

⁷⁸ Settlement Agreement, Exh. A.

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁹

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. *See* Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject

⁷⁹ Takvoryan Decl., ¶ 19.

1 matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623
2 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

3 The proposed Class Notice describes the Settlement, the deadlines and procedures to
4 submit a Notice of Objection to the Settlement, Request for Exclusion from the Settlement, or
5 disputes regarding weeks worked by Class Members during the Class Period and/or disputes
6 regarding weeks worked by PAGA Aggrieved Employees during the PAGA Period, and
7 provides the date and time set for the Final Approval Hearing.⁸⁰

8 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
9 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
10 members to make an informed decision about their participation.” *Manual for Complex*
11 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
12 proceedings to date and the terms and conditions of the Settlement in an informative and
13 coherent manner.⁸¹ The proposed Class Notice recognizes that the Court has not yet granted
14 final approval of the Settlement.⁸² The proposed Class Notice also apprises the Class Members
15 of, *inter alia*, how their Individual Settlement Payment and, if applicable, their Individual PAGA
16 Payment are calculated and the number of weeks worked credited to them.⁸³

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

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27 ⁸⁰ Settlement Agreement, Exh. A

28 ⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

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

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

The Settlement Administrator will mail the Class Notice to each Class Member by First Class U.S. Mail.⁸⁴ Prior to mailing the Class Notice to the Class Members, the Settlement Administrator will use the National Change of Address Database to update or correct the addresses of the Class Member.⁸⁵ With respect to any returned, undeliverable Class Notice that is returned with a forwarding address on or before the Response Deadline, the Settlement Administrator will promptly re-mail the Class Notice via First Class U.S. Mail to the forwarding address and will indicate the date of such re-mailing.⁸⁶ With respect to any returned, undeliverable Class Notice returned without a forwarding address, the Settlement Administrator will perform a skip-trace procedure to obtain a more current address and, if an updated address is located, undertake a single remailing to such address.⁸⁷ The Settlement Administrator will receive Requests for Exclusion, Notices of Objection, and any disputes regarding weeks worked during the Class Period and/or during the PAGA Period.⁸⁸

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes thereon; mail the payment checks to Settlement Class Members and PAGA Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁹ The Settlement Administration Costs are currently estimated to be Fifteen Thousand Dollars (\$15,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁹⁰

⁸⁴ Settlement Agreement ¶ C.13.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ *Id.* ¶¶ C.6 & C.13.

⁹⁰ *Id.* ¶ B.29.

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiff 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 Defendants' records.⁹¹

Within fifteen (15) business days of entry of an Order of Preliminary Approval of the Settlement by the Court, Defendants will provide the Settlement Administrator with the following information about each Class Member: full name, last known mailing address, Social Security number or Federal Employment Identification Numbers, and the number of work weeks they worked during the Class Period, and the number of work weeks they worked during the PAGA Period as an hourly and/or non-exempt employee of Defendants in California during the Class Period (collectively referred to as the "Class List and Data").⁹²

Within ten (10) business days after receiving the Class List and Data from Defendants, the Settlement Administrator will mail the Class Notice to the Class Members via First Class U.S. Mail.⁹³ Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.⁹⁴ If no forwarding address is provided, the Settlement Administrator will promptly attempt to locate a more current address will do one skip-trace search using the Class Member's Social Security number and re-mail the Class Notice.⁹⁵ Class Members will have forty-five (45) days from the original mailing of the Class Notice to submit

⁹¹ Settlement Agreement, ¶ C.14.

⁹² *Ibid.*

⁹³ *Id.*, ¶ C.15.

⁹⁴ *Id.*, ¶ C.18.

⁹⁵ *Ibid.*

a Request for Exclusion, Notice of Objection, or dispute regarding weeks worked during the Class Period and/or during the PAGA Period to the Settlement Administrator.⁹⁶ Those Class Members who receive a re-mailed Class Notice shall have their Response Deadline extended fifteen (15) days from the original Response Deadline.⁹⁷

Defendants will transfer the Gross Settlement Amount and employer's share of payroll taxes due on the wages portion of the Individual Settlement Payment to the Settlement Administrator in two installments.⁹⁸ The first one-half of the Gross Settlement Amount and the employer's share of the payroll taxes shall be tendered within fifteen (15) days of the Effective Date.⁹⁹ The second one-half of the Gross Settlement Amount and the employer's share of the payroll taxes shall be tendered by the later of (a) nine (9) months after the due date of the first installment or (b) July 15, 2023.¹⁰⁰

Within fifteen (15) calendar days of Defendants funding the Gross Settlement Amount, the Settlement Administrator shall pay: (1) the Individual Settlement Payments to Settlement Class Members and Individual PAGA Payments to PAGA Aggrieved Employees; (2) the LWDA Payment to the Labor and Workforce Development Agency; (4) the Enhancement Payment to Plaintiff Mireya Torres; and (5) Class Counsel Fees and Costs to Class Counsel.¹⁰¹ The Settlement Administrator shall also issue a payment to itself for services performed in connection with the Settlement.¹⁰²

The payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance.¹⁰³ Such checks will automatically be cancelled if not cashed or deposited by the Class Member within the 180-day period, and the funds associated with such cancelled checks will be transferred to the California Secretary of State Controller's Office—Office of Unclaimed Property Fund under the unclaimed property laws in

⁹⁶ Settlement Agreement ¶ B.28, C.19, C.21, & G.2.

⁹⁷ *Id.*, ¶ C.18.

⁹⁸ *Id.*, ¶ C.3.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Id.*, ¶ C.24.

¹⁰² *Ibid.*

¹⁰³ *Id.*, ¶ C.25.

the name of the Settlement Class Members and PAGA Aggrieved Employees.¹⁰⁴

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

Plaintiff Mireya Arteaga respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the request for Enhancement Payment in an amount up to Twelve Thousand Five Hundred Dollars (\$12,500) to Plaintiff as provided for by the Settlement.¹⁰⁵ 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 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement award 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 to Plaintiff 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.¹⁰⁶ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.¹⁰⁷ For example, Plaintiff reviewed and responded to requests for production of documents, prepared for and attended a full-day of deposition, and reviewed her transcript thereafter.¹⁰⁸ Accordingly, it is appropriate and just for Plaintiff to receive reasonable Enhancement Payment for her services on behalf of the Class, in addition to her Individual Settlement Payment and Individual PAGA Payment.

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¹⁰⁴ *Ibid.*

¹⁰⁵ Settlement Agreement, ¶ B.12.

¹⁰⁶ Takvoryan Decl., ¶ 20; Declaration of Mireya Arteaga In Support Of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Arteaga Decl."), ¶¶ 3-4.

¹⁰⁷ Takvoryan Decl., ¶ 20; Arteaga Decl., ¶¶ 3-6.

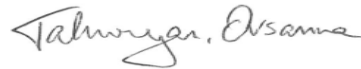
¹⁰⁸ Arteaga Decl., ¶ 4-5.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; certify the Class for settlement purposes; appoint and designate Lawyers *for* Justice, PC as Class Counsel; appoint and designate Plaintiff Mireya Arteaga as Class Representative; appoint Simpluris as Settlement Administrator; preliminarily approve the allocations for Class Counsel Fees and Costs, Enhancement Payment, PAGA 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 six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: October 21, 2022

LAWYERS *for* JUSTICE, PC

By:  _____
Ovsanna Takvoryan
Attorneys for Plaintiff