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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 FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Settlement Administrator (Mary
Butler); Notice of Motion and Motion for
Attorneys' Fees and Costs, and Enhancement
Payment; Declaration of Class Counsel (Edwin
Aiwazian); Declaration of Class Representative
(Mireya Arteaga); [Proposed] Order Awarding
Attorneys' Fees and Costs, and Enhancement
Payment; and [Proposed] Order Granting Final
Approval of Class Action Settlement and
Judgment filed concurrently herewith]

Date: April 21, 2023
Time: 1:00 p.m.
Department: C-72

Complaint Filed: August 9, 2019
FAC Filed: November 17, 2022
Trial Date: None Set

PLEASE TAKE NOTICE that on April 21, 2023, at 1:00 p.m. in Department C-72 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff Mireya Arteaga (“Plaintiff”) will and hereby does move for an order granting final approval of:

1. The proposed class action settlement described herein and as set forth in the parties’ Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the Settlement is fair, adequate, and reasonable because:

- A Net Settlement Amount of approximately **\$1,817,562.27** will be fully distributed to the Class Members who did not submit a timely and valid Request for Exclusion (“Settlement Class Member”);
- **No objections** were submitted to the settlement administrator, Simpluris, Inc. (“Settlement Administrator” or “Simpluris”);
- **One (1) Request for Exclusion** was submitted to the Settlement Administrator;
- **One (1) dispute regarding work weeks was submitted to the Settlement Administrator;**

2. Payment in the amount of **\$13,000.00** to the Settlement Administrator, Simpluris, Inc. (“Simpluris”), for Settlement Administration Costs;

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which requires approval by the Court of a class action settlement.

This motion is based upon the following Memorandum of Points and Authorities and the Declaration of Settlement Administrator (Mary Butler of Simpluris) in support thereof; as well as the concurrently-filed Notice of Motion and Motion for Attorneys’ Fees and Costs, and Enhancement Payment, and the Declarations of Class Counsel (Edwin Aiwarzian) and Class Representative (Mireya Arteaga) 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: April 7, 2023

LAWYERS for JUSTICE, PC

By:



Brian J. St. John
Attorneys for Plaintiff and the Class

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In re American Bank Note Holographics, Inc., Securities Litigation (S.D.N.Y. 2001) 127 F.Supp.2d 418
..... 13

Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224 7, 8, 14

Other Authorities

Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47 13

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Mireya Arteaga (“Plaintiff”) seeks final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), entered into by and between Plaintiff and Defendants Arch Health Partners, Inc. and Pacific Accountable Management, LLC (together, “Defendants”) (collectively with Plaintiff, the “Parties”).

The Settlement provides for a Gross Settlement Amount of \$3,250,000.00 and seeks relief on behalf of the following Class:

All individuals who are or were employed by Defendants as non-exempt employees in California during the period from August 9, 2015 to July 15, 2022 (“Class” or “Class Members”).¹

Plaintiff moves for final approval of all payments allocated and provided for by the Settlement, to be paid from the Gross Settlement Amount, including and not limited to, Enhancement Payment in the amount of \$12,500.00 to Plaintiff, attorneys’ fees in the amount of \$1,137,500.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$19,437.73 (together, “Class Counsel Fees and Costs”)² to Lawyers for Justice, Settlement Administration Costs in the amount of \$13,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”), and \$250,000.00 allocated to penalties under the Private Attorneys General Act (“PAGA Payment”), of which \$187,500.00 will be paid to the California Labor and Workforce Development Agency (“LWDA”) for its 75% portion of the PAGA Payment (“LWDA Payment”) and \$62,500.00 will be distributed to all current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time during the PAGA Period (“PAGA Aggrieved Employees”) on a *pro rata* basis (“Net PAGA Penalties”) for their 25% portion.

The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length, good-faith negotiations by experienced counsel, presided over by a highly-regarded mediator who is experienced in mediating wage-and-hour class action lawsuits. The Settlement has been well received by the Class – as of

¹ Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), § B.4. “Class Period” means the time period from August 9, 2015 to July 15, 2022. *See id.*, § B.6.

² In the interest of judicial efficiency, and in support of the allocations and requests for the Attorneys’ Fees and Costs and Enhancement Payment, Plaintiff respectfully refers the Court to Plaintiff’s Motion for Attorneys’ Fees and Costs, and Enhancement Payment, and papers in support thereof, filed concurrently herewith, on April 7, 2023.

the date of this motion, not a single Class Member has objected to the Settlement, only one (1) Class Member submitted a Request for Exclusion, and only one (1) Class Member submitted a dispute of the workweeks credited to them (which is under consideration).

Accordingly, the Court should grant final approval of the Settlement, and all payments allocated and provided for by the Settlement Agreement, including and not limited to the Individual Settlement Payments to Settlement Class Members, Settlement Administration Costs to the Settlement Administrator, and the PAGA Payment to the State of California and PAGA Aggrieved Employees.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Arch Health Partners, Inc. is a multi-specialty health care organization dedicated to enhancing the health of people in San Diego communities. Defendant Pacific Accountable Management, LLC manages a network of over 200 providers and healthcare professionals. Plaintiff Mireya Arteaga is a former employee of Defendants.

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 September 16, 2019, Defendant Arch Health Partners, Inc. filed its answer to the Original Complaint. On October 23, 2019, Defendant and Pacific Accountable Management, LLC filed its answer to the Original Complaint. On November 14, 2019, Defendants filed their Consolidated First Amended Answer to the Original Complaint.

On November 17, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint” or “First Amended Complaint”), in the Action, adding a representative cause of action under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”) against Defendants.

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 propounded multiple sets of written discovery requests on each of the Defendants (i.e., Plaintiff’s Form Interrogatories – General (Set One), Request for Admissions (Set One), Request for Production of Documents (Set One), Special Interrogatories (Set One), Special Interrogatories (Set Two), and Special Interrogatories (Set One) on each of the Defendants). 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.

On October 21, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On November 18, 2022, the Court entered an Order Granting Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

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Plaintiff now moves for final approval of the Settlement, and all payments allocated and provided for by the Settlement Agreement, including and not limited to the Individual Settlement Payments to Settlement Class Members, Settlement Administration Costs to the Settlement Administrator, and the PAGA Payment to the State of California and PAGA Aggrieved Employees, and for approval of the requested Class Counsel Fees and Costs and Enhancement Payment, as set forth in the concurrently filed Motion for Attorneys' Fees and Costs, and Enhancement Payment.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants have agreed to pay a Gross Settlement Amount of \$3,250,000.00.³ 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, consisting of attorneys' fees in the amount of 35% of the Gross Settlement Amount (equal to \$1,137,500.00) and reimbursement of litigation costs and expenses in the amount of \$19,437.73, to Class Counsel; (2) Enhancement Payment in the amount of \$12,500.00 to Plaintiff Mireya Arteaga; (3) Settlement Administration Costs in the amount of \$13,000.00 to Simpluris; and (4) PAGA Payment in the amount of \$250,000.00.⁴

The Net Settlement Amount, which is estimated to be \$1,817,562.27, will be distributed to Settlement Class Members in accordance with the Settlement Agreement.⁵ The Settlement Administrator will calculate each Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Payment"), based upon the number of weeks each Settlement Class Member worked for Defendants during the class period, by dividing the Net Settlement Amount by the total number of work weeks worked by Class Members during the Class Period and multiplying the result by the number of work weeks worked by each respective Class Member during the Class Period to yield his or her Individual Settlement Payment.⁶

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³ Settlement Agreement, § B.15.

⁴ *Id.*, §§ B.2, B.12, B.18, B.21 & B.29.

⁵ This amount is higher than the amount stated in Paragraph 14 of the accompanying Declaration of Mary Butler Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$32,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$19,437.73 for reimbursement of litigation costs and expenses, and the difference of \$12,562.27 will remain part of the Net Settlement Amount.

⁶ Settlement Agreement, § C.10.

The Settlement Administrator will calculate each PAGA Aggrieved Employee's share of the PAGA Aggrieved Employee Amount ("Individual PAGA Payment") based on the PAGA Aggrieved Employee's work weeks during the PAGA Period⁷ dividing the Net PAGA Penalties by the total number of work weeks worked by PAGA Aggrieved Employees during the PAGA Period, and multiplying the result by the number of work weeks worked by each respective PAGA Aggrieved Employee during the PAGA Period to yield his or her Individual PAGA Payment.

Class Members had forty-five (45) calendar days after the initial mailing of the Class Notice to submit a Request for Exclusion or written objection ("Objection"), and/or dispute of the work weeks credited to them ("Response Deadline").⁸ The Response Deadline was March 31, 2023.⁹ As of the date of this motion, the Settlement Administrator has received only one (1) Request for Exclusion, only one (1) work weeks dispute, and no Objections from Class Members.¹⁰

Each Individual Settlement Payment will be allocated as twenty percent (20%) wages, to be reported on IRS Form W-2; and eighty percent (80%) penalties, interest, and non-wage damages, to be reported on IRS Form 1099 (if applicable).¹¹ The Settlement Administrator will withhold (and remit to the appropriate taxing authorities) the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payments, and issue checks to Settlement Class Members for their Individual Settlement Payment (i.e., payment of their Individual Settlement Payment net of these taxes and withholdings).¹² The Individual PAGA Payments will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable).¹³ Defendants will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Payments in addition to the Gross Settlement Amount.¹⁴

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.¹⁵ The funds associated with such canceled checks will be sent to the California

⁷ "PAGA Period" means the time period from August 9, 2018 through July 15, 2022. *See id.*, § B.22.

⁸ *Id.*, §§ B.27, B.28, C.19, C.21.

⁹ *Simpluris Decl.*, ¶ 10.

¹⁰ *Id.*, ¶¶ 10 & 11.

¹¹ Settlement Agreement, § C.28.

¹² *Ibid.*

¹³ *Id.*, § C.29.

¹⁴ *Id.*, §§ C.28.

¹⁵ *Id.*, § C.25.

Secretary of State Controller’s Office—Office of Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Members and/or PAGA Aggrieved Employees.¹⁶

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court’s November 18, 2022, Preliminary Approval Order.

On November 29, 2022, Simpluris received the Court-approved Notice from Plaintiffs’ Counsel.¹⁷

On December 28, 2022, Simpluris received a data file from Defendants’ counsel in Microsoft Excel format that contained each Class Member’s name, last known address, Social Security Number, and pertinent employment information (collectively, “Class List”).¹⁸ The Class List contained information for 1,360 individuals identified as Class Members.¹⁹ Simpluris processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class List with any updated addresses located.²⁰

On February 14, 2023, Simpluris mailed the Class Notice via first class mail to 1,360 individuals identified as Class Members in the Class List.²¹

As of the date of this Motion, ninety-seven (97) Class Notices were returned as undeliverable.²² Simpluris performed a skip-trace search on those that were returned to Simpluris without forwarding addresses, located an updated address for eighty-four (84) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²³ Ultimately, thirteen (13) Class Notices remain undeliverable because an updated address was not located through skip-tracing.²⁴

The Response Deadline was March 31, 2023.²⁵ As of the date of this Motion, the Settlement Administrator has received only one (1) Request for Exclusion, only one (1) work weeks dispute (which is

¹⁶ Settlement Agreement, § C.25.

¹⁷ Simpluris Decl., ¶ 5.

¹⁸ *Id.*, ¶ 6.

¹⁹ *Ibid.*

²⁰ *Id.*, ¶ 7.

²¹ *Id.*, ¶ 8.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, ¶ 9.

pending resolution, and no written objections or disputes regarding work weeks from Class Members.²⁶

To date, there are one thousand three hundred and fifty (1,359) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁷ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$1,817,562.27 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁸

The *highest* Individual Settlement Payment is currently estimated to be at least \$5,180.70 and the *average* Individual Settlement Payment is currently estimated to be at least \$1,327.21.²⁹ PAGA Aggrieved Employees are slated to receive \$62,500.00 for their 25% portion of the PAGA Payment, and the *highest* Individual PAGA Payment is currently estimated to be \$155.63 and the *average* Individual PAGA Payment is currently estimated to be \$60.15.³⁰ The State of California is slated to receive \$187,500 for its 75% portion of the PAGA Payment.

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether the settlement is fair and reasonable, courts consider relevant factors such as:

the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk, supra*, 48 Cal.App.4th at

²⁶ Simpluris Decl., ¶¶ 10-12.

²⁷ *Id.*, ¶ 13.

²⁸ *Id.*, ¶ 14; see also, n.5, *supra*.

²⁹ *Ibid.* The actual average and highest Individual Settlement Payment will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$32,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$12,562.27, will be part of the Net Settlement Amount). See n.5, *supra*. The resolution of the work weeks dispute will also slightly impact final Individual Settlement Payment amounts.

³⁰ *Id.*, ¶ 15.

1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: “(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.” *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The Parties actively litigated the case since it was commenced on August 9, 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.³¹ The Parties conducted significant formal and informal discovery and investigation into the facts of the case, and also informally exchanged information, documents, and data in preparation for mediation.³² Class Counsel also had the opportunity to interview and obtain information from Plaintiff and other putative class members, and reviewed and analyzed a large volume of information, documents, and data obtained from Plaintiff, Defendants, and other sources.³³ The documents and data reviewed and analyzed by Class Counsel included, and were not limited

³¹ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

³² *Ibid.*

³³ *Ibid.*

to, Plaintiff and other Class Members' employment records, PowerPoint presentations (such as the 2017 annual training presentation, Time and Attendance Presentation, Employee Benefit presentation, HR tasks and intro to Paycom presentation, Intro to Nextgen EPM presentation), Defendants' Employee Handbooks, internal memoranda, job titles and descriptions, policies (such as Defendants' Unlawful Harassment policy, Nondiscrimination policy, Meal and Rest Period policy, Specimen Collection and Labeling policy, and Conflict of Interest Disclosure), acknowledgement forms (such as Plaintiff and other Class Member's Acknowledgement of Receipt of Employee Handbook, Acknowledgement of Standards of Conduct, Acknowledgement of Injury and Illness Prevention Program Information, HIPAA Privacy Education Form, Acknowledgement of Return of Company Property, and Medicare Fraud, Waste, and Abuse Policy Acknowledgment), Personnel Action Forms, offer letters to Plaintiff and other Class Member, sampling of class time and pay data (including, but not limited to, timecards, payroll records, and wage statements), employee separation reports, earnings statements, checks, corrective action forms, order of withholding from earnings, employee check listings, performance reviews, meal and break schedules, confidentiality agreements, and official notices by IWC to be posted for employees, among other information and documents.³⁴ Class Counsel researched applicable law, developed liability, damages, and penalties valuation models in connection with mediation and settlement negotiations, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to pleadings, discovery and the production of information, documents, and data in the course of litigation and mediation and settlement negotiations. Class Counsel also drafted pleadings and the mediation brief, and prepared for and attended court proceedings, the mediation, and settlement negotiations, among other tasks.³⁵

After conducting significant formal and informal discovery and investigation into the facts of the case, the Parties attended a formal, full-day mediation conducted by Mark Rudy, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.³⁶ In the course of mediation and settlement discussions, the Parties exchanged information and documents, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the Parties of proceeding with class certification and/or representative adjudication, the law

³⁴ Aiwazian Decl., ¶ 6.

³⁵ Ibid.

³⁶ *Id.*, ¶ 8.

1 relating to off-the-clock theory, meal and rest periods, Plaintiff's claims and allegations, arbitration and class
2 action waiver agreements, wage-and-hour law and enforcement, the evidence produced and analyzed, the
3 possibility of appeals, and Defendant's financial circumstances, among other things.³⁷ During all settlement
4 discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁸ Arriving at
5 a settlement that was acceptable to the Parties was not easy.³⁹ Defendants and their counsel felt very
6 strongly about Defendants' ability to prevail on the merits and to avoid class certification and representative
7 adjudication. Plaintiff and Class Counsel believed that they would be able to obtain class certification and
8 prevail at trial.⁴⁰ After conducting significant formal and informal discovery and investigation, extensive
9 settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the case was
10 well-suited for settlement given the legal issues relating to Plaintiff's principal claims and the factual
11 circumstances, as well as the costs and risks to the Parties that would attend further litigation.⁴¹

12 The Settlement takes into account the strengths and weaknesses of each side's position and the
13 uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel had
14 the opportunity to interview, and obtain information from Plaintiff and other putative class members.⁴²
15 Class Counsel also reviewed and analyzed a large volume of information, documents, and data obtained
16 from Defendants, Plaintiff, and other sources, and performed significant research into the applicable law,
17 which is constantly evolving as it relates to certification, off-the-clock theory, meal and rest periods, PAGA
18 representative claims, wage-and-hour law and enforcement, arbitration and class action waiver agreements,
19 Plaintiff's claims and damages, and Defendants' defenses, as well as facts discovered.⁴³ The Settlement
20 was based on this large volume of facts, evidence, and investigation.⁴⁴ Additionally, Class Counsel has
21 extensive experience in handling complex wage-and-hour matters, including significant experience in
22 employment class action litigation.⁴⁵

23 ///

24 ///

25 ³⁷ Aiwazian Decl., ¶ 8.

26 ³⁸ Ibid.

27 ³⁹ Ibid.

28 ⁴⁰ Ibid.

⁴¹ Ibid.

⁴² *Id.*, ¶ 6.

⁴³ Ibid.

⁴⁴ *Id.*, ¶¶ 6 & 8.

⁴⁵ *Id.*, ¶¶ 15-18.

B. The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.

The Settlement, which provides for a Gross Settlement Amount of \$3,250,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁶ The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of preparing for mediation and ongoing settlement negotiations.⁴⁷ Had the action not settled, Defendants would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendants contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendants would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendants also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members and PAGA Aggrieved Employees after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, additional depositions of Defendants' Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Discovery disputes would have certainly arisen, which would have cost the parties additional

⁴⁶ Aiwasian Decl., ¶¶ 8 & 21.

⁴⁷ *Id.*, ¶¶ 5-8.

time and money. In contrast, the Settlement provides real and significant benefits for the Class here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

It would be grossly inefficient for such a large class of current and former employees to bring individual actions to recover from Defendants for the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that could be obtained by a Class Member would not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members, the State of California, and the PAGA Aggrieved Employees.

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

The Settlement, which provides for a Gross Settlement Amount of \$3,250,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this case. Moreover, considering all of the facts in the case, the Gross Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$1,137,500.00, litigation costs and expenses in the amount of \$19,437.73, Enhancement Payment in the amount of \$12,500.00, Settlement Administration Costs in the amount of \$13,000.00, and the PAGA Payment in the amount of \$250,000.00 from the Gross Settlement Amount of \$3,250,000.00, as provided for by the Settlement, the Net Settlement Amount is currently estimated to be \$1,817,562.27.⁴⁸ Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of work weeks credited to him or her and each PAGA Aggrieved Employee will be paid a *pro rata* share of the PAGA Aggrieved Employee Amount, based on the number of work weeks during the PAGA Period credited to him or her. To date, there are 1,359 Settlement Class Members,

⁴⁸ Simpluris Decl., ¶ 14; see n.5, *supra*.

representing 99.93% of the Class.⁴⁹ The highest Individual Settlement Payment is currently estimated to be at least \$5,180.70 and the average Individual Settlement Payment is currently estimated to be at least \$1,327.21.⁵⁰ PAGA Aggrieved Employees are slated to receive \$62,500.00 for their 25% portion of the PAGA Payment, and the *highest* Individual PAGA Payment is currently estimated to be \$155.63 and the *average* Individual PAGA Payment is currently estimated to be \$60.15.⁵¹ The State of California is slated to receive \$187,500 for its 75% portion of the PAGA Payment. These are significant recoveries, particularly in light of the risks of litigation.

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. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and the PAGA Aggrieved Employees.⁵² 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, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁵³ Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁵⁴ Both Parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendants and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

⁴⁹ Simpluris Decl., ¶ 13.

⁵⁰ *Id.*, ¶ 14; see n.29, *supra*.

⁵¹ *Id.*, ¶ 15.

⁵² Aiwazian Decl., ¶ 21.

⁵³ *Id.*, ¶¶ 15-18.

⁵⁴ *Ibid.*

1 E. **There Are No Notices of Objection to the Settlement.**

2 The Settlement has been well received by the Class – *not a single Class Member objected to the*
3 **Settlement.**⁵⁵ Specifically, no objections have been made as to the Gross Settlement Amount or requested
4 Class Counsel Fees and Costs, Enhancement Payment, Settlement Administration Costs, or the amount for
5 the PAGA Payment. California courts have consistently found that a small number of objectors indicates
6 the class’ support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at
7 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53
8 (final approval granted despite 9 objectors).

9 Here, the lack of any objections speaks volumes about the fairness, reasonableness, and adequacy
10 of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate,
11 and the Court should grant final approval of the Settlement in its entirety. *Dunk, supra*, 48 Cal.App.4th at
12 1802.

13 **VI. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE**
14 **AND SHOULD BE APPROVED.**

15 As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred
16 by Simpluris for the notice and settlement administration process are \$13,000.00.⁵⁶ The costs incurred and
17 to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice
18 to the Class Members in English and Spanish; performing skip-trace searches on Class Notices returned as
19 undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving,
20 reviewing, and processing Requests for Exclusion, written objections, and disputes regarding work weeks
21 (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement
22 Payments and Individual PAGA Payments, and preparing the associated tax forms; and transmitting
23 payments, among other things.⁵⁷

24 Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party
25 administrator, for its handling of the notice and settlement process, in the amount of \$13,000.00.

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28 ⁵⁵ Simpluris Decl., ¶¶ 11 & 12.

⁵⁶ Simpluris Decl., ¶ 17.

⁵⁷ *Id.*, ¶ 3.

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and all payments allocated and provided for by the Settlement Agreement, including and not limited to the Individual Settlement Payments to Settlement Class Members, Settlement Administration Costs to the Settlement Administrator, and the PAGA Payment to the State of California and PAGA Aggrieved Employees, in their entirety, as sought herein.

Dated: April 7, 2023

LAWYERS for JUSTICE, PC

By:



Brian J. St. John
Attorney for Plaintiff and the Class