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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—STANLEY MOSK COURTHOUSE

GUADALUPE MOYA, individually, and
on behalf of other aggrieved employees
pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

USRG (CALIFORNIA) INC., a California
corporation; U.S. RESIDENTIAL GROUP
LLC, an unknown business entity; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: BC625588

Honorable Robert B. Broadbelt
Department 53

CLASS ACTION

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

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

Date: February 15, 2019
Time: 8:30 a.m.
Dept: 53
Reservation ID: 181120367673

Complaint Filed: June 30, 2016
Trial Date: None Set

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

PLEASE TAKE NOTICE that on February 15, 2019 at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Robert B. Broadbelt in Department 53 of the Superior Court of California for the County of Los Angeles, Stanley Mosk Courthouse located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff Guadalupe Moya ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting Plaintiff leave to file the [Proposed] First Amended Class Action Complaint for Damages and Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("First Amended Complaint") which is attached as "EXHIBIT 1" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement ("Proposed Order"), filed concurrently herewith;
- Granting preliminary approval of the proposed class and representative action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release ("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, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA Payment"), Attorneys' Fees and Costs, Class Representative Enhancement Payment, and Settlement Administration Costs;
- Certifying the Class for settlement purposes;
- Appointing Plaintiff Guadalupe Moya as Class Representative;
- Appointing Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "EXHIBIT 2" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;

- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator;
- Vacating the Final Status Conference currently scheduled for August 16, 2019 at 8:30 a.m. and the Trial currently scheduled for August 21, 2019 at 10:00 a.m.; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for Attorneys' Fees and Costs, Class Representative Enhancement Payment, Settlement Administration Costs, and allocation for the PAGA Payment.

This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Edwin Aiwarzian) and the Proposed Class Representative (Guadalupe Moya) 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: January 31, 2019

LAWYERS for JUSTICE, PC

By:

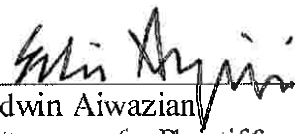

Edwin Aiwarzian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Guadalupe Moya ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("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 Defendants USRG (California) Inc. and U.S. Residential Group, LLC ("Defendants"), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the "Parties") have agreed to settle this lawsuit for a Class Settlement Amount of three hundred ten thousand dollars (\$310,000).¹ The Class Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members; (2) employee's share of payroll taxes with respect to the wage portion of Individual Settlement Shares; (3) Class Representative Enhancement Payment to Plaintiff; (4) attorneys' fees and reimbursement of any actual litigation costs and expenses (collectively, "Attorneys' Fees and Costs") to Class Counsel; (5) penalties allocated under the California Labor Code Private Attorneys General Act of 2004 ("PAGA Payment"); and (6) Settlement Administration Costs to Settlement Administrator.²

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

All individuals who are or were employed by Defendants in the State of California during the period from June 30, 2012 through April 30, 2018 as on-site employees classified as "exempt," holding the position of "property manager," "assistant property manager," "community manager," "assistant community manager," "maintenance supervisor," "assistant maintenance supervisor," and/or similar job titles ("Class" or "Class Members").³

The Class is estimated to consist of approximately fifty-seven (57) individuals.⁴

///

¹ Settlement Agreement, attached as "EXHIBIT I" to Declaration of Edwin Aiwasian ("Aiwasian Decl."), ¶ 9.

² *Ibid.*

³ *Id.*, ¶ 6.

⁴ Aiwasian Decl., ¶ 9.

Class Members who do not submit a timely and valid Request for Exclusion (“Participating Class Members”) will receive a share of the Net Settlement Amount on a *pro rata* basis, based upon the number of weeks each Class Member actually worked for Defendants during the period from June 30, 2012 through April 30, 2018 (“Class Period”) in the State of California as on-site employees classified as “exempt,” holding the title of “property manager,” “assistant property manager,” “community manager,” “assistant community manager,” “maintenance supervisor,” “assistant maintenance supervisor,” and or similar job title (“Workweeks”).⁵ The Net Settlement Amount refers to the Class Settlement Amount, less the following amounts subject to approval by the Court: Attorneys’ Fees and Costs, Settlement Administration Costs, Class Representative Enhancement Payment, and PAGA Payment.⁶

Class Members who were employed by Defendants during the period from May 27, 2015 through April 30, 2018 (“PAGA Period”) will receive a *pro rata* share of twenty-five percent (25%) of the PAGA Payment (i.e., \$1,250) based on the number of Workweeks credited to each of them (“Individual Workweeks”). The remaining seventy-five percent (75%) of the PAGA Payment (i.e., \$3,750) shall be paid to the California Labor and Workforce Development Agency (“LWDA”).

The Settlement resolves the Released Claims of Plaintiff and Participating Class Members and the PAGA Released Claims of Class Members against the Released Parties.⁷

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are a property management company. Plaintiff Moya Guadalupe is a former employee of Defendant.

On June 30, 2016, Plaintiff Guadalupe Moya filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Original Complaint”) against Defendants in the Los Angeles County Superior Court (“Court”), Case No.

⁵ Settlement Agreement, ¶¶ 16, 32, and 41(a)-41(b).

⁶ *Id.*, ¶ 18.

⁷ See *id.* at ¶ 26, for the full scope of the “Released Claims,” and *id.* at ¶ 27 for the definition of the “Released Parties.” A Class Member who timely submits a Request for Exclusion is still bound by the PAGA Settlement and will still release their Released Claims which arise under PAGA (“PAGA Released Claims”).

1 BC625588 (the "Action"). On August 8, 2016, Defendants filed Defendants USRG (California)
2 Inc. and U.S. Residential Group LLC's Answer to Plaintiff Guadalupe Moya's Unverified
3 Complaint Under the Private Attorneys General Act (PAGA), California Labor Code § 2698, *Et*
4 *Seq.*

5 On October 25, 2017, Defendants filed a Motion for Summary Judgment. On July 6,
6 2018, the Parties filed a Joint Notice of Settlement. On July 9, 2018, Defendants took the
7 Motion for Summary Judgment off calendar.

8 Plaintiff's core allegation is that Defendants have violated the California Labor Code by
9 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
10 of, *inter alia*, misclassifying them as exempt and failing to pay all wages due and owing, failing
11 to provide compliant meal period and rest periods and associated premium pay, failing to timely
12 pay wages during employment and upon termination, failing to provide compliant wage
13 statements, failing to maintain requisite payroll records, and failing to reimburse necessary
14 business expenses, and thereby engaged in unfair business practices under the California
15 Business and Professions Code and owes penalties recoverable under PAGA. Plaintiff contends
16 that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including,
17 and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

22 The Parties have actively litigated this matter since the Action was commenced on June
23 30, 2016. The Parties have conducted significant formal and informal discovery and
24 investigation into the claims. Both sides have propounded and responded to multiple sets of
25 formal written discovery requests in various forms. Class Counsel also prepared for and took the
26 deposition of Defendants' Person Most Knowledgeable and multiple non-party witnesses and
27 prepared for and defended the deposition of Plaintiff. The Parties engaged in extensive
28 discussions about the strengths and weaknesses of Plaintiff's claims and Defendants' defenses

thereto, to try to resolve the Action. Ultimately, the Parties reached the proposed Settlement described herein to resolve this Action in its entirety.

III. REQUEST FOR LEAVE TO FILE AMENDED COMPLAINT

To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties agree that leave should be granted for Plaintiff to amend the Original Complaint in order to flesh out and formally allege allegations that were ascertained through discovery and investigation in the Action.⁸ The First Amended Complaint will add claims under the California Labor Code and details to the alleged claims regarding the facts and legal theories. As such, Plaintiff respectfully requests leave to file the First Amended Complaint so that the operative complaint in the Action formally fleshes out the allegations that have been investigated, litigated, mediated, and ultimately settled by the Parties and so that the terms of the Settlement may be effectuated.⁹

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Class Settlement Amount in the amount of three hundred ten thousand dollars (\$310,000) to resolve the Released Claims of Plaintiff and the Class Members who do not opt out of the Settlement (i.e., Participating Class Members) and PAGA Released Claims of Class Members with respect to the Released Parties.¹⁰ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Class Settlement Amount: (1) Attorneys' Fees and Costs, which consists of attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Class Settlement Amount (\$117,800 out of \$310,000) and reimbursement of actual litigation costs and expenses to Class Counsel; (2) Class Representative Enhancement Payment of up to five thousand dollars (\$5,000) to Plaintiff; (3) PAGA Payment of five thousand dollars (\$5,000); and (4) Settlement Administration Costs, which are currently estimated not to exceed six thousand five hundred dollars (\$6,500) to the Settlement Administrator.¹¹ The Parties have agreed to

⁸ Aiwazian Decl., ¶ 10.

⁹ *Ibid.*

¹⁰ Settlement Agreement, ¶ 52. Notwithstanding the foregoing, a Class Member who timely submits a Request for Exclusion is still bound by the PAGA Settlement and will still release the PAGA Released Claims.

¹¹ *Id.*, ¶¶ 3, 8, 9, 17, 18, 21, & 30.

1 retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and
2 settlement administration process.

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

- 6 a. The Settlement Administrator will calculate the number of Individual
7 Workweeks for each individual Class Member and the total number of
8 Workweeks worked by all Class Members ("Class Workweeks").¹²
9 b. The Settlement Administrator will use the following formula: estimated
10 Individual Settlement Share= (Individual Workweeks÷ Class Workweeks) x
11 Net Settlement Amount.¹³
12 c. If any Class Members submit timely and valid Requests for Exclusion, the
13 Settlement Administrator will proportionately increase the Individual
14 Settlement Shares of each Participating Class Member to ensure that the entire
15 Net Settlement Amount is distributed to Participating Class Members.¹⁴

16 Each Participating Class Member who worked for Defendants during the PAGA Period
17 will be entitled to a *pro rata* share of twenty-five percent (25%) of the PAGA Payment (i.e.,
18 \$1,250) ("Employee PAGA Portion") based on the number of Workweeks credit to each of them,
19 in accordance with the Settlement Agreement.¹⁵

20 Each Participating Class Member's Individual Settlement Share will be allocated as
21 follows: one-third (1/3) wages, which will be reported on an IRS Form W-2; and two-thirds (2/3)
22 non-wages for interest and penalties, which will be reported on an IRS Form 1099.¹⁶ Each Class
23 Member who worked during the PAGA Period, *pro rata* share of the Employee PAGA Portion
24 will be allocated as one hundred percent (100%) non-wages for penalties, will be reported on an
25 IRS Form 1099, and will be paid out without reduction for any taxes or withholdings.¹⁷
26 Participating Class Members will be issued payment of their Individual Settlement Share subject
27 to reduction for the employee's share of taxes and withholdings with respect to the wage portion
28

¹² Settlement Agreement, ¶ 41(a).

¹³ *Id.*, ¶ 41(b).

¹⁴ *Id.*, ¶ 41(d).

¹⁵ *Id.*, ¶ 41(c).

¹⁶ *Id.*, ¶ 57.

¹⁷ *Id.*, ¶ 57.

1 of each Individual Settlement Share (“Individual Settlement Payment”).¹⁸ The employer’s share
2 of payroll taxes with respect to the wage portion of the Individual Settlement Shares will be paid
3 by Defendants separately and in addition to the Class Settlement Amount.¹⁹

4 The payment checks issued to Participating Class Members and Class Members who
5 worked for Defendant during the PAGA Period will remain valid and negotiable for one hundred
6 eighty (180) calendar days from the date of issuance.²⁰ Those payment checks that are returned
7 as undeliverable or that remain un-cashed for more than one hundred eighty (180) calendar days
8 after issuance will be cancelled and the funds associated with such cancelled checks will be
9 deposited with the California Department of Industrial Relations Unpaid Wage Fund, in the
10 name of the Class Member whose check is cancelled, in his or her respective Individual
11 Settlement Payment and/or share of the Employee PAGA Portion.²¹

12 A Class Member who wishes to be excluded from the Settlement of Released Claims
13 which do not arise under PAGA (“Class Settlement”) must timely submit a valid Request for
14 Exclusion to the Settlement Administrator.²² To be timely, the Class Member must mail or fax a
15 Request for Exclusion to the Settlement Administrator postmarked or fax-stamped on or before
16 the date that is sixty (60) calendar days from the mailing of the Class Notice or, in the case of re-
17 mailed Class Notice, the later of the original 60-day period or fifteen (15) calendar days after the
18 Settlement Administrator re-mails the Class Notice to the Class Member (“Response
19 Deadline”).²³ A Request for Exclusion must: (a) contain the case name and number; (b) be
20 signed by the Class Member; (c) contain the name, address, telephone number, and last four
21 digits of the Social Security number of the Class Member requesting exclusion from the Class
22 Settlement; (d) clearly state that the Class Member does not wish to be included in the Class
23 Settlement; (e) be returned by fax or by or mail to the Settlement Administrator at the specified
24 address and/or facsimile number; and (f) be faxed or postmarked on or before the Response

25 ¹⁸ Settlement Agreement, ¶ 15.

26 ¹⁹ *Id.*, ¶ 9 & 59.

27 ²⁰ *Id.*, ¶ 55.

28 ²¹ *Id.*, ¶ 55.

²² *Id.*, ¶ 50.

²³ *Id.*, ¶ 28.

Deadline.²⁴ If a Class Member's Request for Exclusion is timely submitted before the Response Deadline but is otherwise defective as to the requirements, the Class Member will be given the opportunity to cure the defect.²⁵ The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid.²⁶ The Class Member will have until the later of the applicable Response Deadline or fifteen (15) calendar days from the date of the cure letter, to mail or fax a revised Request for Exclusion to the Settlement Administrator.²⁷ Any Class Member who is properly excluded from the Class Settlement will not participate in the Class Settlement, will not be a Participating Class Member, will not be entitled to receive an Individual Settlement Share, will not be bound by the Class Settlement and will not have any right to object, appeal, or comment thereon.²⁸ Notwithstanding the foregoing, Class Members who submit timely and valid Requests for Exclusion will, nevertheless, be deemed to settle and resolve all PAGA Released Claims and, if they were employed by Defendants during the PAGA Period, they will still be issued payment for their share of the Employee PAGA Portion.²⁹

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Participating Class Members) can object to the Class Settlement.³⁰ Participating Class Members who wish to object to the Class Settlement must mail their written objection ("Notice of Objection") to the Settlement Administrator on or before the Response Deadline.³¹ The Notice of Objection must include: (a) the case name and number of the Action; (b) the objector's full name, signature, address, and telephone number; (c) a written statement clearly indicating that the Class Member wishes to object to the Class Settlement and stating all legal and factual grounds for the objection; (d) copies of any papers, briefs, or other documents upon which the

²⁴ Settlement Agreement, ¶ 28.

²⁵ *Id.*, ¶ 49.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Id.*, ¶ 50.

²⁹ *Ibid.*

³⁰ *Id.*, ¶ 52.

³¹ *Ibid.*

1 objection is based or which support the objection.³² The postmark date on the Notice of
2 Objection mailed to the Settlement Administrator will be deemed the exclusive means for
3 determining whether a Notice of Objection is timely.³³ Participating Class Members who fail to
4 object in accordance with these requirements will be deemed to have waived all objections to the
5 Class Settlement.³⁴

6 Class Members who wish to dispute the number of Workweeks credited to each of them
7 in their Class Notice may do so by mailing or faxing a written dispute to the Settlement
8 Administrator on or before the Response Deadline.³⁵ A valid dispute must contain: (a) the case
9 name and number of the Action; (b) the disputing Class Member's full name, signature, address,
10 and telephone number; (c) a written statement clearly indicating that the Class Member wishes to
11 dispute the number of Workweeks credited to him or her and the number of Workweeks that he
12 or she contends is correctly creditable to him or her; and (d) any evidence showing that the
13 number of Workweeks credited to him or her, based on Defendants' records, is inaccurate.³⁶

14 **V. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
15 **SETTLEMENTS**

16 The settlement of a class action requires approval by the Court. *Dunk v. Ford Motor Co.*
17 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
18 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
19 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
20 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.*
21 (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and
22 reasonable, whether certification of the class was proper, and whether the attorney fee award was
23 proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
24 decision to approve a class action settlement may be reversed only upon a strong showing of
25

26 ³² Settlement Agreement, ¶20.

27 ³³ *Ibid.*

28 ³⁴ *Ibid.*

³⁵ *Id.*, ¶ 48.

³⁶ *Ibid.*

1 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
2 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

23 **VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.**

24 The trial court has broad powers to determine whether a proposed settlement is fair under
25 the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make
26 this fairness determination, courts must consider several relevant factors, including “the strength
27 of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the
28 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 this matter since it was commenced on June 30, 2016. Both sides used the pre-Settlement time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for a motion for class certification.³⁷

Prior to reaching the Settlement, Class Counsel conducted significant investigation into the facts of the case and engaged in extensive formal and informal discovery and review and analysis of thousands of pages of documents and data produced by Defendants.³⁸ The volume of data and documents that Class Counsel reviewed and analyzed included, and was not limited to: Plaintiff and other Class Members’ employment records, a detailed sampling of Class Members’ time and pay data (including, but not limited to, timecards, payroll records, and wage statements), Defendants’ Employee Handbooks and Associate Handbook, agreements, internal

³⁷ Aiwazian Deel, ¶¶ 11-13.

³⁸ *Id.*, ¶ 12.

1 memoranda, job titles and descriptions, and Defendants' operations and employment practices
2 (such as Defendants' Hiring Guide), forms (such as Defendants' Reimbursement Form and
3 Mileage Reimbursement Form), procedures (such as Defendants' Payroll Procedures and Rent
4 Deduction through Payroll Procedures), and policies (such as Defendants' Meal (Lunch) Break
5 and Rest Scheduling Break policy, Break and Overtime policy, tuition reimbursement policy,
6 and holiday policy), among other information and documents.³⁹ Class Counsel interviewed
7 Plaintiff and other Class Members to gather facts and to identify potential witnesses.⁴⁰ Class
8 Counsel served multiple sets of formal written discovery requests and reviewed Defendants'
9 responses and supplemental response thereto.⁴¹ Class Counsel also worked with Plaintiff to
10 prepare responses to requests for production of documents which were propounded by
11 Defendants.⁴² Class Counsel also took the depositions of Defendants' Person Most
12 Knowledgeable designee and four (4) non-party witnesses and prepared for and defended the
13 deposition of Plaintiff.⁴³ Counsel for the Parties also met and conferred on numerous occasions,
14 e.g., to discuss issues relating to the pleadings, discovery, motion practice, and the production of
15 documents and data.⁴⁴ Class Counsel also prepared for and attended court proceedings and
16 settlement negotiations, among other tasks.⁴⁵

17 The Parties also engaged in extensive settlement negotiations over several months.⁴⁶ Prior
18 to and during the settlement discussions, the Parties exchanged class information and engaged in
19 an intensive discussion regarding their evaluations of the Action and various aspects of the
20 Action, including but not limited to, the risks and delays of further litigation, the risks to the
21 Parties of proceeding with representative adjudication and class certification, the law relating to
22 misclassification theory, meal and rest periods, wage-and-hour enforcement, and PAGA
23 representative claims, as well as the evidence produced and analyzed, and the possibility of

24 ³⁹ Aiwazian Decl., ¶ 12.

25 ⁴⁰ *Ibid.*

26 ⁴¹ *Ibid.*

27 ⁴² *Ibid.*

28 ⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶ 11.

1 appeals, among other things.⁴⁷ During all settlement discussions, the Parties conducted their
2 negotiations at arm's length in an adversarial position.⁴⁸ Arriving at a settlement that was
3 acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their
4 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that
5 they would be able to obtain class certification and prevail at trial.⁴⁹ After conducting
6 investigations, extensive formal and informal discovery, multiple depositions, and extensive
7 settlement negotiations, the Parties have agreed that this case is well-suited for settlement given
8 the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides
9 that would attend further litigation.⁵⁰

10 The Settlement takes into account the strengths and weaknesses of each side's position
11 and the uncertainty of how the case might have concluded at certification and/or trial.⁵¹ The
12 Parties have had the opportunity to interview and obtain information from their respective
13 witnesses.⁵² Counsel for the Parties have also reviewed documents and information relating to
14 Plaintiff's and the Class Members' employment with Defendants and performed significant
15 research into the law concerning PAGA representative actions, class certification,
16 misclassification theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims,
17 and Defendants' defenses thereto, as well as facts discovered.⁵³ The Parties have reached the
18 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class
19 Counsel have extensive experience in employment class actions, including significant experience
20 in California wage-and-hour litigation.⁵⁴

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24 ⁴⁷ Aiwazian Decl., ¶ 11.

25 ⁴⁸ *Ibid.*

26 ⁴⁹ *Id.*, ¶¶ 16-18.

27 ⁵⁰ *Ibid.*

28 ⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁴ *Id.*, ¶¶ 6-7.

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

2 The Class Settlement Amount of three hundred ten thousand dollars (\$310,000)
3 represents a fair, adequate, and reasonable resolution of this case.⁵⁵ The Settlement was
4 calculated using the information and data uncovered during the litigation, case investigation, as
5 well as the formal and informal exchange of information.⁵⁶ The Settlement takes into account
6 the potential risks and rewards inherent in any case and, in particular, in this case.⁵⁷ Moreover,
7 considering all of the facts and circumstances of this case, the Settlement represents a fair,
8 reasonable, and adequate recovery for the Class.⁵⁸

9 Assuming that the Attorneys' Fees and Costs, Class Representative Enhancement
10 Payment, PAGA Payment, and Settlement Administration Costs are approved by the Court and
11 paid in the full amounts provided for by the Settlement, the Settlement provides for a Net
12 Settlement Amount that is currently estimated to be one hundred seventy-five thousand seven
13 hundred dollars (\$175,700) subject to reduction for reimbursement of Class Counsel's actual
14 litigation costs and expenses.⁵⁹ As discussed in Part III, *supra*, the entire Net Settlement
15 Amount will be fully paid out to the Participating Class Members and the Employee PAGA
16 Portion will be fully paid out to Class Members who worked for Defendant during the PAGA
17 Period. The amount of each Participating Class Member's Individual Settlement Payments will
18 be calculated based on their Workweeks and each Class Member's, who worked during the
19 PAGA Period, share of the Employee PAGA Amount will be calculated based on their
20 Workweeks.⁶⁰ There is no reason to doubt the fairness of the proposed plan of allocation of the
21 settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n
22 allocation formula need only have a reasonable, rational basis [to warrant approval], particularly
23 if recommended by experienced and competent class counsel." *In re American Bank Note*
24 *Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

25 ⁵⁵Aiwazian Decl., ¶¶ 11, 13, 14 & 21.

26 ⁵⁶*Id.*, ¶¶ 11-13.

27 ⁵⁷*Id.*, ¶¶ 16-18.

28 ⁵⁸ *Id.*, ¶¶ 11, 13, & 21.

⁵⁹ *Id.*, ¶ 14.

⁶⁰ Settlement Agreement, ¶¶ 41(a) & 41(c) .

1 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
2 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁶¹
3 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
4 the recommendations into account, particularly if Class Counsel appears to be competent, and
5 has experience with this type of litigation, and significant discovery and investigation have been
6 completed. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
7 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, held multiple depositions, and exchanged
11 thousands of pages of documents, data, and information prior to engaging in settlement
12 discussions.⁶² The discovery and information that Class Counsel obtained from Defendants and
13 through other sources allowed Class Counsel to develop valuation models in order to evaluate
14 the potential value and merit of the claims, and perform a complete evaluation of Defendants'
15 defenses thereto.⁶³ As outlined in the Declaration of Edwin Aiwazian, Class Counsel performed
16 an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the
17 Settlement.⁶⁴

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

19 For settlement purposes, the requisites for establishing class certification are met, and the
20 Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶⁵
21 California Code of Civil Procedure Section 382 "authorizes class actions when the question is
22 one of a common or general interest, of many persons, or when the Parties are numerous, and it
23 is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court*
24 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
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26 ⁶¹ Aiwazian Decl., ¶¶ 11, 13, & 21.

27 ⁶² *Id.*, ¶¶ 11-13 & 18.

28 ⁶³ *Id.*, ¶ 18.

⁶⁴ *Id.*, ¶¶ 11-13 & 16-18.

⁶⁵ Settlement Agreement, ¶ 78.

1 “both [1] an ascertainable class and [2] a well-defined community of interest among class
2 members.” *Id.*

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

11 **A. The Class Is Ascertainable and Sufficiently Numerous.**

12 “Ascertainability is required in order to give notice to putative class members as to whom
13 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
14 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
15 by describing a set of common characteristics sufficient to allow a member of that group to
16 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
17 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
18 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

19 This action involves a class of approximately fifty-seven (57) individuals.⁶⁶ This class is
20 sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35
21 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is
22 not practical at that point). Further, all Class Members can and will be identified by Defendants
23 to the Settlement Administrator through a review of Defendants’ employment records regarding
24 on-site employees classified as “exempt,” holding the position of “property manager,” “assistant
25 property manager,” “community manager,” “assistant community manager,” “maintenance
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28 ⁶⁶ Aiwazian Deel., ¶ 9.

supervisor,” “assistant maintenance supervisor,” and /or similar job titles. As such, the Class is ascertainable and sufficiently numerous.

B. The 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 representative with claims or defenses typical of the class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34 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 Defendants’ 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 of the claims alleged and asserted in this lawsuit. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiff contends that all of the putative class members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁶⁷ Plaintiff also asserted that all of the Class Members were regularly limited in their use of independent discretion and judgment as their decisions were often subject to Defendants’ comprehensive policies and guidelines, and that Class Members spent the majority of their time carrying out the same duties as non-exempt employees. Plaintiff’s claims arise from Defendants’ alleged

⁶⁷ Aiwazian Deel., ¶ 16.

1 uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter*
2 *alia*, misclassifying them as exempt and failing to properly pay overtime wages for all hours
3 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
4 to timely pay wages during and after employment, failing to provide compliant Wage statements,
5 failing to maintain requisite payroll records, and failing to reimburse necessary business-related
6 expenses.⁶⁸

7 Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect
8 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶⁹
9 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
10 compensation due to them from Defendants during the time period at issue.⁷⁰

11 Plaintiff maintains that the outcome of this litigation would be determined by
12 Defendants' alleged uniform operations and employment policies and procedures that applied
13 across its on-site employees classified as "exempt," holding the position of "property manager,"
14 "assistant property manager," "community manager," "assistant community manger,"
15 "maintenance supervisor," "assistant maintenance supervisor," and /or similar job titles, who
16 worked for Defendants within the State of California during the Class Period. Accordingly, the
17 Court should certify the Class for settlement purposes only.

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

20 Class Counsel have litigated the Action for approximately two-and-one-half years and
21 were actively preparing the matter for representative adjudication and class certification.⁷¹ The
22 ongoing work has been extensive, demanding, and ultimately successful in achieving a
23 substantial settlement resolution. Class Counsel conducted extensive investigations into the facts
24 of the case and formal and informal discovery, including, and not limited to, propounding
25 multiple formal written discovery requests onto Defendants and reviewing Defendants'

26 ⁶⁸ Aiwazian Deel., ¶ 16.

27 ⁶⁹ *Ibid.*

28 ⁷⁰ *Ibid.*

⁷¹ *Id.*, ¶¶ 11-13.

1 responses thereto, working with Plaintiff to review and respond to request for production of
2 documents propounded by Defendants, taking the depositions of Defendants' Person Most
3 Knowledgeable designee and four (4) non-party witnesses, preparing and defending the
4 deposition of Plaintiff, and reviewing thousands of pages of documents and data.⁷² Class
5 Counsel also interviewed and obtained information from Plaintiff and other Class Members,
6 researched applicable law, engaged in motion and *ex parte* practice, undertook
7 damages/valuation calculations, and met and conferred with Defendants' counsel regarding the
8 pleadings, motion practice, discovery, and the production of documents and data prior to
9 settlement discussions.⁷³ Counsel for the Parties also undertook extensive settlement
10 discussions.⁷⁴

11 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
12 experience to obtain a great result.⁷⁵

13 The Settlement establishes a Class Settlement Amount of three hundred ten thousand
14 dollars (\$310,000), and provides for Class Counsel to apply to the Court for an award in an
15 amount not to exceed thirty-eight percent (38%) of the Class Settlement Amount (i.e., \$117,800)
16 for attorneys' fees and for reimbursement of actual litigation costs and expenses.⁷⁶ The
17 Attorneys' Fees and Costs award provided for by the Settlement is commensurate with (1) the
18 risk that Class Counsel took in bringing and litigating this case, (2) the extensive time, effort and
19 expense that Class Counsel dedicated to the case, (3) the skill and determination that Class
20 Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5)
21 the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the
22 other cases that Class Counsel had to turn down in order to devote their time and efforts to this
23 matter. The proposed Class Notice provides the Class Members with information about the
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26 ⁷² Aiwazian Decl., ¶ 12.

27 ⁷³ *Ibid.*

28 ⁷⁴ *Id.*, ¶ 11.

⁷⁵ *Id.*, ¶¶ 6-7.

⁷⁶ Settlement Agreement, ¶ 3.

1 amount allocated toward attorneys' fees, and that Attorneys' Fees and Costs will be sought, as
2 provided for by the Settlement.⁷⁷

3 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
4 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
5 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
6 "experienced trial judge is the best judge of the value of professional services rendered in his
7 court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney
8 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
9 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal. 5th 480, 503 (citing
10 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a
11 recovery that can be "monetized" with a reasonable degree of certainty, the trial court should
12 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
13 in comparable litigation." *Id.* at 50. In cases where class members present claims against a
14 settlement fund and the settlement agreement provides that the defendant agrees to paying the
15 attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

23 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
24 depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin*
25 *AntitSimpluris Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of
26 45% of the \$7.3 million settlement amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film*

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28 ⁷⁷ Settlement Agreement, Exh. B.

1 *Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement
2 amount as attorneys' fees). California courts routinely approve class action attorneys' fee
3 awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162
4 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in
5 marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los
6 Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v.*
7 *IKEA*, Los Angeles Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

8 Class Counsel has borne all of the risks and costs of litigation and will not receive any
9 compensation until recovery is obtained.⁷⁸

10 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
11 and further argument at the time of filing Plaintiff's motion for final approval of the Settlement
12 and application for attorneys' fees and costs and at the Final Approval Hearing. Considering the
13 work performed and the risks incurred, the Attorneys' Fees and Costs provided for by the
14 Settlement and to be requested by Class Counsel are well within the range of reasonableness.

15 **IX. THE PROPOSED CLASS NOTICE IS ADEQUATE.**

16 California statutory and case law vests the Court with broad discretion in fashioning
17 appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50
18 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject
19 matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623
20 F.2d 1338, 1351 (quoting *Marshall v. HolidayMagic* (9th Cir. 1977) 550 F.2d 1173, 1177).

21 The proposed Class Notice⁷⁹ describes the Settlement, the deadlines and procedures to
22 submit a Notice of Objection to the Class Settlement, Request for Exclusion from the Class
23 Settlement, or dispute regarding Workweeks, and the date and time set for the Final Approval
24 Hearing.⁸⁰

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27 ⁷⁸ Ai waz ian Decl., ¶19.

⁷⁹ Settlement Agreement, Exh. B.

28 ⁸⁰ *Ibid.*

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.⁸¹ The proposed Class Notice recognizes that the Court has not yet granted final approval of the Settlement.⁸² The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share and, if applicable, their share of the Employee PAGA Portion are calculated and the number of Workweeks credited to them.⁸³

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 *Carit*, *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 AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris (hereinafter, “Simpluris” or “Settlement Administrator”) to administer the Settlement.

The Settlement Administrator will mail the Class Notice to each Class Member by First Class U.S. Mail in both English and Spanish.⁸⁴ Prior to mailing the Class Notice to the Class Members, the Settlement Administrator will use the National Change of Address Database to update or correct the addresses of the Class Member.⁸⁵ With respect to any returned, undeliverable Class Notice that is returned with a forwarding address on or before the Response Deadline, the Settlement Administrator will promptly re-mail the Class Notice via First Class

⁸¹ Settlement Agreement, Exh. B.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Id.*, ¶ 45.

⁸⁵ *Id.*, ¶ 46.

1 U.S. Mail to the forwarding address and will indicate the date of such re-mailing.⁸⁶ With respect
2 to any returned, undeliverable Class Notice returned without a forwarding address, the
3 Settlement Administrator will perform a skip-trace procedure to obtain a more current address
4 and, if an updated address is located, undertake a single remailing to such address.⁸⁷ The
5 Settlement Administrator will receive Requests for Exclusion, Notices of Objection, and any
6 disputes regarding Workweeks.⁸⁸

7 The Settlement Administrator will calculate the amounts of the Individual Settlement
8 Shares and shares of the Employee PAGA Portion; deduct and transmit applicable state and/or
9 federal taxes thereon; mail the payment checks to Participating Class Members and Class
10 Members who worked during the PAGA Period; issue W-2 and 1099 forms; calculate and
11 disburse the Attorneys' Fees and Costs, Class Representative Enhancement Payment, and PAGA
12 Payment; and perform such other tasks necessary to effectuate the terms of the Settlement
13 Agreement.⁸⁹ The Settlement Administration Costs are currently estimated to be six thousand
14 five hundred dollars (\$6,500) and will be paid out of the Class Settlement Amount, subject to
15 approval by the Court.⁹⁰

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

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

21 At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for
22 the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
23 entails mailing of the Class Notice, in the form approved by the Court, to all known and
24 reasonably ascertainable Class Members based on Defendants' records.⁹¹

25 ⁸⁶ Settlement Agreement, ¶ 46.

26 ⁸⁷ *Ibid.*

27 ⁸⁸ *Id.*, ¶ 30.

28 ⁸⁹ *Ibid.*; Aiwazian Decl., ¶ 15.

⁹⁰ Settlement Agreement, ¶ 30.

⁹¹ *Id.*, ¶ 43(d).

1 Within fourteen (14) calendar days after the date on which the Court grants preliminary
2 approval of the Settlement, Defendants will provide the Settlement Administrator with a
3 complete list of all Class Members which will be formatted in a readable Microsoft Office Excel
4 spreadsheet and will include (to the extent available) each Class Member's full name, last-known
5 mailing address and telephone number, Social Security number, dates of hire and termination of
6 employment with Defendants, Workweeks, and any other relevant information needed to
7 calculate settlement payments (collectively, "Class List").⁹²

8 Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator
9 will mail the Class Notice to the Class Members via First Class U.S. Mail.⁹³ Any Class Notice
10 returned to the Settlement Administrator as non-deliverable on or before the Response Deadline
11 will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the
12 Settlement Administrator will indicate the date of such re-mailing on the Class Notice.⁹⁴ If no
13 forwarding address is provided, the Settlement Administrator will promptly attempt to locate a
14 more current address using a skip-trace, or other search using the name, address and/or Social
15 Security number of the Class Member involved, and will then perform a single re-mailing.⁹⁵
16 Class Members will have sixty (60) calendar days from the original mailing of the Class Notice
17 or if the Class Notice is re-mailed, the Class Member will have the later of fifteen (15) calendar
18 days after re-mailing or sixty (60) calendar days from the original mailing, to submit a Request
19 for Exclusion, Notice of Objection, or dispute regarding Workweeks to the Settlement
20 Administrator.⁹⁶

21 Defendants will deliver the Class Settlement Amount within ten (10) business days after
22 the Effective Date into a qualified settlement account created by the Settlement Administrator.⁹⁷
23 Within ten (10) calendar days after Defendants deposit the funds comprising the Class
24 Settlement Amount into a qualified settlement fund, the Settlement Administrator will distribute

25 ⁹² Settlement Agreement, ¶ 44.

26 ⁹³ *Id.*, ¶ 45.

27 ⁹⁴ *Id.*, ¶ 46.

28 ⁹⁵ *Ibid.*

⁹⁶ *Id.*, ¶ 46.

⁹⁷ *Id.*, ¶ 34. See *id.*, ¶ 11 for the definition of "Effective Date."

the: (1) Individual Settlement Payments to Participating Class Members and shares of the Employee PAGA Portion to Class Members who worked during the PAGA Period; (2) the Court-approved Class Representative Enhancement Payment to Plaintiff; (3) the Court-approved Attorneys' Fees and Costs award to Class Counsel; (4) the LWDA's portion of the PAGA Payment to the LWDA; and (5) the Court-approved Settlement Administration Costs to itself.⁹⁸

The payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁹⁹ Such checks will automatically be cancelled if not cashed or deposited by the Class Member within the 180-day period, and the funds associated with such cancelled checks will be deposited with the California Department of Industrial Relations Unpaid Wage Fund, in the name of the Class Member whose check is cancelled, in his or her respective amount.¹⁰⁰

XII. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE ENHANCEMENT PAYMENT

Plaintiff Guadalupe Moya respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the request for Class Representative Enhancement Payment in an amount up to five thousand dollars (\$5,000) to Plaintiff as provided for by the Settlement.¹⁰¹ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

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⁹⁸ Settlement Agreement, ¶ 34.

⁹⁹ *Id.*, ¶ 55.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, ¶ 8.

The Class Representative Enhancement Payment to Plaintiff 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.¹⁰² Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.¹⁰³ For example, Plaintiff reviewed and responded to requests for production of documents, prepared for and attended a full-day of deposition, and reviewed her transcript thereafter.¹⁰⁴ Accordingly, it is appropriate and just for Plaintiff to receive reasonable Class Representative Enhancement Payment for her services on behalf of the Class, in addition to her Individual Settlement Payment.

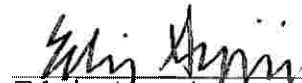
XIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; grant leave to file the First Amended Complaint; certify the Class for settlement purposes; appoint and designate Lawyers for Justice, PC as Class Counsel; appoint and designate Plaintiff Guadalupe Moya as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Class Representative Enhancement Payment, PAGA Payment, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately mid-August 2019.

Dated: January 31, 2019

LAWYERS for JUSTICE, PC

By:


Edwin Aiwasian
Attorneys for Plaintiff

¹⁰² Aiwasian Decl., ¶ 20; Declaration of Guadalupe Moya In Support Of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Moya Decl."), ¶¶ 3-4.

¹⁰³ Aiwasian Decl., ¶ 20; Moya Decl., ¶¶ 3, 4, & 7.

¹⁰⁴ Moya Decl., ¶ 5.