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

LATISHA ANQUINETTE 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,

v.

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 PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Proposed Class Counsel
(Annabel Blanchard); Declaration of
Proposed Class Representative (Latisha
Anquette Johnson); and [Proposed] Order
filed concurrently herewith]

Date: November 3, 2023
Time: 9:00 a.m.
Department: C-73

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

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

PLEASE TAKE NOTICE that on November 3, 2023, at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Joel R. Wohlfeil in Department C-73 of the Superior Court of California for the County of San Diego, located at 330 West Broadway, San Diego, California 92101, Plaintiff Latisha Anquetette Johnson (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and Private Attorney General Act Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Annabel Blanchard, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Service Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Latisha Anquetette Johnson as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Service Award for Plaintiff, and Settlement Administration Costs to Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Annabel Blanchard) and Proposed Class Representative (Latisha Anqunette 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: September 19, 2023

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Latisha Anquetette Johnson (“Plaintiff” or “Class Representative”) seeks preliminary 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, on the one hand, and Defendant AmeriCare Health & Retirement, Inc. (“Defendant” or “AmeriCare”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of One Million Four Hundred and Seventy Thousand Dollars (\$1,470,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Service Award of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$514,500.00, and reimbursement of litigation costs and expenses not to exceed Forty Thousand Dollars (\$40,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount not to exceed Twelve Thousand Dollars (\$12,000.00);⁵ and (5) the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) to be distributed to the Labor and Workforce Development Agency (“LWDA”) (which is 75% of the \$200,000.00 amount allocated under the Settlement to penalties under the Private Attorneys General Act (“PAGA”)).⁶

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

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Annabel Blanchard (“Blanchard Decl.”), § 1.10.

² *Id.*, § 1.22.

³ *Id.*, § 1.18.

⁴ *Id.*, § 1.2.

⁵ *Id.*, § 1.20.

⁶ *Id.*, § 1.12.

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”).⁷

The Class is estimated to consist of approximately eight hundred and fifty (850) individuals.⁸

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendant in California in a non-exempt position during the period from January 2, 2016 through December 2, 2021 (“Workweek(s)").⁹

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

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a healthcare management company which owns and operates retirement communities and medical office buildings. Plaintiff Latisha Anqunette Johnson is a former employee of Defendant.

On January 2, 2020, Plaintiff filed a putative class action complaint (“Original Complaint”), thereby commencing a putative class action against Defendant for violations of the California Labor Code and the California Business and Professions Code, entitled *Johnson v. AmeriCare Health & Retirement, Inc., et al.*, Superior Court of California, San Diego County, Case No. 37-2020-00000221-CU-OE-CTL (“Original Action”), that was dismissed without prejudice on September 15, 2022. This lawsuit had alleged ten (10) causes of action for

⁷ Settlement Agreement, § 1.3. “Settlement Period” is defined as the period of time from January 2, 2016 through December 2, 2021. *See id.*, § 1.24.

⁸ Blanchard Decl., ¶ 9.

⁹ Settlement Agreement, § 1.21, 1.23, 1.24, & 1.25.

¹⁰ *See id.* at § 16, for the full scope of the “Released Claims,” and *id.* at § 1.15 for the definition of the “Released Parties.”

violations of the California Labor Code and Industrial Welfare Commission Wage Orders, for alleged failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods and associated premiums, failure to provide rest periods and associated premiums, failure to pay timely wages during employment, failure to timely pay final wages and associated waiting-time penalties, failure to keep compliant payroll records, failure to keep compliant wage statements, failure to reimburse business expenses, and for violations of California Business and Professions Code Section 17200 *et seq.*.

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

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

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

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

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

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

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

17 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
18 associated with any of the allegations in the Action, and further denies that the Action is
19 appropriate for class treatment or representative adjudication for any purpose other than for
20 settlement purposes only.

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

27 ///

28 ///

1 **III. SUMMARY OF THE SETTLEMENT TERMS**

2 Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to
3 resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and
4 valid Request for Exclusion from the Settlement (i.e., Settlement Class Members) with respect
5 to the Released Parties.¹¹ Subject to approval by the Court, the Net Settlement Amount will be
6 calculated by deducting the following amounts from the Gross Settlement Amount: (1)
7 attorneys' fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e.
8 \$514,500.00) and reimbursement of costs and expenses in an amount not to exceed Forty
9 Thousand Dollars (\$40,000.00) to Class Counsel (collectively referred to as the "Attorneys'
10 Fees and Costs"); (2) settlement administration costs, which are currently estimated not to
11 exceed Twelve Thousand Dollars (\$12,000.00) to the Settlement Administrator ("Settlement
12 Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Penalties (i.e.,
13 \$150,000.00 out of \$200,000.00) ("LWDA Payment"); and (4) payment in the amount of up to
14 Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Latisha Anqunette Johnson
15 ("Service Award").¹² The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or
16 "Settlement Administrator") to handle the notice and settlement administration process.

17 The Parties have agreed that the Settlement Administrator will determine each
18 Settlement Class Member's share of the available Net Settlement Amount ("Individual
19 Settlement Share"), in accordance with the Settlement Agreement and as follows:

- 20 a. The Settlement Administrator will calculate each Class Member's number of
21 Workweek(s) and the total Workweek(s) by using the Class Data list produced by
22 Defendant to the Settlement Administrator.¹³
23 b. The Settlement Administrator will divide the Net Settlement Amount by the
24 Workweeks of all Class Members to yield the "Estimated Workweek Value," and
25 multiply each Class Member's individual Workweeks by the Estimated Workweek
26 Value to yield his or her estimated Individual Settlement Share that he or she may be
27 eligible to receive under the Settlement.¹⁴
28 c. After Final Approval of the Settlement, the Settlement Administrator will divide the
final Net Settlement Amount by the Workweeks of all Settlement Class Member to
yield the "Final Workweek Value," and multiply each Settlement Class Member's

¹¹ Settlement Agreement, § 1.10, § 16.

¹² *Id.*, § 1.11, 6, 7, 8, & 9.

¹³ *Id.*, § 1.25

¹⁴ *Id.*, § 5.1.1.

individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.¹⁵

Each Settlement Class Member's 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 1099.¹⁶ 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.¹⁷ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares ("Employer Taxes") in addition to the Gross Settlement Amount.¹⁸

The Individual Settlement Payment checks issued to Settlement Class Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁹ Individual Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.²⁰ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator after the expiration of the 180-day period, and sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq., in the name of the Settlement Class Member whose check is cancelled and in the respective amount of the cancelled check.²¹

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a letter indicating that they want to exclude themselves ("Request for Exclusion").²² To be timely, the Class Members must mail a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice ("Response

¹⁵ Settlement Agreement, § 5.1.2.

¹⁶ *Id.*, § 5.2.

¹⁷ *Id.*, § 5.3.

¹⁸ *Id.*

¹⁹ *Id.*, § 14.2.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, § 1.16.

Deadline”).²³ A Request for Exclusion must contain: (a) the Class Member’s full name, address, signature, and the last four (4) digits of his or her Social Security number; (b) the case name and number of the Action; and (c) a clear statement indicating that he or she wishes to be excluded from the Settlement.²⁴ Class Members who submit a valid and timely Request for Exclusion (1) will not have any rights under the Settlement Agreement; (2) will not be entitled to receive any compensation under the Settlement Agreement; (3) will not have standing to submit any objection to the Settlement Agreement; and (4) will not be bound by the Settlement Agreement.²⁵

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.²⁶ Settlement Class Members who wish to object to the Settlement may present their objection orally at the Final Approval Hearing and/or submit a written objection to the Settlement Administrator by mail, postmarked no later than the Response Deadline.²⁷ The objection must be signed by the Settlement Class Member or his or her authorized representative, and must contain: (a) the Settlement Class Member’s full name, address, and the last four (4) digits of his or her Social Security number; (b) the case name and number of the Action; and (c) a clear statement of the basis for his or her objection.²⁸

Class Members who wish to dispute the number of Workweek(s) credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator on or before the Response Deadline.²⁹ The letter must contain: (a) the Settlement Class Member’s full name, address, signature, and the last four (4) digits of his or her Social Security number; (b) a clear statement indicating that the Class Member contends the number of Workweeks credited to them are incorrect, the number of Workweeks that they contend should be credited

²³ Settlement Agreement, § 1.17.

²⁴ *Id.*, § 11.1.

²⁵ *Id.*, § 11.2.

²⁶ *Id.*, § 12.1.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Id.*, § 13.

to them, and any facts supporting the Class Member’s dispute; and (c) any supporting materials confirming that the Workweeks attributed to him or her are incorrect.³⁰

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 Plaintiffs 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.

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

³⁰ Settlement Agreement, § 13.

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

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

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

22 The proponent of the settlement has the burden to show that it is fair and reasonable.
23 *Wershba, supra*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the
24 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
26 litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk, supra*, 48 Cal.App.4th at
27 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
28 1151.

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

3 The Parties actively litigated the Action since the Original Action was commenced on
4 January 2, 2020. Both sides used the pre-mediation time period to investigate the veracity,
5 strength, and scope of the claims, and Class Counsel was actively preparing the matter for class
6 certification and trial.³¹

7 Prior to engaging in mediation, Class Counsel conducted significant investigation and
8 formal and informal discovery regarding the facts of the case, including and not limited to, the
9 exchange, review, and analysis of a large volume of documents and data produced by
10 Defendant.³² The volume of data and documents that Class Counsel reviewed and analyzed
11 included and was not limited to: employment records of Plaintiff, a detailed sampling of
12 Plaintiff’s time and pay data, multiple iterations of AmeriCare’s Employee Handbooks
13 (including appendices and notifications of employee handbook changes), company policies and
14 procedures (including, but not limited to documents regarding: job descriptions, employment
15 categories, performance evaluation, paid time off for non-managerial, non-exempt employees,
16 timekeeping, pay days, pay deductions and setoffs, work schedules, cell phone usage, rest and
17 meal periods, use of equipment and vehicles, business travel expenses, employee conduct and
18 work rules, attendance and punctuality, and personal appearance), among other information and
19 documents.³³ Class Counsel interviewed Plaintiff to gather facts and to identify potential
20 witnesses.³⁴ Class Counsel propounded multiple sets of formal written discovery requests on
21 Defendant, reviewed Defendant’s responses and supplemental responses thereto, noticed the
22 depositions of Defendant’s Person Most Knowledgeable designees regarding organizational
23 structure and job duties, and worked with Plaintiff to provide responses to multiple sets of
24 discovery requests that were propounded by Defendant.³⁵ Class Counsel prepared for and took

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³¹ Blanchard Decl., ¶¶ 11-13.

27 ³² *Id.*, ¶ 13.

28 ³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

the deposition of Defendant's Person Most Knowledgeable witness.³⁶ Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁸ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the cases and various aspects of the matter, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, arbitration agreements, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ 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.⁴¹ After conducting investigations, significant formal and informal discovery, 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.⁴²

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.⁴³ The

³⁶ Blanchard Decl., ¶ 13.

³⁷ *Ibid.*

³⁸ Blanchard Decl., ¶ 12.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Blanchard Decl., ¶ 20.

Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Settlement Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁶

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

The Settlement, which provides for a Gross Settlement Amount of One Million Four Hundred and Seventy Thousand Dollars and Zero Cents (\$1,470,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁷ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁸ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁰

Assuming that the Attorneys' Fees and Costs, Service Award, LWDA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Seven Hundred and Forty Six Thousand Dollars (\$746,000.00).⁵¹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the

⁴⁴ Blanchard Decl., ¶ 20.

⁴⁵ *Id.*, ¶¶ 11, 13, & 14.

⁴⁶ Blanchard Decl., ¶¶ 6-7.

⁴⁷ *Id.*, ¶¶ 14, 15 & 23.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 18-20.

⁵⁰ *Id.*, ¶¶ 11, 14, & 23.

⁵¹ *Id.*, ¶ 15.

1 Settlement Class Members, in accordance with the Settlement Agreement. The amount of each
2 Settlement Class Member's Individual Settlement Share will be calculated based on his or her
3 Workweek(s).⁵² There is no reason to doubt the fairness of the proposed plan of allocation of
4 the settlement funds for purposes of preliminary approval. Even at the final approval stage,
5 "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval],
6 particularly if recommended by experienced and competent class counsel." *In re American*
7 *Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-
8 30.

9 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
10 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵³
11 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
12 the recommendations into account, particularly if Class Counsel appears to be competent, and
13 has experience with this type of litigation, and investigation have been completed, as is the case
14 here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
15 Settlement.

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

17 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
18 conducted significant formal and informal discovery and exchanged a large volume of
19 documents, data, and information prior to mediation.⁵⁴ The discovery and information that Class
20 Counsel obtained from Defendant and through other sources allowed Class Counsel to develop
21 valuation models in order to evaluate the potential value and merit of the claims, and perform a
22 complete evaluation of Defendant's defenses thereto.⁵⁵ As outlined in the Declaration of
23 Annabel Blanchard, Class Counsel performed an extensive analysis of each and every claim
24 pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

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27 ⁵² Settlement Agreement, § 5.

⁵³ Blanchard Decl., ¶¶ 11, 14, 15 & 23.

⁵⁴ *Id.*, ¶¶ 12 & 13.

⁵⁵ *Id.*, ¶ 20.

⁵⁶ *Id.*, ¶¶ 11-14 & 18-20.

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.⁵⁷ California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

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

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.

⁵⁷ Settlement Agreement, § 3.

1 This matter involves a class of approximately eight hundred fifty (850) individuals.⁵⁸
2 This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
3 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as
4 joinder is not practical at that point). Further, all Class Members can and will be identified by
5 Defendant to the Settlement Administrator through a review of Defendant's employment
6 records regarding non-exempt employees in California during the Settlement Period. As such,
7 the Class is ascertainable and sufficiently numerous.

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

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

18 The "common issues" requirement "involves analysis of whether the proponent's 'theory
19 of recovery' is likely to prove compatible with class treatment." *Capitol People, supra*, 155
20 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,
21 the commonality inquiry centers on the "reasonableness" of the defendant's labor policies as
22 applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

23 Here, common issues of fact and law predominate as to each of the claims alleged and
24 asserted in the Operative Complaint. Based on the documents and information obtained through
25 formal and informal discovery and exchange of information in the cases, Plaintiff contends that
26 Class Members were subject to the same or similar job duties and uniform operations and
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⁵⁸ Blanchard Decl., ¶ 9.

1 employment practices, policies, and procedures during the time period at issue.⁵⁹ Plaintiff's
2 claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to
3 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
4 wages for all hours worked, failing to provide compliant meal and rest periods and associated
5 premium pay, failing to timely pay wages during employment and upon termination of
6 employment, failing to provide complaint wage statements, failing to keep requisite payroll
7 records, and failing to reimburse necessary business-related expenses.⁶⁰

8 Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect
9 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶¹
10 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
11 compensation due to them from Defendant during the time period at issue.⁶²

12 Plaintiff maintains that the outcome of this litigation would be determined by
13 Defendant's alleged uniform operations and employment policies and procedures that applied
14 across its non-exempt employees who worked in California during the Settlement Period.
15 Accordingly, the Court should certify the Class for settlement purposes only.

16 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
17 **ATTORNEYS' FEES AND COSTS**

18 Class Counsel has litigated the case since the action commenced on January 2, 2020, and
19 was actively preparing the matter for class certification and trial.⁶³ The ongoing work has been
20 extensive, demanding, and ultimately successful in achieving a substantial settlement resolution.
21 Class Counsel conducted extensive investigations into the facts of the cases and formal and
22 informal discovery, including, and not limited to, propounding multiple formal written
23 discovery requests onto Defendant. Class Counsel also noticed and took the deposition of
24 Defendant's Person Most Knowledgeable designee. Class Counsel reviewed a large volume of
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26 ⁵⁹ Blanchard Decl., ¶ 18.

27 ⁶⁰ *Ibid.*

28 ⁶¹ Blanchard Decl., ¶ 18.

⁶² *Ibid.*

⁶³ Blanchard Decl., ¶¶ 11-14.

documents and data⁶⁴ and also had the opportunity to interview and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁵ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁶

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Settlement Class Members.⁶⁷

The Settlement establishes a Gross Settlement Amount of One Million Four Hundred and Seventy Thousand Dollars (\$1,470,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$514,500.00) and an amount not to exceed Forty Thousand Dollars (\$40,000.00) for costs and expenses.⁶⁸ The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁶⁹

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.*

⁶⁴ Blanchard Decl., ¶ 13.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 6-7.

⁶⁸ Settlement Agreement, § 1.2, 1.10, & 6.

⁶⁹ *Id.*, Exh. A.

1 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
2 “experienced trial judge is the best judge of the value of professional services rendered in his
3 court.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney
4 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
5 achieved and risk incurred. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
6 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
7 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
8 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
9 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
10 settlement fund and the settlement agreement provides that the defendant agrees to paying the
11 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

19 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
20 depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin*
21 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
22 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
23 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
24 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
25 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
26 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
27 actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case
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No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County 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.⁷⁰

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 the Attorneys' Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees 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 matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Class Notice⁷¹ describes the Settlement, the deadlines and procedures to file and serve an objection to the Settlement, mail a request for exclusion from the Settlement, and/or mail a dispute regarding Workweek(s), and the date and time set for the Final Approval Hearing.⁷²

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷³ The proposed Class Notice recognizes that the Court has not yet granted

⁷⁰ Blanchard Decl., ¶ 21.

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

⁷³ *Ibid.*

1 final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members
2 of, *inter alia*, how their Individual Settlement Payment is calculated and the number of
3 Workweek(s) credited to them.⁷⁵

4 The proposed Class Notice satisfies all due process requirements and complies with the
5 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,
6 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 (“The
7 essentials of due process of law in class suits would appear to be afforded by fair representation
8 in the assertion of claims of class members against the opposing parties in any lawsuit, and
9 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

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

11 **ADMINISTRATOR**

12 The Parties have selected Simpluris to administer the Settlement.

13 The Settlement Administrator will mail the Class Notice to each Class Member by First-
14 Class U.S. mail.⁷⁶ Any undeliverable Class Notice that is returned to the Settlement
15 Administrator with a forwarding address on or before the Response Deadline, will be re-mailed
16 to the forwarding address.⁷⁷ With respect to any undeliverable Class Notice returned on or
17 before the Response Deadline without a forwarding address, the Settlement Administrator will
18 make reasonable efforts to obtain an updated mailing address, including but not limited to
19 conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁷⁸ The Response
20 Deadline to submit a Request for Exclusion, objection, or dispute regarding Workweek(s) for
21 Class Members to whom a Class Notice is re-sent, after having been returned as undeliverable
22 to the Settlement Administrator, will be fifteen (15) calendar days from the date of the re-mailing
23 or the original forty-five (45) calendar day deadline, whichever is later.⁷⁹ The Settlement
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26 ⁷⁴ Settlement Agreement, Exh. A

27 ⁷⁵ *Ibid.*

28 ⁷⁶ Settlement Agreement, § 10.3.

⁷⁷ *Id.*, § 10.4.

⁷⁸ *Ibid.*

⁷⁹ *Id.*, § 1.17.

Administrator will receive and process Requests for Exclusion, objections, and any disputes regarding Workweek(s).⁸⁰

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Service Award, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸¹ The Settlement Administration Costs are currently estimated to be Twelve Thousand Dollars (\$12,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸²

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the 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, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸³

Within fifteen (15) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: (1) last known full name; (2) last known mailing address; (3) last known telephone number; (4) Social Security number; and (5) start and end dates of employment as a non-exempt employee of Defendant in California during the Settlement Period (collectively, "Class Data List").⁸⁴

⁸⁰ Settlement Agreement, § 9.

⁸¹ *Ibid.*; Blanchard Decl., ¶ 17.

⁸² *Ibid.*

⁸³ Settlement Agreement, § 10.

⁸⁴ *Id.*, § 10.1.

1 Within twenty-five (25) business days of the Preliminary Approval Order, the Settlement
2 Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁸⁵ If a
3 Class Notice is returned to the Settlement Administrator with a forwarding address, the
4 Settlement Administrator will re-send the Class Notice to the forwarding address.⁸⁶ If no
5 forwarding address is provided, then the Settlement Administrator will make reasonable efforts
6 to obtain an updated mailing address, including but not limited to conducting one skip-trace,
7 and re-mail the Class Notice to the Class Members.⁸⁷ Class Members will have until the
8 applicable Response Deadline to mail a Request for Exclusion, mail a dispute regarding
9 Workweek(s), and/or to file and serve an objection.⁸⁸

10 Defendant will make a one-time deposit of the Gross Settlement Amount, together with
11 an amount sufficient to pay Employer Taxes, into a Qualified Settlement Fund to be established
12 by the Settlement Administrator, within ten (10) calendar days after the Effective Date.⁸⁹ Within
13 ten (10) calendar days of receipt of the Gross Settlement Amount, the Settlement Administrator
14 will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) the
15 Court-approved Service Award to Plaintiff; (3) the Court-approved Attorneys' Fees and Costs
16 to Class Counsel; (4) the LWDA Payment to the LWDA; and (5) the Court-approved Settlement
17 Administration Costs to itself.⁹⁰

18 The Individual Settlement Payment checks will remain negotiable for one hundred and
19 eighty (180) calendar days from the date of their issuance.⁹¹ Checks that are not negotiated
20 within the 180-day period will be cancelled.⁹² The funds associated with such cancelled checks
21 will be tendered by the Settlement Administrator within (10) calendar days after the last day of
22 the 180-day period to the Controller of the State of California to be held pursuant to the
23 Unclaimed Property Law, California Civil Code Section 1500, et seq..⁹³

24 ⁸⁵ Settlement Agreement, § 10.3.

25 ⁸⁶ *Id.*, § 10.4.

26 ⁸⁷ *Ibid.*

27 ⁸⁸ *Id.*, § 11, 12, and 13.

28 ⁸⁹ Settlement Agreement, § 4.2.

⁹⁰ *Id.*, § 14.1.

⁹¹ *Id.*, § 14.2.

⁹² *Ibid.*

⁹³ *Ibid.*

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR SERVICE AWARD

Plaintiff Latisha Anqunette Johnson respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Service Award in an amount up to Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Latisha Anqunette Johnson.⁹⁴ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Service Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records, reviewing and answering to discovery requests, and providing the facts and evidence necessary to attempt to prove the allegations.⁹⁵ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that facilitate pursuit of the Action.⁹⁶ Accordingly, it is appropriate and just for Plaintiff to receive a Service Award for her services on behalf of the Class, in addition to her Individual Settlement Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Latisha Anqunette Johnson as Class Representative; appoint Simpluris, Inc.

⁹⁴ Settlement Agreement, § 7.

⁹⁵ Blanchard Decl., ¶ 22; Declaration of Latisha Anqunette Johnson in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Johnson Decl."), ¶ 3-6.

⁹⁶ *Ibid.*

as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Service Award, LWDA Payment, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six months; and permit the filing of a memorandum that exceeds the page limit.

Dated: September 19, 2023

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiff