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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET**

MELISSA GARCIA, 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.

WOLFORD AMERICA, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 21STCV07870

Honorable Elihu M. Berle
Department 6

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Brian J. St. John); Declaration of
Proposed Class Representative (Melissa
Garcia); and [Proposed] Order filed
concurrently herewith]

Date: December 8, 2022
Time: 11:00 a.m.
Department: 6

Complaint Filed: March 1, 2021
FAC Filed: October 4, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on December 8, 2022, at 11:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Elihu M. Berle in Department 6 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Melissa Garcia (“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 PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Brian J. St. John, 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, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Administration Expenses Payment to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Melissa Garcia 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 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests

1 for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment
2 to Class Counsel, Class Representative Service Payment for Plaintiff, and
3 Administration Expenses Payment to the Administrator.

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

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

12 Dated: October 14, 2022

LAWYERS for JUSTICE, PC

13
14 By: _____


15 Brian J. St. John
16 Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Melissa Garcia (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Class Action and PAGA 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 Welford America, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Three Hundred Seventy-Five Thousand Dollars and Zero Cents (\$375,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Class Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Service Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$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 One Hundred Thirty-One Thousand Two Hundred Fifty Dollars and Zero Cents (\$131,250.00), and reimbursement of litigation costs and expenses not to exceed Eighteen Thousand Dollars and Zero Cents (\$18,000.00)⁴; (4) the Settlement Administration Costs to the Administrator in the amount not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00)⁵; and (5) the amount of Seventy Five Thousand Dollars and Zero Cents (\$75,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$56,250.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$18,750.00) will be distributed on a *pro rata* basis to all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during PAGA Period (“Aggrieved Employees”).⁶

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Brian J. St. John (“St. John Decl.”), § 1.23.

² *Id.*, § 1.24.

³ *Id.*, § 3.2.1.

⁴ *Id.*, § 3.2.2.

⁵ *Id.*, § 3.2.3.

⁶ *Id.*, §§ 1.4 & 3.2.5. “PAGA Period” is defined as the period from May 9, 2021 to the date the Court grants Preliminary Approval of the Settlement. *See id.*, § 1.33.

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

3 All current and former hourly-paid and/or non-exempt employees who worked for
4 Defendant within the State of California at any time during the Class Period
5 (“Class” or “Class Members”).⁷

6 The Class is estimated to consist of approximately forty-five (45) individuals.⁸

7 Class Members who do not submit a timely and valid request to be excluded from the
8 Settlement (“Participating Class Member”) will receive a share of the Net Settlement Amount
9 (“Individual Class Payment”) on a *pro rata* basis based upon the number of weeks each
10 Participating Class Member was employed by Defendant in California in a non-exempt and/or
11 hourly-paid position during the period from March 1, 2017 through the date of Preliminary
12 Approval of the Settlement (“Workweeks”).⁹

13 Aggrieved Employees will receive a *pro rata* share of the 25% share of the PAGA
14 Penalties (“Individual PAGA Payment”) based on each Aggrieved Employees’ number of pay
15 periods during which the Aggrieved Employee worked for Defendant at least one day during
16 the PAGA Period (“PAGA Pay Periods”).¹⁰

17 The Settlement, if granted preliminary and final approval by the Court, will operate to
18 resolve the Released Class Claims of Plaintiff and Participating Class Members and the Released
19 PAGA Claims of the State of California and Aggrieved Employees, against the Released
20 Parties.¹¹

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

25 ///

26 ⁷ Settlement Agreement, § 1.5. “Class Period” is defined as the period of time from March 1, 2017 through the date
27 of Preliminary Approval of the Settlement. *See id.*, § 1.12.

28 ⁸ St. John Decl., ¶ 9.

⁹ Settlement Agreement, §§ 1.24, 1.38, & 1.48.

¹⁰ *Id.*, §§ 1.25 & 1.32.

¹¹ *See id.* at § 1.42, for the full scope of the “Released Class Claims,” *id.* at § 1.43 for the full scope of the “Released
PAGA Claims,” and *id.* at § 1.44 for the definition of the “Released Parties.”

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

2 Founded in 1996, Defendant sells clothing, lingerie, and hosiery in sixteen locations
3 across the United States. Plaintiff Melissa Garcia is a former employee of Defendant in
4 California.

5 On March 1, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los
6 Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
7 (“Action”).

8 On July 19, 2021, Plaintiff propounded multiple sets of discovery including Form
9 Interrogatories (Set One), Requests for Production of Documents, (Set One) and Special
10 Interrogatories, (Sets One & Two), on Defendant.

11 On August 6, 2021, Defendant filed an Answer to Plaintiff’s Class Action Complaint.

12 On October 4, 2022, Plaintiff filed a First Amended Class Action Complaint for
13 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
14 2698, *Et Seq.* (“Operative Complaint”).

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

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

The Parties have actively litigated the Action since it was commenced on March 1, 2021. On April 28, 2022, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Participating Class Member) with respect to the Released Parties.¹² 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 not to exceed One Hundred Thirty One Thousand Two Hundred Fifty Dollars and Zero Cents (\$131,250.00) (i.e., up to 35% of the Gross Settlement Amount) ("Class Counsel Fees Payment") and reimbursement of costs and expenses in an amount not to exceed Eighteen Thousand Dollars and Zero Cents (\$18,000.00) ("Class Counsel Litigation Expenses Payment") to Class Counsel (2) settlement administration costs, which are not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) to the Administrator ("Administration Expenses Payment"); (3) PAGA civil penalties in the amount of Seventy-Five Thousand Dollars (\$75,000.00) ("PAGA Penalties"), of which 75% (i.e., \$56,250.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., \$18,750.00) will be distributed on a *pro rata* basis to Aggrieved Employees; and (4) payment in the amount of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Melissa Garcia ("Class Representative Service Payment").¹³ The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Administrator") to handle the notice and settlement administration process.

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¹² Settlement Agreement, § 1.23.

¹³ *Id.*, §§ 1.28, 3.2.1-3.2.3, & 3.2.5.

The Parties have agreed that the Administrator will determine each Participating Class Member's share of the available Net Settlement Amount (i.e., Individual Class Payment), in accordance with the Settlement Agreement and as follows:

- a. The Administrator will calculate each Participating Class Member's number of Workweeks and the total number of Workweeks of all Participating Class Member.¹⁴
- b. The Administrator will divide the Net Settlement Amount by the total number of Workweeks of all Participating Class Member and multiply the result by each Participating Class Member's Workweeks to yield his or her Individual Class Payment.¹⁵

The Parties have agreed that the Administrator will determine each Aggrieved Employee's of the 25% share of the PAGA Penalties (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement and as follows:

- a. The Administrator will calculate each Aggrieved Employees number of PAGA Pay Periods and the total number of PAGA Pay Periods of all Aggrieved Employees.¹⁶
- b. The Administrator will divide the 25% share of the PAGA Penalties by the total number of PAGA Pay Periods of all Aggrieved Employees and multiply the result by each Aggrieved Employee's PAGA Pay Periods to yield his or her Individual PAGA Payment.¹⁷

Each Participating Class Member's Individual Class Payment will be allocated as follows: thirty-three point three three percent (33.33%) as wages (the "Wage portion"), which will be reported on an IRS Form W-2; and the remaining sixty-six point six seven percent (66.67%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁸ 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.¹⁹ Participating Class Members will assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.²⁰ The Individual PAGA Payments to Aggrieved Employees will be allocated as one hundred percent (100%)

¹⁴ Settlement Agreement, § 1.48.

¹⁵ *Id.*, § 3.2.4.

¹⁶ *Id.*, § 1.32.

¹⁷ *Id.*, § 3.2.5.1.

¹⁸ *Id.*, § 3.2.4.1.

¹⁹ *Ibid.*

²⁰ *Ibid.*

penalties, will not be subject taxes or withholdings, and will be reported on an IRS Form 1099-MISC, if necessary.²¹

The Individual Class Payment checks issued to Participating Class Members and Individual PAGA Payment checks issued to Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days from the date of issuance.²² The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment, if applicable.²³ Individual settlement payment checks that are not negotiated within the 180-day period will be cancelled.²⁴ The funds from associated with such cancelled checks will be transmitted by the Administrator within (10) calendar days after the expiration of the 180-day period, and sent to the Legal Aid at Work.²⁵

Class Members who wishes to be excluded from the Settlement (i.e., opt out) must notify the Administrator in writing by sending a letter indicating that they want to exclude themselves.²⁶ To be timely, the Class Member must mail a written request for exclusion to the Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Class Notice (“Response Deadline”).²⁷ A request for exclusion must contain: (1) the case name and number of the Action; (2) the Class Member’s full name, address, email address, telephone number, and last four digits of his or her Social Security Number; (3) the signature of the Class Member; (4) a clear statement that the Class Member requests to be excluded from the Settlement; and (5) is sent to the Administrator no later than the Response Deadline.²⁸ Class Members who submit a valid and timely request for exclusion will not be bound by the terms of the Class Settlement and Final Approval Order and Judgment.²⁹

²¹ Settlement Agreement, § 3.2.5.1.

²² *Id.*, § 4.5.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, § 4.7.

²⁶ *Id.*, § 7.4.

²⁷ *Id.*, § 1.46.

²⁸ *Id.*, § 7.4.1.

²⁹ *Id.*, § 7.4.3.

Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.³⁰

Only Class Members who do not exclude themselves from the Settlement (i.e., Participating Class Members) have standing to object to the Settlement.³¹ Participating Class Members who wish to object to the Settlement may send the Administrator a written notice of objection on or before the Response Deadline.³² The objection must contain: (1) the case name and number of the Action; (2) the Participating Class Member's full name, address, telephone number, signature, and last four digits of his or her Social Security number; (3) clearly state the grounds for the objection; and (4) a statement of whether the Participating Class Member intends to appear at the Final Approval Hearing.³³ Alternatively, Participating Class Members may present objections to the Class Settlement to the Court at the Final Approval Hearing, regardless of whether they submit written Notices of Objection.³⁴

Class Members who wish to dispute the number of Workweeks or PAGA Pay Periods credited to them in their Class Notice may do so by mailing a written letter to the Administrator on or before the Response Deadline.³⁵ The letter must contain: (1) the case name and number of the Action; (2) the Class Member's full name, address, telephone number, signature, and last four digits of his or her Social Security number; and (3) a statement setting forth the number of Workweeks or PAGA Pay Periods during the Class Period and/or PAGA Period that he or she contends is correct and attach any relevant documentation in support thereof.³⁶

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

³⁰ Settlement Agreement, § 7.4.4.

³¹ *Id.*, § 7.6.1.

³² *Id.*, § 7.6.2.

³³ *Ibid.*

³⁴ *Id.*, §§ 7.6.2 & 7.6.3.

³⁵ *Id.*, § 7.5.

³⁶ *Ibid.*

1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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).

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

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

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s 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 view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 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, supra*, 91 Cal.App.4th at 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties actively litigated the Action since it was commenced on March 1, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁷

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the

³⁷ St. John Decl., ¶¶ 11-13.

exchange, review, and analysis of documents and data produced by Defendant.³⁸ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members' time and pay data, multiple iterations of Defendant's Employee Handbook, supplements and amendments thereto, financial information (including but not limited to pay statements and earning statements), company policy acknowledgements (including but not limited to, Employment Acknowledgement Form for California Supplement to Wolford Employee Handbook, Confidentiality Agreement, Dress Code Agreement, and Commissioned Sales Employment Agreement), internal memoranda, job descriptions, new hire orientation documents, Defendants' operations and employment practices, forms, procedures, and policies (Staff Exclusive Policy, Electronic Resources Policy, Cell Phone and Handheld Mobile Device Usage policy, Meal and Rest Periods policy, and Attendance and Punctuality policy), among other information and documents.³⁹ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.⁴⁰ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto, and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties.⁴¹ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.⁴² Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴³

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.⁴⁴ Prior to and during the mediation and

³⁸ St. John Decl., ¶ 12.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶ 11.

1 settlement discussions, the Parties exchanged class information and engaged in an intensive
2 discussion regarding their evaluations of the case and various aspects of the case, including but
3 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding
4 with class certification and/or representative adjudication, the law relating to off-the-clock
5 theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative
6 claims, as well as the evidence produced and analyzed, and the possibility of appeals, among
7 other things.⁴⁵ During all settlement discussions, the Parties conducted their negotiations at
8 arm's length in an adversarial position.⁴⁶ Arriving at a settlement that was acceptable to both
9 Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the
10 merits and at certification, and Plaintiff and Class Counsel believed that they would be able to
11 obtain class certification and prevail at trial.⁴⁷ After conducting investigations, significant
12 formal and informal discovery, extensive settlement negotiations, and with the aid of the
13 mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given
14 the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides
15 that would attend further litigation.⁴⁸

16 The Settlement takes into account the strengths and weaknesses of each side's position
17 and the uncertainty of how the case might have concluded at certification and trial.⁴⁹ The Parties
18 have had the opportunity to interview and obtain information from their respective witnesses.⁵⁰
19 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's,
20 the Class Members', and Aggrieved Employees' employment with Defendant and performed
21 significant research into the law concerning class certification, PAGA representative actions,
22 off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's
23 claims, and Defendant's defenses thereto, as well as facts discovered.⁵¹ The Parties have
24 reached the Settlement based on this large volume of facts, evidence, and investigation. In

25 ⁴⁵ St. John Decl., ¶ 11.

26 ⁴⁶ *Ibid.*

27 ⁴⁷ *Id.*, ¶¶ 11, 16-18.

28 ⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Id.*, ¶¶ 11-13 & 16-18.

1 addition, Class Counsel has extensive experience in employment class actions, including
2 significant experience in California wage-and-hour litigation.⁵²

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

4 The Settlement, which provides for a Gross Settlement Amount of Three Hundred
5 Seventy Five Thousand Dollars and Zero Cents (\$375,000.00), represents a fair, adequate, and
6 reasonable resolution of the matter.⁵³ The Settlement was calculated using the information and
7 data uncovered during litigation, case investigation, as well as the formal and informal exchange
8 of information.⁵⁴ The Settlement takes into account the potential risks and rewards inherent in
9 any case and, in particular, in the case at issue.⁵⁵ Moreover, considering all of the facts and
10 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery
11 for the Class.⁵⁶

12 Assuming that the Class Counsel Fees Payment and Class Counsel Litigation Expenses
13 Payment, Class Representative Service Payment, and Administration Expenses Payment are
14 approved by the Court and paid in the full amounts provided for by the Settlement, the
15 Settlement provides for a Net Settlement Amount that is currently estimated to be One Hundred
16 Thirty-Eight Thousand Two Hundred Fifty Dollars and Zero Cents (\$138,250.00).⁵⁷
17 Additionally, the 25% of the PAGA Penalties, which is \$18,750 out of \$75,000, will be
18 distributed to Aggrieved Employees. As discussed in Part III, *supra*, the entire Net Settlement
19 Amount will be fully paid out to the Participating Class Members, in accordance with the
20 Settlement Agreement. The amount of each Participating Class Member's Individual Class
21 Payment will be calculated based on his or her Workweeks and each Aggrieved Employee's
22 Individual PAGA Payment will be calculated based on his or her PAGA Pay Periods.⁵⁸ There
23 is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for
24 purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula

25 ⁵² St. John Decl., ¶¶ 6-7.

26 ⁵³ *Id.*, ¶ 11, 13, 14 & 21.

27 ⁵⁴ *Id.*, ¶¶ 11-13.

28 ⁵⁵ *Id.*, ¶¶ 16-18.

⁵⁶ *Id.*, ¶¶ 11, 13, & 21.

⁵⁷ *Id.*, ¶ 14.

⁵⁸ Settlement Agreement, §§ 3.2.4 & 3.2.5.1.

1 need only have a reasonable, rational basis [to warrant approval], particularly if recommended
2 by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc.*,
3 *Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

4 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
5 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members,
6 Aggrieved Employees, and the State of California.⁵⁹ Although the recommendations of Class
7 Counsel are not conclusive, the Court can properly take the recommendations into account,
8 particularly if Class Counsel appears to be competent, and has experience with this type of
9 litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47.
10 Accordingly, the Court should grant preliminary approval of the Settlement.

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

12 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
13 conducted significant formal and informal discovery and exchanged documents, data, and
14 information prior to mediation.⁶⁰ The discovery and information that Class Counsel obtained
15 from Defendant, Plaintiff, and other sources allowed Class Counsel to develop valuation models
16 in order to evaluate the potential value and merit of the claims, and perform a complete
17 evaluation of Defendant’s defenses thereto.⁶¹ As outlined in the Declaration of Brian J. St. John,
18 Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior
19 to entering into the Settlement.⁶²

20 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE**

21 For settlement purposes, the requisites for establishing class certification are met, and
22 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶³
23 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
24 one of a common or general interest, of many persons, or when the Parties are numerous, and it
25 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*

26 ⁵⁹ St. John Decl., ¶¶ 11, 13, & 21.

27 ⁶⁰ *Id.*, ¶¶ 11-13 & 18.

28 ⁶¹ *Id.*, ¶ 18.

⁶² *Id.*, ¶¶ 11-13 & 16-18.

⁶³ Settlement Agreement, § 12.1.

(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.

This action involves a class of approximately forty-five (45) individuals.⁶⁴ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Administrator through a review of Defendant’s employment records regarding non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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⁶⁴ St. John Decl., ¶ 9.

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

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

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

16 Here, common issues of fact and law predominate as to each of the claims alleged and
17 asserted in the Operative Complaint. Based on the documents and information obtained through
18 formal and informal discovery and exchange of information in this case, Plaintiff contends that
19 Class Members were subject to the same or similar job duties and uniform operations and
20 employment practices, policies, and procedures during the time period at issue.⁶⁵ Plaintiff’s
21 claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to
22 Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum
23 wages for all hours worked, failing to provide compliant meal and rest periods and associated
24 premium pay, failing to timely pay wages during employment and upon termination of
25 employment, failing to provide complaint wage statements, failing to keep requisite payroll
26 records, and failing to reimburse necessary business-related expenses.⁶⁶

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28 ⁶⁵ St. John Decl., ¶ 16.

⁶⁶ *Ibid.*

1 Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect
2 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁷
3 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
4 compensation due to them from Defendant during the time period at issue.⁶⁸

5 Plaintiff maintains that the outcome of this litigation would be determined by
6 Defendant's alleged uniform operations and employment policies and procedures that applied
7 across its hourly-paid or non-exempt employees who worked in California during the Class
8 Period. Accordingly, the Court should certify the Class for settlement purposes only.

9 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS**
10 **COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES**
11 **PAYMENT**

12 Class Counsel has litigated the matter for over a year and was actively preparing the
13 matter for class certification and trial.⁶⁹ The ongoing work has been extensive, demanding, and
14 ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted
15 extensive investigations into the facts of the case and formal and informal discovery, including,
16 and not limited to, propounding multiple formal written discovery requests onto Defendant.
17 Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable
18 designees. Class Counsel reviewed documents and data⁷⁰ and also interviewed and obtained
19 information from Plaintiff and other Class Members, researched applicable law, undertook
20 damages/valuation calculations, and met and conferred with Defendant's counsel regarding the
21 pleadings, discovery, and the production of documents and data prior to mediation.⁷¹ Counsel
22 for the Parties also undertook extensive settlement discussions, which included participating in
23 a formal, full-day mediation.⁷²

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26 ⁶⁷ St. John Decl., ¶ 16.

27 ⁶⁸ *Ibid.*

28 ⁶⁹ *Id.*, ¶¶ 11-13.

⁷⁰ *Id.*, ¶ 12.

⁷¹ *Ibid.*

⁷² *Id.*, ¶ 11.

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁷³

The Settlement establishes a Gross Settlement Amount of Three Hundred Seventy-Five Thousand Dollars and Zero Cents (\$375,000.00) and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$131,250.00) and an amount not to exceed Eighteen Thousand Dollars and Zero Cents (\$18,000.00) for costs and expenses.⁷⁴ The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved 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 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and that an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.⁷⁵

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to

⁷³ St. John Decl., ¶¶ 6-7.

⁷⁴ Settlement Agreement, §§ 3.1 and 3.2.2.

⁷⁵ *Id.*, Exh. A.

1 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
2 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
3 in comparable litigation.” *Id.* at 50. In cases where class members present claims against a
4 settlement fund and the settlement agreement provides that the defendant agrees to paying the
5 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

13 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
14 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin*
15 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45%
16 of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
17 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’
18 fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around
19 one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
20 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
21 actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case
22 No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior
23 Court Case No. BC263646 (Sept. 2006) (wage and hour).

24 Class Counsel has borne all of the risks and costs of litigation and will not receive any
25 compensation until recovery is obtained.⁷⁶

26 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
27 and further argument at the time of filing Plaintiff’s motion for final approval of the Settlement
28

⁷⁶ St. John Decl., ¶ 19.

and application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment 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 Notice⁷⁷ 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 Workweeks or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.⁷⁸

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.⁷⁹ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁸⁰ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Class Payment is calculated and the number of Workweeks credited to them and how their Individual PAGA Payment, if any, is calculated and the number of PAGA Pay Periods credited to them.⁸¹

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⁷⁷ Settlement Agreement, Exh. A.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

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

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE ADMINISTRATOR

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

The Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.⁸² Any undeliverable Class Notice that is returned to the Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.⁸³ With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁸⁴ The Response Deadline to submit a request for exclusion, objection, or dispute regarding Workweeks or PAGA Pay Periods for Class Members to whom a Class Notice is re-sent, after having been returned as undeliverable to the Administrator, will be extended fourteen (14) calendar days.⁸⁵ The Administrator will receive and process requests for exclusion, objections, and any disputes regarding Workweeks or PAGA Pay Periods.⁸⁶

The Administrator will calculate the amounts of the Individual Class Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Class Payments; mail the Individual Class Payment checks to Participating Class Members; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and LWDA PAGA Payment; and perform such other tasks necessary to effectuate the terms of the

⁸² Settlement Agreement, § 4.5.

⁸³ *Id.*, § 4.6.

⁸⁴ *Id.*, § 1.10.

⁸⁵ *Id.*, § 7.3.4.

⁸⁶ *Id.*, § 7.7.

Settlement Agreement.⁸⁷ The Administration Expenses Payment are currently estimated to be Five Thousand Dollars and Zero Cents (\$5,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁸

The Parties and their counsel have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlement.⁸⁹

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employees 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.⁹⁰

Within thirty (30) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Administrator with the following information for each Class Member: (1) full name; (2) last known mailing address; (3) last known telephone number; (4) last known email address; (5) Social Security number; and (6) and number of Workweeks and PAGA Pay Periods during the Class Period and PAGA Period, respectively (collectively, "Class Data").⁹¹

No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.⁹² Within ten

⁸⁷ Settlement Agreement, § 7.7; St. John Decl., ¶ 15.

⁸⁸ Settlement Agreement, § 3.2.3.

⁸⁹ *Id.*, § 7.1.

⁹⁰ *Id.*, § 7.3.2.

⁹¹ *Id.*, §§ 1.8 & 4.2.

⁹² Settlement Agreement, § 7.3.1.

(10) calendar days of receipt of the Class List, the Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.⁹³ If a Class Notice is returned to the Administrator with a forwarding address, the Administrator will re-send the Class Notice to the forwarding address.⁹⁴ If no forwarding address is provided, then the Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.⁹⁵ Class Members will have until the applicable Response Deadline to mail a request for exclusion, mail a dispute regarding Workweeks or PAGA Pay Periods, and/or to mail an objection.⁹⁶

Defendant will make a one-time deposit of the Gross Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be established by the Administrator, within twenty-one (21) calendar days after the Effective Date.⁹⁷ Within ten (10) calendar days of the Effective Date, the Administrator will distribute: (1) the Individual Class Payments to Participating Class Members; (3) Individual PAGA Payments to Aggrieved Employees; (3) the Court-approved Class Representative Service Payment to Plaintiff; (4) the Court-approved Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel; (5) the LWDA PAGA Payment to the LWDA; and (5) the Court-approved Administration Expenses Payment to itself.⁹⁸

The Individual Class Payment and Individual PAGA Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹⁹ Checks that are not negotiated within the 180-day period will be cancelled.¹⁰⁰ The funds associated with such cancelled checks will be tendered by the Administrator to Legal Aid at Work.¹⁰¹

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR

⁹³ *Id.*, § 7.3.2.

⁹⁴ *Id.*, § 7.3.3.

⁹⁵ *Ibid.*

⁹⁶ *Id.*, §§ 7.4, 7.5, & 7.6.

⁹⁷ *Id.*, §§ 4.3 & 7.2.

⁹⁸ *Id.*, § 4.4.

⁹⁹ *Id.*, § 4.5.

¹⁰⁰ *Ibid.*

¹⁰¹ Settlement Agreement., § 4.7.

CLASS REPRESENTATIVE SERVICE PAYMENT

Plaintiff Melissa Garcia respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Service Payment in an amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Melissa Garcia.¹⁰² 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 Class Representative Service 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 Class Representative Service Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.¹⁰³ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.¹⁰⁴ Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Service Payment for her services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to her individual settlement payments.

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XII. CONCLUSION

¹⁰² *Id.*, § 1.14.

¹⁰³ St. John Decl., ¶ 20; Declaration of Melissa Garcia in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Garcia Decl."), ¶ 4.

¹⁰⁴ St. John Decl., ¶ 20; Garcia Decl., ¶¶ 3-6.

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Melissa Garcia as Class Representative; appoint Simpluris, Inc. as Administrator; preliminarily approve the allocations for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Service Payment, , and Administration Expenses Payment; approve the proposed Class Notice; direct the Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: October 14, 2022

LAWYERS *for* JUSTICE, PC

By:



Brian J. St. John
Attorneys for Plaintiff