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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

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

Plaintiff,

vs.

PACE SUPPLY CORP., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: SCV258764

Honorable René Auguste Chouteau
Courtroom 18

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Edwin
Aiwaizian); Declaration of Proposed Class
Representative (Seth Swan); and [Proposed]
Order filed concurrently herewith]

Hearing Date: TBD
Hearing Time: TBD
Hearing Place: Courtroom 18

Complaint Filed: May 6, 2016
Trial Date: August 17, 2018

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

PLEASE TAKE NOTICE that on a date and time to be determined by the Court, before the Honorable René Auguste Chouteau, in Courtroom 18 of the Superior Court of California for the County of Sonoma, located at 600 Administration Drive, Santa Rosa, California 95403, Plaintiff Seth Swan ("Plaintiff") will, and hereby does, move for an order:

- Granting preliminary approval of the Class 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 Edwin Aiwarzian, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, attorneys' fees and litigation costs and expenses, Service Award, and Settlement Administration Expenses;
- Granting approval of the PAGA Settlement and the allocation of two hundred thousand five hundred dollars (\$250,000) of the Gross Settlement Fund toward PAGA penalties of which seventy-five percent (75%) will be paid to the California Labor and Workforce Division Agency ("LWDA") and twenty-five percent (25%) will be paid to PAGA Group Members;
- Conditionally certifying the Class for settlement purposes;
- Appointing Plaintiff Seth Swan as Class Representative;
- Appointing Edwin Aiwarzian, Esq., Arby Aiwarzian, Esq., and Joanna Ghosh, Esq. of 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;
- 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 Class Settlement, at which time the Court will also consider whether to grant final approval of the requests for attorneys' fees and litigation costs and expenses, Service Award, and Settlement Administration Expenses.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwazian) and the Proposed Class Representative (Seth Swan) 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: July 23, 2018

LAWYERS for JUSTICE, PC

By:


Edwin Aiwazian
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiff Seth Swan ("Plaintiff") seeks approval of the PAGA Settlement and preliminary
4 approval of the Class Settlement reached by way of the Class Action and PAGA Settlement
5 Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and
6 between Plaintiff, individually and on behalf of the Class, on the one hand, and Defendant Pace
7 Supply Corp. ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and
8 Defendant (collectively, the "Parties") have agreed to settle this lawsuit for a Gross Settlement
9 Fund of five million dollars (\$5,000,000).¹ The Gross Settlement Fund includes the following:

- 10 (1) an award of attorneys' fees to Lawyers for Justice, PC ("Class Counsel");
11 (2) an award of litigation costs and expenses to Class Counsel;
12 (3) Service Award to Plaintiff;
13 (4) penalties under the California Labor Code Private Attorneys General Act of 2004
14 ("PAGA Payment"), of which seventy-five percent (75%) will be paid to the
15 California Labor and Workforce Development Agency ("LWDA") and the remaining
16 twenty-five percent (25%) will be distributed on a *pro rata* basis to Class Members
17 who worked for Defendant during the time period from February 25, 2015 to August
18 9, 2017 ("PAGA Group Members");
19 (5) Settlement Administration Expenses to Simpluris, Inc. ("Settlement Administrator");
20 and
21 (6) The amount available for payment to members of the Class who do not timely submit
22 a valid Request for Exclusion from the Class Settlement ("Settlement Class
23 Members") (i.e., the Net Settlement Fund).²

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

26 ///

27 _____
28 ¹ Settlement Agreement, attached as "EXHIBIT 1" to Declaration of Edwin Aiwazian ("Aiwazian Decl."), § 10.

² *Id.*, §§ 10 & 12.

All current and former hourly-paid or non-exempt employees who directly worked for Defendant within the State of California at any time during the period from May 6, 2012 continue up to and including August 9, 2017 ("Class" or "Class Members").³

The Class expressly does not include individuals who worked for Defendant through any staffing agencies at any time during the period of May 6, 2012 continuing up to and including August 9, 2017 ("Settlement Period"). The Class is estimated to consist of approximately nine hundred fifty-two (952) individuals.⁴

The Net Settlement Fund will be the Gross Settlement Fund of five million dollars (\$5,000,000), less the following payments, which are subject to Court approval:

- (1) attorneys' fees of up to 35% of the Gross Settlement Fund (i.e. up to \$1,750,000) to Class Counsel;
- (2) litigation costs and expenses in an amount not to exceed eighty thousand dollars (\$80,000) to Class Counsel;
- (3) Service Award of up to six thousand dollars (\$6,000) to Plaintiff;
- (4) payment of two hundred fifty thousand dollars (\$250,000) for PAGA Payment; and
- (5) Settlement Administration Expenses of up to sixteen thousand dollars (\$16,000) to the Settlement Administrator.⁵

Class Members who do not timely submit a valid Request for Exclusion from the Settlement Class (i.e., Settlement Class Members) will receive a *pro rata* share of the Net Settlement Fund ("Individual Settlement Share") based upon the number of weeks that they worked during the Settlement Period ("workweeks").⁶ PAGA Group Members will receive a *pro rata* share of the sixty-two thousand five hundred dollars (\$62,500) of the PAGA Payment allocated to PAGA Group Members based on their workweeks.⁷ The sixty-two thousand five hundred dollar figure is twenty-five percent (25%) of the two hundred fifty thousand dollar (\$250,000) PAGA Payment. Seventy-five percent (75%) of the two hundred fifty thousand dollar

³ Settlement Agreement, § 3.

⁴ Aiwasian Decl., ¶ 9.

⁵ Settlement Agreement, § 12.

⁶ *Id.*, §§ 11 & 19.

⁷ *Id.*, §§ 15 & 29(d)(ii).

1 (\$250,000) PAGA Payment (i.e., \$187,500) will be paid to the LWDA as provided in California
2 Labor Code section 2699(i).

3 The Settlement as it relates to the settlement and release of Released Claims which arise
4 under California Labor Code section 2698, *et seq.* ("PAGA Settlement") will be approved upon
5 the Preliminary Approval Date.⁸ On the Effective Date, Plaintiff and all PAGA Group Members
6 will be deemed to forever release, acquit, and discharge each of the Released Parties for all
7 Released Claims which arise under California Labor Code sections 2698, *et seq.*⁹

8 Also on the Effective Date, Plaintiff and all other Settlement Class Members will be
9 deemed to forever release, acquit, and discharge each of the Released Parties for all Released
10 Claims which do not arise under California Labor Code section 2698, *et seq.* ("Class
11 Settlement").¹⁰

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

13 Plaintiff Seth Swan ("Class Representative" and/or "Plaintiff") is a former employee of
14 Defendant Pace Supply Corp. ("Defendant"), which provides wholesale services and products
15 related to plumbing, hydronics, fire protection, water treatment, pump, water well, septic, sewer
16 and water works. Defendant has approximately nineteen (19) locations throughout California
17 and Hawaii.

18 On May 6, 2016, Plaintiff Seth Swan filed a Class Action Complaint for Damages &
19 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698 Et Seq.,
20 individually, and on behalf of all current and former hourly-paid or non-exempt employees who
21 worked Defendant within the State of California at any time during the period from four years
22 preceding the filing of the Complaint to final judgment, and on behalf of other aggrieved
23 employees pursuant to the Private Attorneys General Act, California Labor Code section 2698,
24 *et seq.* ("PAGA"). Plaintiff's lawsuit was filed in the Superior Court of California for the County
25 of Sonoma, Case No. SCV-258764. On July 22, 2016, Defendant filed an Answer to Class Action
26

27
28 ⁸ Settlement Agreement, §§ 28(b)(iv) & 53.

⁹ *Id.*, § 53. See *id.* at § 14, for the full scope of the "Released Parties."

¹⁰ See *id.* at § 52, for the full scope of the "Released Claims."

1 Complaint for Damages. On January 11, 2017, Defendant filed a First Amended Answer to Class
2 Action Complaint for Damages.

3 On December 1, 2016, Plaintiff filed a Notice of Motion and Motion to Compel Defendant
4 Pace Supply Corp. to Provide Further Responses to Plaintiff's Special Interrogatories (Set One)
5 No.s 1 and 2 ("Motion to Compel"). On January 11, 2017, Plaintiff filed a Notice of Motion and
6 Consolidated Motion and Compel Defendant Pace Supply Corp. To Provide Further Response to
7 Plaintiff's Special Interrogatories (Set Two), Form Interrogatories (Set One), & Requests for
8 Production (Set One) and Request for Sanctions ("Consolidated Motion to Compel"). On
9 February 16, 2017, Defendant filed an opposition to Plaintiff's Consolidated Motion to Compel.
10 On February 21, 2017, Plaintiff filed a reply in support of Plaintiff's Consolidated Motion to
11 Compel. On May 4, 2017, the Court entered an Order Granting Plaintiff Seth Swan's
12 Consolidated Motion to Compel.

13 Plaintiff's core allegation is that Defendant, *inter alia*, failed to properly pay minimum
14 and overtime wages, failed to provide compliant meal and rest periods and associated premiums,
15 failed to timely pay wages during employment, failed to timely pay wages upon termination,
16 failed to provide compliant wage statements, failed to keep requisite payroll records, failed to
17 reimburse business expenses, engaged in unfair business practices, and owes unpaid wages, civil
18 and non-civil penalties, restitution, injunctive and other equitable relief, and reasonable attorney's
19 fees and costs, under, *inter alia*, California Labor Code §§ 510, 1198, 226.7, 512(a), 1194, 1197,
20 1197.1, 201, 202, 203, 204, 226(a), 1174(d), 2800, and 2802, California Business & Professions
21 Code §§ 17200 *et seq.*, and PAGA.

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

26 The Parties have actively litigated this case since it was commenced on May 6, 2016. On
27 May 9, 2017, the Parties participated in a formal mediation conducted by Mark S. Rudy, Esq., a
28 well-regarded neutral experienced in mediating wage and hour class action matters. With the aid

of the mediator's evaluations, the Parties reached the Settlement described herein to resolve this action in its entirety.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Fund in the amount of five million dollars (\$5,000,000) to resolve the Class Settlement with respect to Settlement Class Members and the PAGA Settlement with respect to PAGA Group Members.¹¹

The Net Settlement Fund will be calculated as described in § I, *infra*, and is estimated to be approximately two million one hundred and two thousand (\$2,102,000). The Net Settlement Fund will be used to pay Settlement Class Members.¹²

The Parties have agreed to retain Simpluris, Inc. (hereinafter "Simpluris" or "Settlement Administrator") to handle the notice and settlement administration.¹³

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

(1) The Settlement Administrator will first calculate the number of weeks each Settlement Class Member worked during the Settlement Period ("workweeks").¹⁴

(2) The Settlement Administrator will divide each Settlement Class Member's workweeks by the total number of workweeks worked by all Settlement Class Members.¹⁵

(3) The Settlement Administrator will then multiply the resulting number by the Net Settlement Fund to result in the Settlement Class Member's Individual Settlement Share.¹⁶

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: thirty three point three four percent (33.34%) to wages (which will be reported on an IRS Form W-2); and thirty three point three percent (33.33%) to interest and thirty three point three percent

¹¹ Settlement Agreement, § 29(a).

¹² *Id.*, § 29(a)(i).

¹³ *Id.*, § 20.

¹⁴ *Id.*, § 29(d)(i).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

(33.33%) to penalties (which will be reported on an IRS Form 1099).¹⁷ Settlement Class Members will be issued payment of an Individual Settlement Share subject to reduction for employees' share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share.¹⁸ Defendant agrees to pay employer's share of taxes and withholdings with respect to the wage-portion of each Individual Settlement Share separately and in addition to the Gross Settlement Fund.¹⁹

The Parties have agreed that the Settlement Administrator will determine which Class Members worked for Defendant from February 25, 2015 to August 9, 2017 (i.e., PAGA Group Members) and their *pro rata* share of twenty five percent (25%) of the PAGA Payment²⁰, in accordance with the Settlement Agreement and as follows:

- (1) The Settlement Administrator will calculate the number of workweeks that each PAGA Group Member worked during Settlement Period.²¹
- (2) The Settlement Administrator will divide each PAGA Group Member's workweeks by the total number of workweeks worked by all PAGA Group Members.²²
- (3) The Settlement Administrator will then multiply the resulting number by twenty five percent (25%) of the PAGA Payment to result in the PAGA Group Member's PAGA Settlement Share.²³

Under the Agreement, the PAGA Payment will be fully paid out to the LWDA and all PAGA Group Members.²⁴

Each PAGA Group Member's PAGA Settlement Share will be allocated as one hundred percent (100%) penalties will be reported on an IRS Form 1099 and will be paid without reduction for any payroll taxes or withholdings and.²⁵

¹⁷ Settlement Agreement, § 31.

¹⁸, §§ 31-33.

¹⁹ *Ibid.*

²⁰ *Id.*, § 15.

²¹ *Id.*, § 29(d)(ii).

²² *Ibid.*

²³ *Ibid.*

²⁴ *Id.*, §§ 29(d)(ii) & 29(e).

²⁵ *Id.*, § 29(d)(ii).

1 The Individual Settlement Share checks issued to Settlement Class Members and PAGA
2 Settlement Share checks issued to PAGA Group Members will be valid and negotiable for one
3 hundred eighty (180) calendar days from the date of issuance.²⁶ The Settlement Administrator
4 will mail a single reminder postcard to those Settlement Class Members who have not cashed or
5 deposited their Individual Settlement Share checks and to those PAGA Group Members who have
6 not cashed or deposited their PAGA Settlement Share checks, on the date that is sixty (60)
7 calendar days before the date on which the checks will expire.²⁷ Checks that remain uncashed on
8 the date that is one hundred and eighty-one (181) calendar days after the date on which checks
9 were issued, will be cancelled.²⁸

10 The funds associated with cancelled Individual Settlement Share checks will be
11 transmitted 25% to the State Treasury for deposit in the Trial Court Improvement and
12 Modernization Fund; and 75% to the State Treasury for deposit into the Equal Access Fund of
13 the Judicial Branch.²⁹ The Settlement Administrator shall prepare a report regarding the
14 distribution plan pursuant to California Code Civil Procedure § 384, and the report will be
15 presented to the Court as ordered by the Court.³⁰ The funds associated with cancelled PAGA
16 Settlement Share checks will be transmitted to the California Department of Industrial Relations
17 Unpaid Wage Fund, in the respective names and amounts for the PAGA Group Members whose
18 checks are cancelled, within ten (10) calendar days of the expiration of the one hundred eighty
19 (180) calendar day period.³¹

20 A Class Member who wishes to be excluded from the settlement and release of Released
21 Claims which do not arise under California Labor Code section 2698, *et seq.* (i.e., Class
22 Settlement), must timely mail a valid Request for Exclusion to the Settlement Administrator.³²
23 Requests for Exclusion must be postmarked no later than thirty (30) calendar days after the date
24

25 ²⁶ Settlement Agreement, § 40.

26 ²⁷ *Ibid.*

27 ²⁸ *Ibid.*

28 ²⁹ *Id.*, § 40(b).

³⁰ *Ibid.*

³¹ *Id.*, § 40(a).

³² *Id.*, § 42.

1 the Class Notice is initially mailed to Class Members (“Response Deadline”). In the case of a re-
2 mailed Class Notice, the Request for Exclusion must be postmarked not more than ten (10)
3 calendar days after the Class Notice is re-mailed (the “Extended Response Deadline”).³³ To be
4 valid, a Request for Exclusion must be written and contain:

5 (1) the Class Member’s name, current address, telephone number, and last four digits of
6 his or her Social Security number;

7 (2) a clear statement that the Class Member wishes to opt out of the Class Settlement; and

8 (3) the name and number of the case.³⁴

9 Any Class Member who is properly excluded from the Class Settlement will not participate
10 in the Class Settlement, will not be bound by the terms of the Class Settlement, if approved, and
11 will not be issued an Individual Settlement Share.³⁵ Class Members who are PAGA Group
12 Members cannot request exclusion from the PAGA Settlement (i.e., the Settlement as it relates
13 to the settlement and release of Released Claims which arise under California Labor Code section
14 2698, *et seq.*). As of the Effective Date, all PAGA Group Members will be bound to the PAGA
15 Settlement and release the Released Claims that arise under PAGA against the Released Parties
16 and will be issued a PAGA Settlement Share.³⁶

17 A Class Member who disagrees with the number of workweeks attributed to him or her
18 on his or her Class Notice (“Employment Information”) may challenge the Employment
19 Information by submitting a written, signed dispute to the Settlement Administrator postmarked
20 on or before the Response Deadline, or in the event of the re-mailed Notice, on or before the
21 Extended Response Deadline.³⁷ A dispute must contain:

22 (1) the Class Member’s name, current address, telephone number, and the last four digits
23 of his or her Social Security number;

24 ///

25
26 ³³ Settlement Agreement, § 42.

27 ³⁴ *Ibid.*

28 ³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Id.*, § 50.

- (2) a clear statement of the workweeks the Class Member contends to be correct, as well as all supporting documents, if any exist; and
- (3) the name and number of the case.³⁸

For any Class Member to object to the Class Settlement, the Class Member must submit a written objection to the Settlement Administrator by mail no later than the Response Deadline, or in the case of re-mailed Class Notice, by the Extended Response Deadline.³⁹ To be valid, the objection must contain:

- (1) the Settlement Class Member's name, current address, telephone number, and last four (4) digits of his or her Social Security number;
- (2) the name and number of the case; and
- (3) why the Settlement Class Member objects to the Settlement and whether the objector wishes to be heard at the Final Approval Hearing.⁴⁰

V. LEGAL STANDARD FOR APPROVAL OF THE SETTLEMENT

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, n.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.

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³⁸ Settlement Agreement, § 50.

³⁹ *Id.*, § 44.

⁴⁰ *Id.*, § 45.

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).

Preliminary approval of a class action settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made 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 it. 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 to the class 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.

The settlement of a PAGA claim also requires court approval. See Cal. Lab. Code § 2699(l)(2) ("The superior court shall review and approve any settlement of any civil action pursuant to this part."). The civil penalties recovered through a PAGA claim are distributed seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to aggrieved employees. Cal. Lab. Code § 2699(i).

Importantly, however, "[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of" a class action.⁴¹ As such, a court's review of a PAGA settlement involves

⁴¹ *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11 (citing *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-88 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim)); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15.

1 consideration of several unique features and is distinct from the two-step approval process of a
2 class action settlement.

3 Although section 2699(l) of the California Labor Code does not set forth the criteria on
4 which a PAGA settlement is to be judged, courts have approved settlement of PAGA claims
5 where the settlement has been determined to be fair and reasonable. *See, e.g., Franco v. Ruiz*
6 *Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Garcia v. Gordon Trucking*
7 (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal.
8 Feb. 16, 2011) 2011 WL 672645, at *1; *Ramirez v. Benito Valley Farms, LLC*, Case No. 16-CV-
9 04708-LHK, 2017 W3670794 (N.D. Cal., Aug. 25, 2017); *Viceral v. Mistras Group, Inc.*, Case
10 No. 15-cv-02987-EMC, 2016 WL 5907869 (N.D. Cal., Oct. 11, 2016).

11 In a PAGA case, a court's focus is not the amount recovered as civil penalties, but whether
12 the total settlement amount achieves the PAGA's objectives. The purpose of the PAGA is "to
13 incentivize private parties to recover civil penalties for the government that otherwise may not
14 have been assessed and collected by overburdened state enforcement agencies." *Ochoa-*
15 *Hernandez v. CJADERS Foods, Inc.*, Case No. C. 08-2073 MHP, 2010 WL 1340777 (N.D., Cal.,
16 April 2, 2010) at *5; *Ramirez v. Benito Valley Farms, LLC, supra*, 2017 W3670794; *Viceral v.*
17 *Mistras Group, Inc., supra*, 2016 WL 5907869.

18 Unlike class actions, "[u]nnamed employees need not be given notice of the PAGA claim,
19 nor do they have the ability to opt-out of the representative PAGA claim." *Ochoa-Hernandez v.*
20 *CJADERS Foods, Inc., supra*, 2010 WL 1340777 at *5. A representative PAGA action need not
21 satisfy class action requirements, and no due process concern arises from the fact that there are
22 "nonparty aggrieved employees who are not given notice of, and an opportunity to be heard" in
23 such an action. *Arias, supra*, 46 Cal.4th at 984. A PAGA plaintiff acting as a private attorney
24 general is not required to give notice to the aggrieved employees that she seeks to represent and
25 when bringing an action under PAGA, and the plaintiff stands directly in the shoes of the State
26 of California. As such, the law does not contemplate nor require the application of a two-step
27 class action settlement approval process with respect to the settlement of PAGA claims. A PAGA
28 settlement is a settlement of claims for penalties and other remedies which the LWDA could

1 assess and collect on behalf of employees without providing notice or without their involvement
2 or approval.

3 **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE CLASS SETTLEMENT**
4 **AND APPROVE THE PAGA SETTLEMENT**

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

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

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

25 The Parties actively litigated this case since it was commenced on May 6, 2016. Both
26 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
27 claims and defenses. Class Counsel was actively preparing the matter for class certification and
28

1 trial.⁴²

2 Prior to engaging in mediation, the Parties conducted significant formal and informal
3 discovery and investigation into the facts of the case, including and not limited to, the formal
4 exchange, review, and analysis of tens of thousands of pages of documents and data produced by
5 Defendant.⁴³ The volume of data and documents that Class Counsel reviewed and analyzed
6 included and were not limited to: Plaintiff's and other Class Members' employment records, a
7 detailed sampling of Class Members' time and pay data, Defendant's Employee Handbook,
8 agreements (including but not limited to Defendant's Meal Break Waiver Agreement and
9 Arbitration Agreement), and internal memoranda, and Defendant's operations and employment
10 policies (such as, *inter alia*, Defendant's Personnel Guide and Human Resources Policies &
11 Procedures Manual), practices, forms, acknowledgments, and procedures, among other
12 information and documents.⁴⁴ Class Counsel interviewed Plaintiff and other Class Members to
13 gather facts and to identify potential witnesses.⁴⁵ Class Counsel prepared for, attended, and
14 deposed Defendant's Person Most Knowledgeable designee for two full days, and prepared for
15 and defended a full-day deposition of Plaintiff.⁴⁶ Counsel for the Parties also met and conferred
16 on numerous occasions, e.g., to discuss issues relating to the pleadings, motion practice,
17 discovery, and the production of documents and data prior to the mediation.⁴⁷ This included, and
18 was not limited to, a lengthy conference call in which counsel and experts for both Parties went
19 over the analytical framework and calculations.

20 The Parties also engaged in extensive settlement negotiations and participated in a formal,
21 full-day mediation conducted by mediator Mark S. Rudy, Esq., a well-respected mediator
22 experienced in mediating complex labor and employment matters.⁴⁸ Prior to and during the
23 mediation and settlement discussions, the Parties exchanged class information and engaged in an
24 intensive discussion regarding their evaluations of the case and various factual aspects of the case,

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⁴² Aiwazian Decl., ¶¶ 11-13.

26 ⁴³ Aiwazian Decl., ¶ 12.

27 ⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

28 ⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶ 11.

1 including but not limited to, the risks and delays of further litigation, the risks to the Parties of
2 proceeding with class certification and/or representative adjudication, the law relating to off-the-
3 clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative
4 claims, as well as the evidence produced and analyzed, and the possibility of appeals, among
5 other things.⁴⁹ During all settlement discussions, the Parties conducted their negotiations at arm's
6 length in an adversarial position.⁵⁰ Arriving at a settlement that was acceptable to both Parties
7 was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits
8 and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain
9 class certification and prevail at trial.⁵¹ After conducting formal and informal discovery and
10 investigations, extensive settlement negotiations, and with the aid of the mediator's evaluations,
11 the Parties have agreed that this case is well-suited for settlement given the legal issues relating
12 to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further
13 litigation.⁵²

14 The Settlement takes into account the strengths and weaknesses of each side's position
15 and the uncertainty of how the case might have concluded at certification and/or trial.⁵³ The
16 Parties have had the opportunity to interview and obtain information from their respective
17 witnesses.⁵⁴ Counsel for the Parties have also reviewed documents and information relating to
18 Plaintiff's and the Class Members' employment with Defendant and performed significant
19 research into the law concerning class certification, PAGA representative actions, off-the-clock
20 theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's
21 defenses, as well as facts discovered.⁵⁵ The Parties reached the Settlement based on this large
22 volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience
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24

25 ⁴⁹ Aiwazian Decl., ¶ 11.

26 ⁵⁰ *Ibid.*

27 ⁵¹ *Id.*, ¶¶ 17-19.

28 ⁵² *Id.*, ¶¶ 11-13 & 17-19.

⁵³ *Id.*, ¶¶ 17-19.

⁵⁴ *Id.*, ¶ 19.

⁵⁵ *Id.*, ¶¶ 11-13 & 17-19.

1 in complex wage-and-hour cases, including significant experience in California employment
2 class action litigation.⁵⁶

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

4 The Gross Settlement Fund of five million dollars (\$5,000,000) represents a fair,
5 adequate, and reasonable resolution of this case.⁵⁷ The Settlement was calculated using the
6 information and data uncovered during the litigation, formal discovery, case investigation, as well
7 as the informal exchange of information in the context of mediation.⁵⁸ The Settlement takes into
8 account the potential risks and rewards inherent in any case and, in particular, in this case.⁵⁹
9 Considering all of the facts and circumstances of this case, the Settlement provides a fair,
10 reasonable, and adequate recovery for the Class.⁶⁰

11 Assuming that Class Counsel's attorneys' fees and litigation costs and expenses, Service
12 Award, PAGA Payment, and Settlement Administration Expenses are approved and paid as
13 provided in the Settlement, the Settlement provides for a Net Settlement Fund that is currently
14 estimated to be two million eight hundred ninety eight thousand dollars (\$2,898,000).⁶¹ As
15 discussed in Part III, *supra*, the entire Net Settlement Fund will be distributed to Settlement Class
16 Members, on a *pro rata* basis based upon the number of workweeks attributed each Settlement
17 Class Member.⁶² In addition, twenty five percent (25%) of the PAGA Payment will be fully
18 paid out to the PAGA Group Members on a *pro rata* basis, based on the number of workweeks
19 credited to each.⁶³ There is no reason to doubt the fairness of the proposed plan of allocation and
20 distribution of the settlement funds, *especially* for purposes of preliminary approval. Even at the
21 final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to
22 warrant approval], particularly if recommended by experienced and competent class counsel." *In*
23 *re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d

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⁵⁶ *Id.*, ¶¶ 6-7.

25 ⁵⁷ Aiwasian Decl., ¶¶ 11, 13 & 22.

26 ⁵⁸ *Id.*, ¶¶ 11-13.

27 ⁵⁹ *Id.*, ¶¶ 17-19.

28 ⁶⁰ *Id.*, ¶¶ 11, 13, & 22.

⁶¹ *Id.*, ¶ 14.

⁶² Settlement Agreement, §§ 1.22 & 3.4(a).

⁶³ *Id.*, § 3.8(e)(2).

1 418, 429-30. In light of the foregoing considerations, Class Counsel believes that the Settlement
2 is fair, reasonable, adequate, and in the best interest of the Class.⁶⁴ Although the
3 recommendations of Class Counsel are not conclusive, the Court can properly take the
4 recommendations into account, particularly if Class Counsel appears to be competent and has
5 experience with this type of litigation, and significant discovery and investigation have been
6 completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should preliminarily
7 approve the Class Settlement and approve the PAGA Settlement.

8 **C. The Settlement is of Significant Value.**

9 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
10 conducted significant formal and informal discovery and exchanged tens of thousands of pages
11 of documents, data, and information prior to the mediation.⁶⁵ The discovery and information that
12 Class Counsel obtained from Defendant and through other sources allowed Class Counsel to
13 develop models to evaluate the potential value and merit of the claims, and to perform a complete
14 evaluation of Defendant's defenses thereto.⁶⁶ As outlined in the Declaration of Edwin Aiwazian,
15 Class Counsel performed extensive analysis of each and every claim pursuant to *Kullar* prior to
16 entering into the Settlement.⁶⁷

17 **VII. CERTIFICATION OF THE CLASS IS APPROPRIATE**

18 California Code of Civil Procedure section 382 "authorizes class actions when the
19 question is one of a common or general interest, of many persons, or when the parties are
20 numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc.*
21 *v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the
22 plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest
23 among class members." *Id.* For settlement purposes, the requisites for establishing class
24 certification are met, and the Parties have stipulated to conditional certification of the Class for
25 settlement purposes.⁶⁸

26 ⁶⁴ Aiwazian Decl., ¶¶ 11, 13, & 22.

27 ⁶⁵ Aiwazian Decl., ¶¶ 11-13 & 19.

28 ⁶⁶ *Id.*, ¶ 19.

⁶⁷ *Id.*, ¶¶ 11-13 & 17-19.

⁶⁸ Settlement Agreement, § 4.3(a).

The Class is ascertainable and so numerous as to make it impracticable to join all Class Members. 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. 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.

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 nine hundred fifty-two (952) individuals.⁶⁹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding its hourly-paid or non-exempt employees who worked within the State of California at any time during the period from May 6, 2012 continuing up to and including August 9, 2017 (i.e., the Settlement Period). As such, the Class is ascertainable and sufficiently numerous.

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

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Sav-On, supra*, 34

⁶⁹ Aiwazian Decl., ¶ 9.

Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated Plaintiff renders class certification appropriate.” *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

Here, common issues of fact and law predominate as to each claim alleged in this lawsuit. Based on the documents and information obtained through formal discovery and informal exchange of information, Plaintiff contends that all of the hourly-paid or non-exempt employees who directly worked for Defendant in California at any time during the time period at issue were subject to the same or similar employment practices, policies, and procedures.⁷⁰ Plaintiff’s claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, and failing to reimburse Plaintiff and the Class Members for necessary business-related expenses.⁷¹

Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁷² As a result, Plaintiff claims that he and all of the Class Members were uniformly not paid properly for all compensation due to them.⁷³

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⁷⁰ Aiwazian Decl., ¶ 17.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

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

VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL ATTORNEYS' FEES AND COSTS

Class Counsel has litigated this case for nearly two years and was actively preparing it for class certification and trial.⁷⁴ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement. Class Counsel conducted formal and informal investigations into the facts of the case, including and not limited to, propounding multiple sets of written discovery requests on Defendant, working with Plaintiff to respond to interrogatories and requests for production propounded by Defendant, deposing Defendant's Person Most Knowledgeable designee, preparing for and defending Plaintiff's deposition, and reviewing tens of thousands of pages of documents and data.⁷⁵ Class Counsel also interviewed and obtained information from Plaintiff and other Class Members, met and conferred with Defendant's counsel, researched applicable law, and undertook damages/valuation calculations among other tasks.⁷⁶ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁷⁷ Class Counsel also engaged in motion practice, drafted Plaintiff's mediation brief, and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁷⁸

Class Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a favorable result for the Class.⁷⁹

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⁷⁴ Aiwazian Decl., ¶¶ 11-13.

⁷⁵ *Id.*, ¶ 12.

⁷⁶ *Ibid.*

⁷⁷ *Id.*, ¶ 11.

⁷⁸ *Id.*, ¶ 12.

⁷⁹ *Id.*, ¶¶ 6-7.

1 The Settlement establishes a Gross Settlement Fund of five million dollars (\$5,000,000),
2 and provides for Class Counsel to apply for attorneys' fees in an amount not to exceed thirty five
3 percent (35%) of the Gross Settlement Fund (i.e. up to \$1,750,000) and litigation costs and
4 expenses in an amount not to exceed eighty thousand dollars (\$80,000).⁸⁰ The attorneys' fees
5 and litigation costs and expenses payments provided for by the Settlement are commensurate
6 with: (1) the risk that Class Counsel took in bringing and litigating this case, (2) the extensive
7 time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination
8 that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the
9 litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members,
10 and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts
11 to this matter. The proposed Class Notice provides the Class Members with information about
12 the amount allocated toward Class Counsel's attorneys' fees and litigation costs and expenses,
13 and that payment of attorneys' fees and litigation costs and expenses will be sought by Class
14 Counsel, as provided for by the Settlement.⁸¹

15 Trial courts have "wide latitude" in assessing the value of attorneys' fees. Their decisions
16 will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal.,*
17 *Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is
18 the best judge of the value of professional services rendered in his court." *Ketchum v. Moses*
19 (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should be
20 equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
21 incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82
22 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can
23 be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee
24 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
25 litigation." *Id.* at 50. In cases where class members present claims against a maximum settlement
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28 ⁸⁰ Settlement Agreement, § 29(b).

⁸¹ *Id.*, Exh. A.

1 amount and the settlement agreement provides that the Defendant agrees to paying the attorneys
2 a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

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

20 Class Counsel has borne all of the risks and costs of litigation and will not receive any
21 compensation until recovery is obtained.⁸² Class Counsel will provide extensive evidence as to
22 the time worked, litigation efforts, and further argument at the time of filing Plaintiffs' motion
23 for final approval of the Settlement and application for Class Counsel attorneys' fees and
24 litigation costs and expense, to be heard at the Final Approval Hearing. Considering the work
25 performed and the risks incurred, the attorneys' fees and costs provided for by the Settlement and
26 to be requested by Class Counsel are well within the range of reasonableness.

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⁸² Aiwazian Decl., ¶ 20.

IX. THE PROPOSED NOTICE IS ADEQUATE.

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See 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 Notice⁸³ provides information on, among other things, the meaning and nature of the Class; the terms and provisions of the Settlement; the monetary relief that the Settlement will provide to Settlement Class Members and PAGA Group Members; who will receive a PAGA Settlement Share; how to receive an Individual Settlement Share; how to request exclusion from the Class Settlement; how to object to the Class Settlement; the amounts sought for Class Counsel’s attorneys’ fees and litigation costs and expenses, Service Award, and Settlement Administration Expenses; and the date, time, and place of the Final Approval Hearing.⁸⁴ The Class Notice also appries Class Members of the number of workweeks attributed to each Class Member and how to challenge the number; state the estimated gross amount of his or her Individual Settlement Share, and, if applicable, his or her estimated PAGA Settlement Share; and how Individual Settlement Shares and PAGA Settlement Shares are calculated.⁸⁵

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.⁸⁶ The proposed Class Notice also recognizes that the Court has not yet granted final approval of the Class Settlement but has approved the PAGA Settlement.⁸⁷

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⁸³ Settlement Agreement, Exh. A.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *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.

X. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT
ADMINISTRATOR

The Parties have selected Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.⁸⁸

The Settlement Administrator will mail the Class Notice to each Class Member by first-class U.S. mail.⁸⁹ Prior to the mailing, the Settlement Administrator will use the United States Postal Service National Change of Address List (“NCOA”) to update the addresses of the Class Members.⁹⁰ If any Class Notice is returned as undeliverable within thirty (30) calendar days of mailing, the Settlement Administrator will perform a skip-trace procedure to obtain another address. If an updated address is located, the Settlement Administrator will re-mail the Class Notice to the new address.⁹¹ Settlement Administrator will receive Requests for Exclusion, objections, and any disputes and supporting documentation as to the workweeks stated in a Class Member’s Class Notice.⁹²

The Settlement Administrator will calculate the Individual Settlement Shares and PAGA Settlement Shares; calculate employees’ taxes applicable to the wage portion of the Individual Settlement Shares; transmit all payments provided for by the Settlement; provide necessary reports and declarations; and perform other usual and customary duties for administering a class action settlement.⁹³ The Settlement Administration Expenses are currently estimated to be

⁸⁸ Settlement Agreement, § 20.

⁸⁹ *Id.*, § 36.

⁹⁰ *Id.*, § 37.

⁹¹ *Ibid.*

⁹² *Id.*, § 34.

⁹³ *Ibid.*; See also, Aiwazian Decl., ¶ 16.

1 sixteen thousand dollars (\$16,000) and will be paid out of the Gross Settlement Fund subject to
2 approval by the Court.⁹⁴

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

7 **XI. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

8 At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for
9 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails
10 mailing of the Class Notice, in the form approved by the Court, to all known and reasonably
11 ascertainable Class Members based on Defendant's records.⁹⁵

12 Within ten (10) calendar days after the Preliminary Approval Date, Defendant will
13 provide the Settlement Administrator with the names, last known addresses, Social Security
14 numbers, and last known telephone numbers for each member of the Class, and the dates of
15 employment and number of workweeks that each member of the Class worked for Defendant
16 during the Settlement Period ("Class Data").⁹⁶

17 Within fourteen (14) business days after the Preliminary Approval Date, the Settlement
18 Administrator will mail the Court-approved Class Notice to the Class Members at their most last
19 known addresses via first-class U.S. mail.⁹⁷ With respect to any returned, undeliverable Class
20 Notice that has been returned to the Settlement Administrator within thirty (30) calendar days of
21 mailing, the Settlement Administrator will re-mail such Class Notice if a new address is obtained
22 within five (5) calendar days of receipt.⁹⁸

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27 ⁹⁴ Settlement Agreement, § 21.

28 ⁹⁵ *Id.*, § 36.

⁹⁶ *Id.*, § 35.

⁹⁷ *Id.*, § 36.

⁹⁸ *Id.*, § 37.

1 Class Members have until the Response Deadline (i.e., within 30 calendar days after the
2 initial mailing of the Class Notice), or, if applicable, until the Extended Response Deadline, to
3 submit to the Settlement Administrator their Requests for Exclusion, objections, and/or disputes
4 regarding their workweeks and/or dates of employment.⁹⁹ The Settlement Administrator will
5 forward all objections to Class Counsel and Defendant's counsel within three (3) calendar days
6 of receipt.¹⁰⁰

7 Within thirty (30) calendar days after the Effective Date, Defendant will fund the Gross
8 Settlement Fund.¹⁰¹ Within ten (10) calendar days after Defendant funds the Gross Settlement
9 Fund, the Settlement Administrator will make payment of attorneys' fees and litigation costs and
10 expenses to Class Counsel, Service Award to Plaintiff, 75% of the PAGA Payment to the LWDA,
11 and Individual Settlement Shares to Settlement Class Members and PAGA Settlement Shares to
12 PAGA Group Members.¹⁰² Within ten (10) business days after Defendant funds the Gross
13 Settlement Fund, the Settlement Administrator will make a payment to itself of the Settlement
14 Administration Expenses.

15 The Individual Settlement Share checks and PAGA Settlement Share checks will remain
16 valid and negotiable for one hundred and eighty (180) calendar days from the date of issuance.¹⁰³
17 If a Settlement Class Members has not cashed or deposited an Individual Settlement Share check
18 or a PAGA Group Member has not cashed or deposited a PAGA Settlement Share check by the
19 date that is sixty (60) calendar days before the checks expire, the Settlement Administrator will
20 mail a reminder postcard to the Settlement Class Member or PAGA Group Member.¹⁰⁴ Any
21 checks that remain uncashed one hundred and eighty-one (181) calendar days after the date on
22 which the checks were issued, will be cancelled.¹⁰⁵ Within ten (10) calendar days of the
23 expiration of the one hundred eighty-one (181) calendar days period, funds associated with
24 cancelled Individual Settlement Share checks will be transmitted as follows: 25% to the State

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⁹⁹ Settlement Agreement, § 37.

26 ¹⁰⁰ *Id.*, § 46.

27 ¹⁰¹ *Id.*, § 40.

28 ¹⁰² *Id.*, §§ 40(a) & 40(b).

¹⁰³ *Id.*, § 40.

¹⁰⁴ *Id.*, §§ 40(a) & 40(b).

¹⁰⁵ *Ibid.*

Treasury for deposit in the Trial Court Improvement and Modernization Fund and 75% to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch. Within ten (10) calendar days of the expiration of the one hundred eighty-one (181) calendar days period, funds associated with cancelled PAGA Settlement Share checks will be transmitted to the California Department of Industrial Relations Unpaid Wage Fund, in the name of the PAGA Group Member whose check is cancelled.¹⁰⁶

XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR SERVICE AWARD

Plaintiff respectfully requests that the Court appoint Seth Swan as the Class Representative and preliminarily approve a Service Award of up to six thousand dollars (\$6,000), as provided for by the Settlement.¹⁰⁷ It is within the Court's discretion to award payment to the Class Representative for his 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 incentive award include:

- (1) the risk to the class representative in commencing suit, both financial and otherwise;
- (2) the notoriety and personal difficulties encountered by the class representative;
- (3) the amount of time and effort spent by the class representative;
- (4) the duration of the litigation; and
- (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The requested Service Award is fair and appropriate. Plaintiff has 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—for example, Plaintiff provided responses to several formal written discovery requests propounded by Defendants, prepared for and attended a fully day of deposition, and reviewed his deposition

¹⁰⁶ Settlement Agreement, §§ 40(a) & 40(b).

¹⁰⁷ *Id.*, § 29(a)(ii).

1 testimony.¹⁰⁸ Plaintiff was available whenever Class Counsel needed him and actively tried to
2 obtain information that would benefit the Class.¹⁰⁹ Accordingly, it is appropriate and just for
3 Plaintiff to receive a reasonable Service Award for his services on behalf of the Class, in addition
4 to his Individual Settlement Share and PAGA Settlement Share.

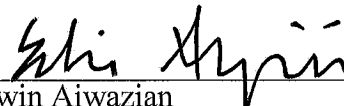
5 **XIII. CONCLUSION**

6 For the foregoing reasons, the Court is respectfully requested to grant approval of the
7 PAGA Payment and PAGA Settlement; grant preliminary approval of the Class Settlement;
8 certify the Class for settlement purposes; appoint and designate Edwin Aiwazian, Esq., Arby
9 Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers for Justice, PC as Class Counsel; appoint
10 and designate Plaintiff Seth Swan as Class Representative; appoint Simpluris, Inc. as Settlement
11 Administrator; preliminarily approve the plan of allocation and distribution of funds for
12 attorneys' fees and litigation costs and expenses to Class Counsel, Service Award to Plaintiff,
13 and Settlement Administration Expenses to the Settlement Administrator; approve the proposed
14 Class Notice; direct the Settlement Administrator to undertake the notice and settlement
15 administration process as provided for in the Settlement Agreement; and schedule a Final
16 Approval Hearing approximately five months after the Preliminary Approval Date.

17 Dated: July 23, 2018

LAWYERS for JUSTICE, PC

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19 By:


Edwin Aiwazian
Attorneys for Plaintiff

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28 ¹⁰⁸ Aiwazian Decl., ¶ 21; Declaration of Seth Swan ("Swan Decl."), ¶¶ 3-5.

¹⁰⁹ Aiwazian Decl., ¶ 21; Swan Decl., ¶¶ 3-6.