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

TED FERGUSON, individually, and on
behalf of other members of the general public
similarly situated, and LISA FLATHERS and
JOEL FLORES, individually, and on behalf
of other members of the general public
similarly situated and on behalf of all other
aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiffs,

v.

G3 ENTERPRISES, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CV-21-000848

Honorable John D. Freeland
Department 23

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Kyla Buenaventura); Declarations of
Proposed Class Representatives (Ted
Ferguson, Lisa Flathers, and Joel Flores);
and [Proposed] Order filed concurrently
herewith]

Date: July 25, 2023
Time: 8:30 a.m.
Department: 23

Complaint Filed: February 23, 2021
FAC Filed: June 27, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that on July 25, 2023 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable John D. Freeland in Department 23 of the Superior Court of California for the County of Stanislaus, located at 801 10th Street, Modesto, California 95354, Plaintiffs Ted Ferguson, Lisa Flathers, and Joel Flores (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Action Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Kyla Buenaventura, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiffs Ted Ferguson, Lisa Flathers, and Joel Flores as Class Representatives;
- Preliminarily appointing Arby Aiwarzian, Joanna Ghosh, and Kyla Buenaventura of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Representative Action Settlement (“Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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

This Motion is made pursuant to Rule 3.764, Rule 3.769, and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Kyla Buenaventura) and Proposed Class Representatives (Ted Ferguson, Lisa Flathers, and Joel Flores) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: June 30, 2023

LAWYERS for JUSTICE, PC

By: 
Kyla Buenaventura
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Ted Ferguson, Lisa Flathers, and Joel Flores (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Class Action and PAGA Action Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant G3 Enterprises, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Total Settlement Amount of three million eight hundred forty-two thousand four hundred forty-seven dollars and no cents (\$3,842,447.00).¹ The Total Settlement Amount includes the following: (1) Individual Class Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) an Enhancement Award of eighteen thousand five hundred dollars and zero cents (\$18,500.00) to Plaintiff Ferguson, and Enhancement Awards of eleven thousand five hundred dollars and zero cents (\$11,500.00) each to Plaintiffs Flathers and Flores (for a combined total of forty-one thousand five hundred dollars (\$41,500.00) in Enhancement Awards)³; (3) the Attorneys’ Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-eight percent (38%) of the Total Settlement Amount, or \$1,460,129.86, and reimbursement of litigation costs and expenses not to exceed thirty thousand dollars and no cents (\$30,000.00)⁴; (4) the Settlement Administration Costs to the Settlement Administrator in the amount of thirty thousand dollars and no cents (\$30,000.00);⁵ (5) the amount of four hundred thousand dollars and no cents (\$400,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA Settlement Amount”), of which 75% (i.e., \$300,000.00) will be distributed to the

¹ Class Action and PAGA Action Settlement Agreement and Release, attached as “**EXHIBIT 1**” to Declaration of Kyla Buenaventura (“Buenaventura Decl.”), ¶¶ 16, 39, and 50. If the number of Workweeks during the Class Period exceed 151,044 (“Workweeks Threshold”), the Total Settlement Amount will increase pro rata to the extent the Workweeks Threshold is exceeded. See *id.*, ¶ 54.

² *Id.*, ¶¶ 16, 17, 22, and 39.

³ *Id.*, ¶¶ 16, 39, and 52.

⁴ *Id.*, ¶¶ 16, 39, and 51.

⁵ *Id.*, ¶¶ 16, 39, and 53.

California Labor and Workforce Development Agency (“LWDA Payment”) and 25% (i.e., \$100,000.00) (“Aggrieved Employees’ PAGA Settlement”) will be distributed to all current and former non-exempt or hourly-paid employees of Defendant who worked for Defendant in the State of California at any time during the PAGA Period (“Aggrieved Employees”);⁶ and (6) payments in the amount of three hundred forty-two thousand four hundred forty-seven dollars and zero cents (\$342,447.00) previously made by Defendant to some Class Members in exchange for releases as part of their individual settlement program related to the actions (“Post-Action Payments”).⁷

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

All current and former non-exempt or hourly-paid individuals who worked for Defendant in the State of California at any time during the Class Period (“Class” or “Class Members”).⁸

The Class is estimated to consist of approximately one thousand one hundred and sixty-five (1,165) individuals.⁹

Class Members who do not submit a timely and valid request to be excluded from the Settlement (“Participating Class Members”) will receive a share of the Net Settlement Amount (“Individual Class Payment”) on a *pro rata* basis, based upon the number of weeks each Participating Class Member worked for Defendant in California in a non-exempt or hourly-paid position during the Class Period.¹⁰

Aggrieved Employees will receive a share of the Aggrieved Employees’ PAGA Settlement (“Individual PAGA Payment”) on a *pro rata* basis, based upon the number of weeks each Aggrieved Employee worked for Defendant in California in a non-exempt or hourly-paid position during the PAGA Period.¹¹

⁶ Settlement Agreement, ¶¶ 2, 16, 28, and 39.

⁷ *Id.*, ¶¶ 31 and 39.

⁸ Settlement Agreement, ¶ 17. “Class Period” is defined as the period of time from February 23, 2017 through the earlier of: (a) the date the Court grants preliminary approval of this Settlement (i.e. enters the Preliminary Approval Order); or (b) the exhaustion of 151,044 Workweeks (unless Defendant elects, pursuant to paragraph 54, to extend the date of the Class Period). *See id.*, ¶¶ 8, 54.

⁹ Buenaventura Decl., ¶ 9.

¹⁰ Settlement Agreement, ¶¶ 17, 55.a.

¹¹ Settlement Agreement, ¶¶ 18 and 55.b.

Defendant has estimated that for the period from February 23, 2017 through April 15, 2023, there are no more than 137,313 Workweeks. If it is determined by the Settlement Administrator that the total number of Workweeks during the Class Period exceeds 137,313 by more than ten percent (10%), then, at Defendant's election: (a) the Total Settlement Amount will be increased on a pro rata basis for any Workweeks added above the 10% increase; or (b) the Class Period and PAGA Period will end on the date the number of Workweeks reaches 151,044.¹²

The Settlement resolves the Released Class Claims of Plaintiffs and the Participating Class Members, and the Released PAGA Claims of the Aggrieved Employees and the State of California against the Released Parties.¹³

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant manufactures packaging for various beverage industries, provides transportation services for the agricultural industry, has warehouse, trucking, and intermodal operations, and provides label printing services for the wine, food, and beverage industries. Defendant is headquartered in Modesto, California and has fifteen (15) locations throughout California. Plaintiffs Ted Ferguson, Lisa Flathers, and Joel Flores are former employees of Defendant.

On February 23, 2021, Plaintiff Ferguson filed a Class Action Complaint for Damages, Case No. CV-21-000848, in the Stanislaus County Superior Court ("Court") ("Class Action").

On April 29, 2021, Defendant filed an Answer to Plaintiffs' Unverified Class Action Complaint.

¹² Settlement Agreement, ¶ 54.

¹³ See *id.* at ¶ 32, for the full scope of the "Released Class Claims," and *id.* at ¶ 34 for the definition of the "Released Parties."

1 On August 1, 2022, Plaintiffs Flores and Flathers provided written notice by online
2 submission to the LWDA and by certified mail to Defendant of the specific provisions of the
3 California Labor Code and Industrial Welfare Commission Wage Orders that were violated.

4 On October 5, 2022, Plaintiffs Flathers and Flores filed a Complaint for Enforcement
5 Under the Private Attorneys General Act, California Labor Code §2698 Et Seq. seeking civil
6 penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) against
7 Defendant, Case No. CV-22-004547. (“PAGA Action”). (The Class Action, together with the
8 PAGA Action shall be referred to collectively as the “Actions”)

9 On December 27, 2022, the Honorable John D. Freeland entered an order relating the
10 Class Action and PAGA Action and assigned the PAGA Action to Department 23 of the
11 Superior Court for the County of Stanislaus.

12 On June 27, 2023, Plaintiffs filed a First Amended Class Action Complaint for Damages
13 & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*
14 to consolidate the claims and Plaintiffs in the Class Action and PAGA Action (“Operative
15 Complaint”).

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

27 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
28 associated with any of the allegations in the Class and PAGA Actions, and further denies that

the Class and PAGA Actions are appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

On December 2, 2021, Plaintiff Ferguson propounded multiple sets of formal written discovery requests on Defendant including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One), and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on February 17, 2022 and September 16, 2022, Defendant responded to Plaintiff Ferguson's discovery requests.

The Parties have actively litigated the Actions since the Class Action was commenced on February 23, 2021. On April 15, 2023, the Parties participated in a formal, full-day mediation conducted by Lynn Frank, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Participating Class Members), and the Released PAGA Claims of the Aggrieved Employees and the State of California against the Released Parties.¹⁴ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount equal to thirty-eight percent (38%) of the Total Settlement Amount (\$1,460,129.86) and reimbursement of costs and expenses in an amount not to exceed thirty thousand dollars (\$30,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed thirty thousand dollars (\$30,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Settlement Amount (i.e., \$300,000.00 out of \$400,000.00) ("LWDA Payment"); (4) payment to the

¹⁴ Settlement Agreement, ¶ 39.

Aggrieved Employees of 25% of the PAGA Settlement Amount (“Aggrieved Employees PAGA Settlement”); (5) payments in the amount of up to \$18,500.00 to Plaintiff Ferguson and up to \$11,500.00 each to Plaintiffs Flathers and Flores (for a combined total of \$41,500.00) (“Enhancement Awards”); and (6) Post-Action Payments in the amount of three hundred forty-two thousand four hundred forty-seven dollars and zero cents (\$342,447.00).¹⁵ The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member’s *pro rata* share of the available Net Settlement Amount (“Individual Class Payment”), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will divide the estimated Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks by the Estimated Workweek Value to yield his, her, or their estimated Individual Class Payment.
- b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield the “Final Workweek Value,” and multiply each Participating Class Member’s individual Workweeks by the Final Workweek Value to yield his, her, or their Individual Class Payment.¹⁶

The Settlement Administrator will determine each Aggrieved Employee’s *pro rata* share of the Employees’ Portion of the PAGA Settlement Amount (“Individual PAGA Payment”), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will divide the Aggrieved Employees’ PAGA Settlement (i.e., 25% of the PAGA Settlement Amount) by the total number of Aggrieved Employee’s Workweeks worked during the PAGA Period to yield the “PAGA Workweek Value,” and multiply each Aggrieved Employee’s individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his, her, or their Individual PAGA Payment.¹⁷

Each Individual Class Payment will be allocated as follows: twenty percent (20%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported

¹⁵ Settlement Agreement, ¶ 55.a.

¹⁶ *Id.*, ¶ 55.a.

¹⁷ *Id.*, ¶ 55.b.

on an IRS Form 1099.¹⁸ Participating Class Members will be issued payment of their Individual Class Payments subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Class Payment (the net payment is referred to as an "Individual Class Payment").¹⁹ Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of the Individual Class Payment ("Employer Taxes") in addition to the Gross Settlement Amount.²⁰ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.²¹

Each Individual Class Payment and Individual PAGA Payment check will be negotiable for one-hundred eighty (180) calendar days from the date of issuance.²² Individual Class Payment and Individual PAGA Payment checks that are not negotiated within the 180-day period will be cancelled.²³ The funds associated with such cancelled checks will be transmitted by the Settlement Administrator to the State of California Unclaimed Property Division, in the name of the Participating Class Member and/or Aggrieved Employee whose check is cancelled and in the respective amount of the cancelled check.²⁴

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing by sending a Request for Exclusion.²⁵ To be timely, the Class Member must mail the Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is sixty (60) calendar days from the initial mailing of the Notice ("Response Deadline").²⁶ A Request for Exclusion must: (1) contain the case name and number of the Class Action; (2) be signed by the Class Member; (3) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion from the Class Settlement; (4) clearly state that the Class Member does not

¹⁸ Settlement Agreement, ¶ 56.

¹⁹ Settlement Agreement, ¶ 56.

²⁰ Settlement Agreement, ¶¶ 12 and 50.

²¹ *Id.*, ¶ 56.

²² *Id.*, ¶ 71.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, ¶ 64.b.

²⁶ *Id.*, ¶ 35.

wish to be included in the Class Settlement; and (5) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.²⁷ Class Members who submit a complete and timely Request for Exclusion will not be bound by the terms of the Class Settlement and Final Approval Order and Judgment as it pertains to the Class Settlement.²⁸ However, if a Class Member is an Aggrieved Employee, they will be bound to the PAGA Settlement and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.²⁹

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Participating Class Members) have standing to object to the Class Settlement.³⁰ Participating Class Members who wish to object in writing to the Class Settlement must mail to the Administrator a written notice of objection (“Notice of Objection”), postmarked on or before the Response Deadline.³¹ The Notice of Objection must: (1) include the case name and number of the Class Action; (2) contain the objector’s full name, signature, address, telephone number, and last four digits of his or her Social Security number; (3) include a written statement of all grounds for the objection to the Class Settlement accompanied by any legal support for such objection; (4) include copies of any papers, briefs, or other documents upon which the objection to the Class Settlement is based; (5) include the name and contact information of any attorney representing the objector with respect to his or her objection to the Class Settlement; and (6) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³² Participating Class Members may also present their objections orally at the Final Approval Hearing.³³

Class Members who wish to dispute the number of Workweeks credited to them in their Notice may do so by mailing a dispute regarding Workweeks (“Workweeks Dispute”) to the

²⁷ Settlement Agreement, ¶ 35.

²⁸ Settlement Agreement, ¶ 64.b.

²⁹ *Ibid.*

³⁰ *Id.*, ¶¶ 25 and 64.a.

³¹ *Id.*, ¶¶ 25 and 64.a.

³² *Ibid.*

³³ *Id.*, ¶ 64.a.

Settlement Administrator on or before the Response Deadline.³⁴ The Workweeks Dispute must: (a) contain the case name and number of the Class Action; (b) be signed by the Class Member; (c) contain the full name, address, telephone number, and the last four digits of the Social Security number of the disputing Class Member; (d) clearly state the Class Member disputes the number of Workweeks credited to them and what they contend is the correct number to be credited to them; (e) include information and/or attach documentation supporting the number of Workweeks they contend should be credited to them; and (f) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.³⁵

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both

³⁴ *Id.*, ¶¶ 41 and 65.

³⁵ Settlement Agreement, ¶ 41.

1 federal and state courts, assures class members of the protection of procedural due process
2 safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement
3 class.

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

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

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

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

at 1027 (citation omitted).

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

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

The Parties actively litigated the Actions since the Class Action was commenced on February 23, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.³⁶

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.³⁷ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiffs and other Class Members, a detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s Employee Handbooks, multiple iterations of Defendant’s Organization Charts, arbitration agreements, collective bargaining agreements, a list of exempt job positions, training documents (including but not limited to ADP Training, Concur Expense Training audio file, G3 Meal Wheel, Shift Equalizer, and various documents about how to use Defendant’s time clock), Human Resources Bulletins (including but not limited to various iterations of Defendant’s practical Matters, HR Reminders, Vantage Timekeeping Requirements, Timecard Attestation

³⁶ Buenaventura Decl., ¶¶ 10-12.

³⁷ Buenaventura Decl., ¶ 12.

Poster, Meal Period and Rest Break Requirements Reference, Timekeeping for Managers of Non-Exempt Non-Union Employees and Exempt Employees and Managers), postings, individual settlement agreements and documents, job descriptions, forms (including but not limited to Expense Forms, Time Correction Forms, and the New Hire Orientation Acknowledgement Form), among other information and documents.³⁸ Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.³⁹ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties.⁴⁰ Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.⁴¹ Class Counsel also drafted Plaintiffs' mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.⁴²

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Lynn Frank, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁴³ Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, arbitration agreements, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁴ During all settlement discussions, the Parties conducted their

³⁸ *Ibid.*

³⁹ Buenaventura Decl., ¶ 12.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Id.*, ¶ 11.

⁴⁴ Buenaventura Decl., ¶ 11.

negotiations at arm's length in an adversarial position.⁴⁵ Arriving at a settlement that was acceptable to the Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and avoid certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁶ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴⁷

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.⁴⁸ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁹ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, arbitration agreements, Plaintiffs' claims, and Defendant's defenses thereto, as well as facts discovered.⁵⁰ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁵¹

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

The Settlement, which provides for a Total Settlement Amount of three million eight hundred forty-two thousand four hundred forty-seven dollars and no cents (\$3,842,447.00), represents a fair, adequate, and reasonable resolution of the matter.⁵² The Settlement was

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶¶ 11, 16-18.

⁴⁷ Buenaventura Decl., ¶¶ 11, 16-18.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Id.*, ¶¶ 11-13 & 16-18.

⁵¹ Buenaventura Decl., ¶¶ 2-7.

⁵² Buenaventura Decl., ¶¶ 11, 13, 14, & 21.

1 calculated using the information and data uncovered during litigation, case investigation, as well
2 as the formal and informal exchange of information.⁵³ The Settlement takes into account the
3 potential risks and rewards inherent in any case and, in particular, in the case at issue.⁵⁴
4 Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement
5 represents a fair, reasonable, and adequate recovery for the Class.⁵⁵

6 Assuming that the Attorneys' Fees and Costs, Enhancement Payments, PAGA
7 Settlement Amount, and Settlement Administration Costs are approved by the Court and paid
8 in the full amounts provided for by the Settlement, and excluding Post-Action Payments, the
9 Settlement provides for a Net Settlement Amount that is currently estimated to be one million
10 five hundred thirty-eight thousand three hundred seventy dollars and fourteen cents
11 (\$1,538,370.14).⁵⁶ Additionally, 75% of the PAGA Settlement Amount, which is \$300,000.00
12 out of \$400,000.00, will be distributed to the LWDA and 25% of the PAGA Settlement Amount,
13 which is \$100,000.00 out of \$400,000.00, will be distributed to the Aggrieved Employees.⁵⁷ As
14 discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the
15 Participating Class Members and the PAGA Settlement Amount will be fully paid out to the
16 LWDA and the Aggrieved Employees, in accordance with the Settlement Agreement. The
17 amount of each Participating Class Member's Individual Class Payment will be calculated based
18 on his or her Workweeks during the Class Period and the amount of each Aggrieved Employee's
19 Individual PAGA Payment will be calculated based on their Workweeks during the PAGA
20 Period.⁵⁸ 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
26 ⁵³ *Id.*, ¶¶ 11-13.

27 ⁵⁴ *Id.*, ¶¶ 16-18.

28 ⁵⁵ Buenaventura Decl., ¶¶ 11, 13, & 21.

⁵⁶ *Id.*, ¶ 14.

⁵⁷ *Ibid.*

⁵⁸ Settlement Agreement, ¶¶ 55.a.-b.

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.⁵⁹
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 investigation have been completed, as is the case
6 here. *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 and exchanged a large volume of
11 documents, data, and information prior to mediation.⁶⁰ The discovery and information that Class
12 Counsel obtained from Defendant and through other sources allowed Class Counsel to develop
13 valuation models in order to evaluate the potential value and merit of the claims, and perform a
14 complete evaluation of Defendant's defenses thereto.⁶¹ As outlined in the Declaration of Kyla
15 Buenaventura, Class Counsel performed an extensive analysis of each and every claim pursuant
16 to *Kullar* prior to entering into the Settlement.⁶²

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

18 For settlement purposes, the requisites for establishing class certification are met, and
19 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁶³
20 California Code of Civil Procedure Section 382 "authorizes class actions when the question is
21 one of a common or general interest, of many persons, or when the Parties are numerous, and it
22 is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court*
23 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
24 "both [1] an ascertainable class and [2] a well-defined community of interest among class
25 members." *Id.*

26 ⁵⁹ Buenaventura Decl., ¶¶ 11, 13, & 21.

27 ⁶⁰ Buenaventura Decl., ¶¶ 11-13, & 18.

28 ⁶¹ *Id.*, ¶ 18.

⁶² *Id.*, ¶¶ 11-13 & 16-18.

⁶³ Settlement Agreement, ¶ 80.

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This action involves a class of approximately one thousand one hundred sixty-five (1,165) individuals.⁶⁴ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid and non-exempt employees in California during the Class Period. 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

⁶⁴ Buenaventura Decl., ¶ 9.

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 Defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs 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 the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiffs contend that 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.⁶⁵ Plaintiffs’ claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁶

Plaintiffs also contend that Defendant’s payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.⁶⁷ As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all

⁶⁵ Buenaventura Decl., ¶ 16.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

1 compensation due to them from Defendant during the time period at issue.⁶⁸

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

6 **VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR**
7 **ATTORNEYS' FEES AND COSTS**

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

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

22 The Settlement establishes a Total Settlement Amount of three million eight hundred
23 forty-two thousand four hundred forty-seven dollars and no cents (\$\$3,842,447.00), and
24 provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of
25

26 ⁶⁸ *Ibid.*

27 ⁶⁹ Buenaventura Decl., ¶¶ 11-13.

28 ⁷⁰ *Id.*, ¶ 12.

⁷¹ *Ibid.*

⁷² *Id.*, ¶ 11.

⁷³ *Id.*, ¶¶ 2-7.

attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Total Settlement Amount (i.e., \$1,460,129.86) and an amount of up to thirty thousand dollars (\$30,000.00) for reimbursement of litigation costs and expenses.⁷⁴ The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁷⁵

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

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement

⁷⁴ Settlement Agreement, ¶ 51.

⁷⁵ *Id.*, Exh. A.

that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]” and “[t]he percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

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

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

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

VIII. THE PROPOSED NOTICE IS ADEQUATE

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50

⁷⁶ Buenaventura Decl., ¶ 19.

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 Notice⁷⁷ describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, mail a Request for Exclusion from the Class Settlement, and/or mail a Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁷⁸

The proposed 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 Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁹ The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.⁸⁰ The proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Class Payment and Individual PAGA Payment are calculated and the number of Workweeks credited to them.⁸¹

The proposed 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 Notice.

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

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

⁷⁷ Settlement Agreement, Exh. A.

⁷⁸ Settlement Agreement, Exh. A .

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

The Settlement Administrator will mail the Notice to each Class Member by First-Class U.S. mail.⁸² With respect to any Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternative address by way of skip-trace, and re-mail the Notice within ten (10) calendar days.⁸³ The Response Deadline to submit a Request for Exclusion, Notice of Objection, or Workweeks Dispute for Class Members to whom a Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be extended by fifteen (15) calendar days.⁸⁴ The Settlement Administrator will receive and process Requests for Exclusion, Notices of Objection, and any Workweeks Disputes.⁸⁵

The Settlement Administrator will calculate the amounts of the Individual Class Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Class Payments; calculate the amounts of the Individual PAGA Payments; mail the Individual Class Payment and Individual PAGA Payment checks to Class Members and Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Awards, and the LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁶ The Settlement Administration Costs are currently estimated not to exceed thirty thousand dollars (\$30,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁸⁷

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for

⁸² Settlement Agreement, ¶ 63(b).

⁸³ *Id.*, ¶ 63(c).

⁸⁴ Settlement Agreement, ¶ 36.

⁸⁵ *Id.*, ¶ 63(d).

⁸⁶ *Id.*, ¶¶ 51, 52, 55, 56, and 70(a); Buenaventura Decl., ¶ 15.

⁸⁷ Settlement Agreement, ¶ 53.

the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.⁸⁸

Within twenty-one (21) calendar days of preliminary approval, Defendant will provide the Settlement Administrator with the following information for each Class Member: each Class Member's full name; last known mailing address; last known telephone number; Social Security number; start and end dates of employment as a non-exempt or hourly-paid employee of Defendant in California during the Class Period, Workweeks worked during the Class Period, and Workweeks worked during the PAGA Period, as reflected in Defendant's records.⁸⁹ (collectively, "Class Member Data").⁹⁰

Within fourteen (14) calendar days of receipt of the Class Member Data, the Settlement Administrator will mail the Notice to the Class Members via First-Class U.S. Mail.⁹¹ With respect to Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.⁹² Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, mail a Workweeks Dispute, and/or a Notice of Objection.⁹³

Within fourteen (14) calendar days of the Effective Date, Defendant will make a one-time deposit of the Gross Settlement Amount⁹⁴, plus an amount sufficient to pay Employer Taxes, into a Qualified Settlement Account to be established by the Settlement Administrator.⁹⁵ Within seven (7) calendar days of the full funding of the Gross Settlement Amount, the Settlement Administrator will distribute: (1) the Individual Class Payments to Participating Class Members; (2) the Individual PAGA Payments to Aggrieved Employees; (3) the Court-

⁸⁸ Settlement Agreement, ¶ 63(a).

⁸⁹ *Id.*, ¶ 63.a.

⁹⁰ *Id.*, ¶ 63.a.

⁹¹ *Id.*, ¶ 63.b.

⁹² *Id.*, ¶ 63.b.

⁹³ *Id.*, ¶ 36.

⁹⁴ The "Gross Settlement Amount" is equal to the Total Settlement Amount (\$3,842,447.00) less the Post-Action Payments (\$342,447.00).

⁹⁵ Settlement Agreement, ¶ 70.b.

1 approved Enhancement Awards to Plaintiffs; (4) the Court-approved Attorneys' Fees and Costs
2 to Class Counsel; (5) the LWDA Payment to the LWDA; and (6) the Court-approved Settlement
3 Administration Costs to itself.⁹⁶

4 The Individual Class Payment and Individual PAGA Payment checks will remain
5 negotiable for 180 calendar days from the date of their issuance.⁹⁷ Checks that are not negotiated
6 within the 180-day period will be cancelled.⁹⁸ The funds associated with such cancelled checks
7 will be tendered by the Settlement to the State of California Unclaimed Property Fund, in the
8 names of those Participating Class Members and/or Aggrieved Employees who did not cash
9 their checks, and in the respective amounts of the uncashed checks.⁹⁹

10 **XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR**
11 **ENHANCEMENT AWARDS**

12 Plaintiffs Ted Ferguson, Lisa Flathers, and Joel Flores respectfully request that the Court
13 appoint them as the Class Representatives and preliminarily approve the Enhancement Awards
14 in the amount of up to eighteen thousand five hundred dollars and zero cents (\$18,500.00) to
15 Plaintiff Ferguson, and in the amount of up to eleven thousand five hundred dollars and zero
16 cents (\$11,500.00) each to Plaintiffs Flathers and Flores (\$41,500.00 total).¹⁰⁰ It is within the
17 Court's discretion to award payment to a class representative for their efforts and work. *Vranken*
18 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000
19 participation award to a single class representative). The factors that courts may consider in
20 determining whether to make an enhancement payment include: (1) the risk to the class
21 representative in commencing suit, both financial and otherwise; (2) the notoriety and personal
22 difficulties encountered by the class representative; (3) the amount of time and effort spent by
23 the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack
24 thereof) enjoyed by the class representative as a result of the litigation. *Id.*

25
26 ⁹⁶ *Id.*, ¶ 70.c.

27 ⁹⁷ *Id.*, ¶ 71.

28 ⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Id.*, ¶ 52.

The Enhancement Awards are fair and appropriate. Plaintiffs 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.¹⁰¹ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.¹⁰² Accordingly, it is appropriate and just for Plaintiffs to each receive an Enhancement Award, in addition to their Individual Class Payments and/or Individual PAGA Payments, for their services on behalf of the Class and the State of California.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Arby Aiwasian, Joanna Ghosh, and Kyla Buenaventura of Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiffs Ted Ferguson, Lisa Flathers, and Joel Flores as Class Representatives; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Awards, PAGA Settlement Amount, and Settlement Administration Costs; approve the proposed Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: June 30, 2023

LAWYERS for JUSTICE, PC

By: 
Kyla Buenaventura
Attorneys for Plaintiffs

¹⁰¹ Buenaventura Decl., ¶ 20; Declaration of Ted Ferguson in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Ferguson Decl."), ¶¶ 3-5; Declaration of Lisa Flathers in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Flathers Decl."), ¶¶ 3-5; and Declaration of Joel Flores in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Flores Decl."), ¶¶ 3-5.

¹⁰² Buenaventura Decl., ¶ 20; Ferguson Decl., ¶¶ 3-6; Flathers Decl., ¶¶ 3-6; and Flores Decl., ¶¶ 3-6.