

Edwin Aiwarzian (SBN 232943)  
Joanna Ghosh (SBN 272479)  
Matthew Richard Soto (SBN 353499)  
**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Tel: (818) 265-1020 / Fax: (818) 265-1021

*Attorneys for Plaintiff and the Class*

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

LATISHA ANQUNETTE JOHNSON,  
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.

AMERICARE HEALTH & RETIREMENT  
INC., a California corporation; SILVERGATE  
FALLBROOK, an unknown business entity;  
AMERICARE HEALTHCARE &  
RETIREMENT, INC., an unknown business  
entity; SILVERGATE SAN MARCOS, an  
unknown business entity; SILVERGATE  
RETIREMENT RESIDENCE & MEMORY  
CARE SUITES, an unknown business entity;  
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 37-2022-00051286-CU-OE-CTL

Honorable Joel R. Wohlfeil  
Department C-73

**CLASS ACTION**

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

[Declaration of Settlement Administrator  
(Jennifer Beliveau); [Declaration of Class  
Counsel (Edwin Aiwarzian); Declaration of  
Class Representative (Latisha Anquette  
Johnson); Notice of Motion for Attorney's  
Fees, Costs, and Service Award; [Proposed]  
Order Granting Final Approval of Class  
Action Settlement and Judgment; and  
[Proposed] Order Awarding Attorney's Fees,  
Costs, and Service Award filed concurrently  
herewith]

Date: July 12, 2024  
Time: 9:00 a.m.  
Department: C-73

Complaint Filed: December 22, 2022  
Trial Date: None Set

1           **PLEASE TAKE NOTICE** that on July 12, 2024 at 9:00 a.m. or as soon thereafter as the  
2 matter may be heard before the Honorable Joel R. Wohlfeil in Department C-73 of the Superior  
3 Court of California for the County of San Diego located at 330 West Broadway, San Diego,  
4 California 92101, Plaintiff Latisha Anquetette Johnson (“Plaintiff” or “Class Representative”)  
5 will, and hereby does, move for an order:

6           1.       The proposed class action settlement described herein and as set forth in the  
7 parties’ Class Action and Private Attorney General Act Settlement Agreement (“Settlement,”  
8 “Agreement,” or “Settlement Agreement”) on the grounds that the Settlement is fair, adequate,  
9 and reasonable because:

- 10           • A Net Settlement Amount of approximately **\$774,961.60** will be distributed to the  
11 Class Members who did not submit timely and valid Request for Exclusion  
12 (“Settlement Class Member”);
- 13           • **No Notices of Objections** were submitted to the settlement administrator, Simpluris,  
14 Inc. (“Settlement Administrator” or “Simpluris”);
- 15           • **Three (3) Requests for Exclusion** were submitted to the Settlement Administrator;  
16 and

17           2.       Payment in the amount of **\$11,500.00** to the Settlement Administrator, Simpluris,  
18 for Settlement Administration Costs;

19           3.       Payment in the amount of **\$1,550.64** by Defendant, separate and in addition to the  
20 Gross Settlement Amount, to the Settlement Administrator, Simpluris, for Additional Settlement  
21 Administration Costs;

22           This motion is made pursuant to Rules 3.769, 3.764, and 3.1113(e) of the California  
23 Rules of Court, which require approval by the Court of a class action settlement, allow  
24 memoranda in support of a motion for class certification to be up to twenty (20) pages, and  
25 permit the Court to extend the page limit for memoranda.

26           This motion is based upon the following Memorandum of Points and Authorities and the  
27 Declaration of Settlement Administrator (Jennifer Beliveau of Simpluris) in support thereof; as  
28 well as the concurrently-filed Notice of Motion and Motion for Attorneys’ Fees, Costs, and

Service Award, and the Declarations of Class Counsel (Edwin Aiwazian) and Class Representative (Latisha Anquetette Johnson) 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: June 18, 2024

**LAWYERS for JUSTICE, PC**



By: \_\_\_\_\_

Edwin Aiwazian  
Matthew Richard Soto  
*Attorney for Plaintiff and the Class*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Latisha Anqunette Johnson (“Plaintiff” or “Class Representative”) seeks final approval of the Class Action and Private Attorney General Act Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, and Defendant Americare Health & Retirement Inc. (“Defendant”) (together with Plaintiff, the “Parties”).

The Settlement provides for an escalated Gross Settlement Amount of (\$1,474,154.69)<sup>1</sup> and seeks relief on behalf of the following Class:

All persons who are or have been employed by Defendant in California as nonexempt employees at any time during the Settlement Period (“Class” or “Class Members.”).<sup>2</sup>

Plaintiff moves for final approval of all payments allocated and provided for by the Settlement, to be paid from the Gross Settlement Amount, including but not limited to, a Service Award in the amount of \$7,500.00 to Plaintiff, attorneys’ fees in the amount of \$514,500.00, which is thirty-five percent (35%) of the original Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$15,639.09 (together, Attorney’s Fees and Costs)<sup>3</sup> to Lawyers for Justice, Settlement Administration Costs in the amount of \$11,500.00 to Simpluris, Inc. (Simpluris” or “Settlement Administrator”), and \$200,000.00 for the PAGA Penalties, of which \$150,000.00 will be paid to the California Labor and Workforce Development Agency (“LWDA”) for its portion of the PAGA Penalties (“LWDA Payment”), and \$50,000.00 will be distributed to Settlement Class Members as part of the Net Settlement Amount, on a *pro rata* basis.

<sup>1</sup> Class Action and Private Attorney General Act Settlement Agreement (“Settlement Agreement”), ¶¶ 1.10 & 19; Aiwazian Decl., ¶ 9.

<sup>2</sup> Settlement Agreement, ¶ 1.24. “Settlement Period” is defined as the period of time from January 2, 2016 through December 2, 2021.

<sup>3</sup> In the interest of judicial efficiency, and in support of the allocations and requests for the Attorneys’ Fees and Costs and Service Award, Plaintiff respectfully refers the Court to Plaintiff’s Motion for Attorneys’ Fees, Costs, and Service Award, and papers in support thereof, filed concurrently herewith, on June 18, 2024.

1 The Settlement is fair, adequate, and reasonable, and is the product of arm's-length,  
2 good-faith negotiations by experienced counsel, presided over by a highly regarded mediator  
3 who is experienced in mediating wage-and-hour class action lawsuits. The Settlement has been  
4 well received by the Class—as of the date of this motion, not a single Class Member has  
5 objected to the Settlement, and only three (3) have submitted a valid letter to be excluded from  
6 the Settlement (“Request for Exclusion”).

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

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

12 Defendant Americare Health & Retirement Inc. (“Defendant”), is the parent company that  
13 owns and operates several locations throughout California. Defendant was founded in 1984 and  
14 its executive office is located in Solana Beach, California. Defendant invests in retirement  
15 communities and medical office buildings in the Southern California area. Specifically,  
16 Defendant owns and operates rental retirement communities which offer independent senior  
17 housing, assisted living services, and specialty care. Defendant also operates outpatient medical  
18 office buildings. Defendant owns four (4) assisted living communities with over 300 apartments  
19 and owns five (5) medical office buildings with about sixty medical and dental practices..  
20 Plaintiff Latisha Anqunette Johnson is a former employee of Defendant.

21 On January 2, 2020, Plaintiff filed a putative class action complaint (“Original  
22 Complaint”), thereby commencing a putative class action against Defendant for violations of the  
23 California Labor Code and the California Business and Professions Code, entitled Johnson v.  
24 AmeriCare Health & Retirement, Inc., et al., Superior Court of California, San Diego County,  
25 Case No. 37-2020-00000221-CU-OE-CTL (“Original Action”), that was dismissed without  
26 prejudice on September 15, 2022. This lawsuit had alleged ten (10) causes of action for violations  
27 of the California Labor Code and Industrial Welfare Commission Wage Orders, for alleged  
28 failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods and

1 associated premiums, failure to provide rest periods and associated premiums, failure to pay  
2 timely wages during employment, failure to timely pay final wages and associated waiting-time  
3 penalties, failure to keep compliant payroll records, failure to keep compliant wage statements,  
4 failure to reimburse business expenses, and for violations of California Business and Professions  
5 Code Section 17200 et seq..

6 On April 24, 2020, Plaintiff propounded multiple sets of formal written discovery on  
7 Defendant, including Requests for Production of Documents, (Sets One & Two); Special  
8 Interrogatories, (Sets One, Two & Three); and Form Interrogatories, (Set One). On April 24,  
9 2020, Plaintiff noticed the deposition of Defendant's person most knowledgeable regarding job  
10 duties and organizational structure of Defendant. Thereafter, on July 24, 2020, Defendant  
11 responded to Plaintiff's discovery requests.

12 On June 10, 2020, Defendant propounded multiple sets of discovery on Plaintiff,  
13 including Requests for Production of Documents, (Set One); Special Interrogatories (Set One);  
14 Requests for Admission, (Set One); and Form Interrogatories, (General, Set One & Employment,  
15 Set One). Thereafter, on September 4, 2020, Plaintiff responded to Defendant's discovery  
16 requests.

17 On August 4, 2021, the Parties participated in a mediation session with Jeffrey Krivis,  
18 Esq. The settlement discussions were conducted at arm's-length and reached a settlement. On  
19 August 4, 2021, the Parties executed a Memorandum of Understanding setting forth basic and  
20 key terms of the settlement.

21 On April 20, 2022, Plaintiff provided written notice to the LWDA and Defendant, giving  
22 notice of her intent to pursue civil penalties under PAGA, California Labor Code § 2698, Et Seq.  
23 on behalf of herself and the State of California, as well as on behalf of a proposed group of  
24 aggrieved employees, for alleged violations of multiple provisions of the California Labor Code  
25 and Industrial Welfare Commission Wage Orders ("LWDA Notice").

26 On September 15, 2022, the Court on its own motion, via the Honorable Kenneth J.  
27 Medel, dismissed the Original Action without prejudice.

1 On December 22, 2022, Plaintiff filed a renewed Class Action Complaint for Damages  
2 and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 1698 Et Seq.  
3 (“Operative Complaint”) in the San Diego County Superior Court (“Court”), thereby  
4 commencing the above-captioned lawsuit (“Action”).

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

15 Defendant has vigorously denied, and continues to deny, any liability and wrongdoing  
16 associated with the claims alleged in the Action or otherwise. Defendant contends, *inter alia*,  
17 that at all times it fully complied with all wage and hour laws applicable to Plaintiff and the  
18 Class Members in connection with the services performed for Defendant. Defendant further  
19 denies that the Action is appropriate for class treatment or representative adjudication for any  
20 purpose other than for settlement purposes only.

21 The Parties have actively litigated this matter since the Original Action was commenced on  
22 January 2, 2020 (which was dismissed without prejudice on September 15, 2022). On August 4,  
23 2021, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a  
24 well-regarded mediator experienced in mediating complex labor and employment matters. With  
25 the aid of the mediator and his evaluation, the Parties ultimately reached the Settlement described  
26 herein to resolve the Action in its entirety.

27 On September 19, 2023, Plaintiff filed a Motion for Preliminary Approval of Class  
28 Action Settlement and supporting documents. On November 3, 2023, 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 Notice of Proposed Class Action Settlement and Hearing Date for Court Approval ("Initial Class Notice"), and the proposed administration procedures and associated deadlines.

On December 27, 2023, the Initial Class Notice was mailed to all Class Members. On April 2, 2024, due to an error in the information the Settlement Administrator relied on for mailing the Initial Class Notice, the Parties filed their Joint Stipulation to Mail Corrective Class Notices, and Continue the Hearing on Plaintiff's Motion for Final Approval and Related Deadlines ("Stipulation to Mail Corrective Class Notices"), seeking approval of the Further Notice of Proposed Class Action Settlement and Hearing Date For Court Approval ("Corrective Class Notice") (together the Initial Class Notice and Corrective Class Notice are referred to as, the "Class Notices") to be sent out to Class Members to correct the errors in the Initial Class Notice. On April 4, 2024, the Court granted the Parties Stipulation to Mail Corrective Class Notices, and on April 11, 2024, the Corrective Class Notice was mailed to all Class Members. Since the mailing of the Class Notices, the Settlement Administrator has received no valid objections to the Settlement ("Notice of Objections") and only three (3) Request for Exclusions.

Plaintiff now moves for final approval of the, 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 LWDA Payment to the State of California, and for approval of the requested Attorneys' Fees and Costs and Service Award, as set forth in the concurrently filed Motion for Attorneys' Fees, Costs, and Service Award.

### **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

Under the terms of the Settlement Agreement, Defendant will pay an escalated Gross Settlement Amount of \$1,474,154.69.<sup>4</sup> Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount of \$514,500.00 (i.e., up to 35% of the original Gross

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<sup>4</sup> Settlement Agreement, ¶¶ 1.10 & 19; Aiwasian Decl., ¶ 9.

Settlement Amount) and reimbursement of costs and expenses of \$15,639.09 to Class Counsel (collectively referred to as the “Attorneys’ Fees and Costs”); (2) settlement administration costs of \$11,500.00 to the Settlement Administrator, Simpluris (“Settlement Administration Costs”); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$150,000.00 out of \$200,000.00); and (4) a service award in the amount of \$7,500.00 to Plaintiff Latisha Anqunette Johnson (“Service Award”).<sup>5</sup>

The Net Settlement Amount, which is estimated to be \$774,961.60, will be distributed to Settlement Class Members in accordance with the Settlement Agreement. The Settlement Administrator will calculate each Settlement Class Member’s share of the available Net Settlement Amount (“Individual Settlement Share”) by dividing the final Net Settlement Amount by the number of weeks each Class Member was employed by Defendant as a non-exempt employee in California during the Settlement Period, (“Workweeks”) of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.<sup>6</sup>

Class Members had forty-five (45) calendar days after the mailing of the Initial Class Notice to Class Members to opt out of the Settlement, object to the Settlement, and/or dispute the number of Workweeks to which they were credited (“Response Deadline”).<sup>7</sup> The Response Deadline for the Initial Class Notice was February 10, 2024.<sup>8</sup> Class Members also had forty-five (45) calendar days after the mailing of the Corrective Class Notice to Class Members to opt out of the Settlement, object to the Settlement, and/or dispute the number of Workweeks to which they were credited. The Response Deadline for the Corrective Class Notice was May 28, 2024.<sup>9</sup>

***As of the date of this Motion, the Settlement Administrator has received three (3) Request for Exclusions and no Notice of Objections from Class Members.***<sup>10</sup>

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<sup>5</sup> *Id.*, ¶¶ 6, 7, 8 and 9.

<sup>6</sup> Settlement Agreement, ¶ 5.1.2.

<sup>7</sup> Settlement Agreement, ¶ 1.17.

<sup>8</sup> Declaration of Jennifer Beliveau Regarding Notice and Settlement Administration (“Simpluris Declaration” or “Simpluris Decl.”), ¶ 17.

<sup>9</sup> Simpluris Decl., ¶ 18.

<sup>10</sup> *Id.*, ¶¶ 19 & 20.

Each Individual Settlement Share will be allocated as follows: one-third (1/3) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining two-thirds (2/3) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.<sup>11</sup> Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement Payment”).<sup>12</sup> The employer’s share of taxes and contributions on the wages portion of Individual Settlement Shares will be paid by Defendant separately and in addition to the escalated Gross Settlement Amount.<sup>13</sup>

The Individual Settlement Payment checks issued to Settlement Class Members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and thereafter, shall be cancelled.<sup>14</sup> Any funds remaining as the result of cancelled checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class Members who did not cash their checks, until such time that they claim their property. Settlement Class Members whose Individual Settlement Payment checks are cancelled shall, nevertheless, be bound by this Settlement Agreement.<sup>15</sup>

#### 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 3, 2023 Preliminary Approval Order and the Court’s April 4, 2024 Order granting the Parties’ Stipulation to Mail Corrective Class Notices.

On November 3, 2023, Simpluris received the Court-approved text for the Class Notice.<sup>16</sup>

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<sup>11</sup> Settlement Agreement, ¶ 5.2.

<sup>12</sup> *Id.*, ¶ 1.22.

<sup>13</sup> *Id.*, ¶ 4.2.

<sup>14</sup> *Id.*, ¶ 14.2.

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

<sup>16</sup> Simpluris Decl., ¶ 5.

On November 29, 2023, Simpluris received the Class Data List (“First Class Data List”) from Defendants and on December 6, 2023, Simpluris received a revised Class Data List (“Second Class Data List”) from Defendants, containing each Class Member’s full names, last known mailing addresses, Social Security Numbers, and such other information as was necessary for Simpluris to calculate Workweeks during the Settlement Period.<sup>17</sup> The Class Data and List contained information for nine hundred and sixty-five (965) individuals identified as Class Members.<sup>18</sup> Simpluris processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class Data and List with any updated addresses located.<sup>19</sup>

On August 23, 2023, Simpluris mailed the Initial Class Notice via first class mail to nine hundred and sixty-five (965) individuals identified as Class Members in the Class Data List.<sup>20</sup>

As of the date of this Motion, eleven (11) Initial Class Notices were returned as undeliverable with forwarding addresses, and Simpluris promptly re-mailed the Notice to the forwarding addresses.<sup>21</sup> Ninety-one (91) Initial Class Notices were returned as undeliverable without forwarding addresses.<sup>22</sup> Simpluris performed a skip-trace search on the ninety-one (91) Initial Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for seventy (70) Class Members, and promptly re-mailed the Initial Class Notice to the updated addresses.<sup>23</sup> Ultimately, twenty-one (21) Initial Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Class Notice was returned as undeliverable a second time.<sup>24</sup>

On or about January 10, 2024, Defendant discovered there were several individuals who were erroneously included as Class Members in the Second Class Data List, although they were not Class Members, overrepresenting the total Workweeks.

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<sup>17</sup> *Id.*, ¶ 6.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Id.*, ¶ 7.

<sup>20</sup> *Id.*, ¶ 8.

<sup>21</sup> *Id.*, ¶ 9.

<sup>22</sup> *Ibid.*

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

<sup>24</sup> *Ibid.*

On or about February 2, 2024, Defendant provided Simpluris a corrective Class Data List (“Third Class Dats List”).<sup>25</sup> After processing the Third Class Data List, Simpluris found that of the nine hundred and sixty-five individuals (965) in the Initial Class Data List, fifty-two (52) were removed as they were determined to be exempt during the Settlement Period resulting in there being nine hundred and thirteen (913) Class Members.<sup>26</sup>

On April 11, 2024, Simpluris mailed the Corrective Class Notice via first class mail to nine hundred and thirteen (913) individuals identified as Class Members in the Corrective Class Data and List.<sup>27</sup>

As of the date of this Motion, fifty-one (51) Corrective Class Notices were returned as undeliverable with forwarding addresses, and Simpluris promptly re-mailed the Corrective Class Notice to the forwarding addresses.<sup>28</sup> Seventeen (17) Corrective Class Notices were returned as undeliverable without forwarding addresses.<sup>29</sup> Simpluris performed a skip-trace search on the seventeen (17) Corrective Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for six (6) Class Members, and promptly re-mailed the Notice to the updated addresses.<sup>30</sup> Ultimately, eleven (11) Corrective Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Corrective Class Notice was returned as undeliverable a second time.<sup>31</sup> As of the date of this Motion, the Settlement Administrator has not received any Notice of Objections and only three (3) Requests for Exclusion from Class Members.<sup>32</sup>

To date, there are nine hundred and ten (910) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.<sup>33</sup> Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$774,961.60 will be distributed to Settlement Class Members in accordance with

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<sup>25</sup> *Id.*, ¶ 11.

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

<sup>27</sup> *Id.*, ¶ 14.

<sup>28</sup> *Id.*, ¶ 15.

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

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Id.*, ¶¶ 19 & 20.

<sup>33</sup> *Id.*, ¶ 22.

the terms of the Settlement.<sup>34</sup> The highest Individual Settlement Payment is currently estimated to be \$3,450.17 and the average Individual Settlement Payment is currently estimated to be \$796.66.<sup>35</sup>

**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 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

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<sup>34</sup> *Id.*, ¶ 23.

<sup>35</sup> *Id.*, ¶ 24.

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 the Original Action was commenced on January 2, 2020. Class Counsel conducted formal and informal discovery and investigation into the facts of the case, to assess the veracity, strength, and scope of the claims, and was preparing the matter for class certification and trial, prior to reaching the Settlement.<sup>36</sup>

The Parties conducted significant formal and informal discovery and investigation into the facts of the case, and also formally and informally exchanged, reviewed, and analyzed a volume of information, documents, and data obtained from Plaintiff, Defendant, and other sources, throughout the course of the litigation and in connection with mediation and settlement negotiations.<sup>37</sup> Class Counsel propounded multiple sets of written discovery requests (such as Form Interrogatories – General (Set One), Special Interrogatories (Sets One, Two, and Three), and Requests for Production of Documents (Sets One and Two)) on Defendant, reviewed Defendant’s objections, responses, and supplemental responses thereto, and prepared and served multiple notices of deposition of Defendant’s persons most knowledgeable along with accompanying requests for production of documents. The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, a sampling of Class Members’ time and pay records, multiple iterations of Defendant’s Employee Handbooks, Defendant’s operations and employment practices, acknowledgements

<sup>36</sup> Declaration of Edwin Aiwarzian (“Aiwarzian Decl.”), ¶ 6 filed concurrently herewith the Motion for Attorneys’ Fees, Costs, and Service Award.

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

(including but not limited to, Employee Handbook Acknowledgement, Cell Phone and Usage of Company Phones Policy for Non-Exempt Employees Acknowledgement, and Attendance and Punctuality Acknowledgement), procedures, and policies (such as but not limited to, Timekeeping Policies, Overtime Policies, and Cellphone Usage Policies), among other information and documents.<sup>38</sup> Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with mediation and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of information, documents, and data in the course of litigation and in connection with mediation and settlement negotiations.<sup>39</sup> Class Counsel had the opportunity to interview and obtain information from Plaintiff, and other Class Members, and percipient witnesses.<sup>40</sup> Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with mediation and settlement negotiations. Class Counsel also met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, the production of information, documents, and data in the course of litigation and in connection with mediation and settlement negotiations, as well as mediation and settlement negotiations. Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising the pleadings, the mediation brief, and settlement documents; preparing for and attending court proceedings; and preparing for and participating in mediation and settlement negotiations, among other tasks.<sup>41</sup>

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 Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.<sup>42</sup> In the course of mediation and settlement negotiations, the Parties exchanged information, documents, and data, and discussed all aspects of the case, including the risks and

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<sup>38</sup> Aiwazian Decl., ¶ 6.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Aiwazian Decl., ¶ 8.

delays of further litigation, the risks and expenses to the Parties of proceeding with class certification adjudication, the law relating to class certification, off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, among other things.<sup>43</sup> During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.<sup>44</sup> Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.<sup>45</sup> After conducting significant formal and informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.<sup>46</sup>

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial and/or appeals. Class Counsel had the opportunity to interview and obtain information from their respective witnesses.<sup>47</sup> Class Counsel also reviewed and analyzed a large volume of information, documents, and data obtained from Defendant, Plaintiff, and other sources, and performed significant research into the applicable law, which is constantly evolving as it relates to class certification, off-the-clock theory, meal and rest periods, representative PAGA claims and penalties, wage-and-hour enforcement, Plaintiff's claims and allegations, and Defendant's defenses thereto, as well as facts discovered.<sup>48</sup> The Settlement Agreement reached was based on this large volume of facts, evidence, and investigation.<sup>49</sup> Additionally, Class Counsel has

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<sup>43</sup> Aiwazian Decl., ¶ 8.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> *Id.*, ¶ 6.

<sup>48</sup> Aiwazian Decl., ¶ 7.

<sup>49</sup> *Id.*, ¶¶ 6 & 8.

extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.<sup>50</sup>

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

The Settlement, which provides for an escalated Gross Settlement Amount of \$1,474,154.69, 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.<sup>51</sup> The Settlement was calculated using the information and data uncovered during through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation.<sup>52</sup> Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification, representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide adjudication. On the other hand, Defendant 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 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 adjudication, class decertification after certification of a class, allowing a jury to decide the claims asserted in the case,

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<sup>50</sup> *Id.*, ¶¶ 14-18.

<sup>51</sup> *Id.*, ¶¶ 8 & 21.

<sup>52</sup> *Id.*, ¶¶ 5-8.

1 and the real possibility of no recovery after years of litigation. Additionally, the Parties were  
2 moving into the phase of the litigation where they would have to conduct a significant amount of  
3 additional discovery, including and not limited to, depositions of Defendant's Person Most  
4 Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers,  
5 supervisors, and other current and former employees throughout the State of California. More  
6 discovery would have certainly followed, which would have cost the Parties additional time and  
7 money. In contrast, the Settlement provides real and significant benefits for the Class here and  
8 now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the  
9 possibility of recovery.

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

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

17 The Settlement, which provides for an escalated Gross Settlement Amount of  
18 \$1,474,154.69, represents a fair, reasonable, and adequate resolution of the case. The Settlement  
19 was calculated using information and data uncovered through extensive case investigation,  
20 informal and formal discovery, and the exchange of information in the context of preparing for  
21 mediation and conducting ongoing settlement negotiations. The Settlement takes into account  
22 the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,  
23 considering all of the facts in the case, the Gross Settlement Amount represents a considerable  
24 recovery.

25 Even after deducting attorneys' fees in the amount of \$514,500.00, litigation costs and  
26 expenses in the amount of \$15,639.09, Service Award in the amount of \$7,500.00, and  
27 Settlement Administration Costs in the amount of \$11,500.00, and the LWDA Payment in the  
28 amount of \$150,000.00 from the escalated Gross Settlement Amount of \$1,474,154.69 as

provided for by the Settlement, the Net Settlement Amount is currently estimated to be \$774,961.60.<sup>53</sup> 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 Workweeks credited to him or her. To date, there are nine hundred and ten (910) Settlement Class Members, representing 99.67%% of the Class.<sup>54</sup> The highest Individual Settlement Payment is currently estimated to be \$3,450.17 and the average Individual Settlement Payment is currently estimated to be \$796.66.<sup>55</sup> The State of California is slated to receive \$150,000.00 for its 75% portion of the PAGA Penalties. 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 believe that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.<sup>56</sup> Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, have 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 have extensive experience in employment class action law and complex wage-and-hour litigation.<sup>57</sup> Lawyers for Justice, PC has been appointed class counsel in

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<sup>53</sup> Simpluris Decl., ¶ 23.

<sup>54</sup> *Id.*, ¶ 19.

<sup>55</sup> *Id.*, ¶ 24.

<sup>56</sup> Aiwasian Decl., ¶ 21.

<sup>57</sup> Aiwasian Decl., ¶¶ 14-18.

1 numerous complex wage-and-hour cases, and have recovered millions of dollars for individuals  
2 in California.<sup>58</sup> Both Parties' counsel were capable of assessing the strengths and weaknesses of  
3 the Class Members' claims against Defendant and the benefits of the Settlement under the  
4 circumstances of the case and in the context of a private, consensual settlement agreement.

5 **E. There Are No Notice of Objections to the Settlement.**

6 The Settlement has been well received by the Class – *not a single Class Member*  
7 *objected to the Settlement and only three (3) Request for Exclusions were submitted.*<sup>59</sup>  
8 Specifically, no objections have been made as to the escalated Gross Settlement Amount or  
9 requested Attorneys' Fees and Costs, Service Award, Settlement Administration Costs, or the  
10 allocation for PAGA Penalties. California courts have consistently found that a small number of  
11 objectors indicates the class' support for a settlement and strongly favors final approval.  
12 *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); 7-  
13 *Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

18 **VI. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND**  
19 **REASONABLE AND SHOULD BE APPROVED.**

20 As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be  
21 incurred by Simpluris for the notice and settlement administration process are \$11,500.00.<sup>60</sup> The  
22 costs incurred and to be incurred include, but are not limited to, expenses for formatting,  
23 printing, and mailing the Initial Class Notices to the Class Members in both English and Spanish;  
24 performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class  
25 Notices to any updated addresses located by skip-trace search; receiving, reviewing, and  
26 processing Requests for Exclusion, Notices of Objections, and disputes regarding Workweeks (if

27 <sup>58</sup> *Id.*, ¶¶ 14-18.

28 <sup>59</sup> Simpluris Decl., ¶¶ 19 & 20.

<sup>60</sup> Simpluris Decl., ¶ 25.

any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and preparing the associated tax forms; and transmitting payments, among other things.<sup>61</sup>

Additionally, the Settlement Administrator incurred \$1,550.64 in costs for processing the Corrective Class Data List and mailing the Corrective Class Notice which Defendant has agreed to pay separately and in addition to the escalated Gross Settlement Amount, to Simpluris.<sup>62</sup>

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$11,500.00 and to order Defendant to pay \$1,550.64 separate and in addition to the escalated Gross Settlement Amount.

## 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 LWDA Payment to the State of California, in their entirety, as sought herein.

Dated: June 18, 2024

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian  
Matthew Richard Soto  
Attorneys for Plaintiff and the Class

<sup>61</sup> *Id.*, ¶ 3.

<sup>62</sup> *Id.*, ¶ 26.