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

WILLIAM CAMPOS; individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act; JUANITA
HERNANDEZ; individually, and on behalf of
other members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,

vs.

MOTIVE ENERGY, INC., a California
corporation; MOTIVE ENERGY
TELECOMMUNICATIONS GROUP, INC., a
California corporation; ADVANCED
CHARGING TECHNOLOGIES, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 30-2016-00828352-CU-OE-CXC

Honorable William D. Claster
Department CX102

CLASS ACTION

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

Reservation Number: 72858846

[Declaration of Proposed Class Counsel
(Edwin Aiwazian); Declaration of Proposed
Class Representatives (William Campos and
Juanita Hernandez); and [Proposed] Order
filed concurrently herewith.]

Date: August 24, 2018
Time: 9:00 a.m.
Department: CX102

Complaint Filed: January 5, 2016
FAC Filed: September 22, 2016
SAC Filed: December 2, 2016
Jury Trial: None Set

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

3 **PLEASE TAKE NOTICE** that on August 24, 2018 at 9:00 a.m., or as soon thereafter
4 as the matter may be heard before the Honorable William D. Claster in Department CX102 of
5 the Superior Court of California for the County of Orange, located at 751 West Santa Ana Blvd.,
6 Santa Ana, California, 92701, Plaintiffs William Campos and Juanita Hernandez ("Plaintiffs"
7 or "Class Representatives") will, and hereby do, move for an order:

- 8 • Granting preliminary approval of the proposed class action settlement described
9 herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement
10 and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as
11 "**EXHIBIT 1**" to the Declaration of Edwin Aiwazian, including, but not limited to,
12 the means of allocation and distribution of funds, including and not limited to, the
13 allocations for penalties under the California Labor Code Private Attorneys General
14 Act of 2004 ("PAGA Penalties"), Attorneys' Fees and Litigation Costs and Expenses,
15 Service Payments, and Settlement Administration Costs, as defined therein;
- 16 • Conditionally certifying the Class for settlement purposes;
- 17 • Provisionally appointing Plaintiffs William Campos and Juanita Hernandez as Class
18 Representatives;
- 19 • Provisionally appointing Edwin Aiwazian, Esq., Arby Aiwazian, Esq., and Joanna
20 Ghosh, Esq. of Lawyers for Justice, PC as Class Counsel;
- 21 • Provisionally approving the proposed Notice of Class Action Settlement ("Class
22 Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary
23 Approval of Class Action Settlement;
- 24 • Directing the mailing of the Class Notice to the Class Members;
- 25 • Approving the proposed deadlines for the notice and settlement administration
26 process;
- 27 • Approving Simpluris, Inc. as the Settlement Administrator; and

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- 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 Litigation Costs Expenses, Service Payments, and Settlement Administration Costs.

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 Declaration of Proposed Class Counsel (Edwin Aiwazian) and the Proposed Class Representatives (William Campos and Juanita Hernandez) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: July 27, 2018

LAWYERS for JUSTICE, PC

By:


Edwin Aiwazian
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs William Campos and Juanita Hernandez (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, on the one hand, and Defendants Motive Energy, Inc., Motive Energy Telecommunications Group, Inc., and Advanced Charging Technologies, Inc. (collectively, the “Defendants”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a maximum settlement amount of seven hundred fifty thousand dollars (\$750,000) (the “Maximum Settlement Amount”).¹ The Maximum Settlement Amount includes the following, as defined in the Settlement Agreement²: (1) Net Settlement Amount; (2) Settlement Administration Costs; (3) Attorneys’ Fees and Litigation Costs and Expenses; (4) Service Payments; and (5) penalties allocated under the California Labor Code Private Attorneys General Act of 2004 (“PAGA Penalties”).³

Plaintiffs also seek to provisionally certify the following Class for settlement purposes only, which Defendants do not oppose:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California during the time period from January 5, 2012 to March 16, 2018 (“Class” or “Class Members”).⁴

The Class is estimated to consist of approximately five hundred (500) individuals.⁵

Class Members who do not submit a timely and valid Request for Exclusion (i.e. “Settlement Class Members”) will receive a share of the Net Settlement Amount on a *pro rata* basis based upon the number of weeks that each Class Member was employed by Defendants in an hourly-paid or non-exempt position during the time-period of January 5, 2012 through March

¹ Settlement Agreement, attached as “EXHIBIT I” to Declaration of Edwin Aiwazian (“Aiwazian Decl.”), § 44

² All capitalized terms used herein are ascribed the definitions set forth in the Settlement Agreement, unless otherwise stated.

³ *Ibid.*

⁴ *Id.*, §§ 2 & 5.

⁵ Aiwazian Decl., ¶ 9.

6, 2018 (“Workweeks”).⁶ The Net Settlement Amount refers to the Maximum Settlement Amount, less the following amounts subject to approval by the Court: Settlement Administration Costs, Attorneys’ Fees and Litigation Costs and Expenses, Service Payments, and the Labor and Workforce Development Agency’s Share of PAGA Penalties (“LWDA Payment”).⁷

The Settlement resolves Plaintiffs’ and the Settlement Class Members’ Released Claims against the Released Parties.⁸

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Motive Energy, Inc. delivers products and maintenance services to support the material handling industry and is also the largest forklift battery and charger supplier on the West Coast of the United States. Defendant Motive Energy Telecommunications Group, Inc. provides services for WiFi and DAS networks, microwave engineering and construction and maintenance services, amongst other things. Defendant Advanced Charging Technologies, Inc. is a provider of forklift batteries and charging technologies. All of Defendants are owned, in part, by the same individual. Plaintiffs William Campos and Juanita Hernandez are former employees of Defendants.

On January 5, 2016, Plaintiff William Campos filed a Class Action Complaint for Damages & Enforcement under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Complaint”) against Defendants in the Orange County Superior Court, Case No. 30-2016-00828352. On April 26, 2016, Defendants filed their Answer to the Complaint.

On August 16, 2016, and after engaging in initial discovery, Defendants filed a Motion to Compel Further Responses to Form Interrogatories-General and Request for Monetary Sanctions (“Motion to Compel”).

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⁶ Settlement Agreement, §§ 10 & 46.

⁷ *Id.*, § 45.

⁸ See *id.* at § 6, for the full scope of the “Released Claims,” and *id.* at § 34 for the definition of the “Released Parties.”

1 On August 18, 2016, Plaintiff filed a Motion for Leave to File an Amended Complaint
2 ("Motion for Leave"). On September 2, 2016, Defendants filed an Opposition to the Motion for
3 Leave. On September 9, 2016, Plaintiff Campos filed a Reply in support of the Motion for
4 Leave.

5 On September 12, 2016, Plaintiff Campos filed his Opposition to Defendants' Motion to
6 Compel and on September 16, 2016, Defendants filed their Reply in support of their Motion to
7 Compel.

8 On September 22, 2016, pursuant to the Court's order granting Plaintiff Campos' Motion
9 for Leave, Plaintiff Campos filed his First Amended Class Action Complaint for Damages &
10 Enforcement under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
11 ("First Amended Complaint"), which added Plaintiff Juanita Hernandez as a named plaintiff.
12 On December 2, 2016, pursuant to an order granting a joint stipulation of the parties, Plaintiffs
13 filed their Second Amended Class Action Complaint for Damages & Enforcement under the
14 Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Second Amended
15 Complaint").

16 On January 17, 2017, Plaintiffs filed a Motion to Compel Further Deposition of
17 Defendant Motive Energy Telecommunications Group, Inc.'s Person Most Knowledgeable and
18 Production of Documents at Deposition and Request for Sections ("Motion to Compel Further
19 Deposition").

20 On January 30, 2017, Defendant filed a Demurrer to the Second Amended Complaint
21 ("Demurrer"). On February 27, 2017, Plaintiffs filed an opposition to Defendants' Demurrer.
22 On March 3, 2017, Defendants filed a reply in support of its Demurrer. On March 10, 2017, the
23 Court entered a Minute Order overruling Defendants' Demurrer.

24 On March 20, 2017, Defendants filed their Answer to Plaintiffs' Second Amended
25 Complaint, and on May 8, 2017, Defendants filed an Amended Answer to Plaintiffs' Second
26 Amended Complaint adding additional affirmative defenses.

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1 On June 22, 2017, Plaintiffs filed a Consolidated Motion to Compel all Defendants to
2 Provide Further Responses to Plaintiffs' Special Interrogatories (Set One) and Request for
3 Monetary Sanctions ("Consolidated Motion to Compel"). The Court entered an Order, pursuant
4 to the Parties stipulation, which provided for withdrawal of the Consolidated Motion to Compel.

5 On October 10, 2017, each Defendant filed a Substitution of Attorney informing the
6 Court that Michelman & Robinson, LLP would now be representing Defendants.

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

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

21 As set forth above, the Parties have actively litigated this matter since it was commenced
22 on January 5, 2016. On January 31, 2018, the Parties participated in a formal, full-day mediation
23 conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex
24 labor and employment matters. With the aid of the mediator, the Parties ultimately reached the
25 Settlement described herein to resolve the lawsuit in its entirety.

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

2 Under the terms of the Settlement, Defendants will pay a Maximum Settlement Amount
3 in the amount of seven hundred fifty thousand dollars (\$750,000) to resolve the Released Claims
4 of Plaintiffs and the Class Members who do not opt out of the Settlement (i.e., Settlement Class
5 Members) with respect to the Released Parties.⁹ Subject to approval by the Court, the Net
6 Settlement Amount will be calculated by deducting the following amounts from the Maximum
7 Settlement Amount: (1) Settlement Administration Costs in an amount estimated not to exceed
8 twelve thousand dollars (\$12,000), to the Settlement Administrator; (2) attorneys' fees in the
9 amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e.
10 \$262,500 of \$750,000) and necessary costs in an amount not to exceed fifty thousand dollars
11 (\$50,000) (collectively, "Attorneys' Fees and Litigation Costs and Expenses") to Class Counsel;
12 (3) the portion of the PAGA Penalties which will be paid to the Labor and Workforce
13 Development Agency ("LWDA") in the amount of twenty-two thousand five hundred dollars
14 (\$22,500) ("LWDA Payment"); and (4) Service Payments to each Plaintiff, in the amount of
15 eight thousand dollars (\$8,000) to Plaintiff Campos and seven thousand dollars to Plaintiff
16 Hernandez (totaling \$15,000).¹⁰ The Parties have agreed to retain Simpluris, Inc. ("Simpluris"
17 or "Settlement Administrator") to handle the notice and settlement administration process.

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

- 21 a. The Settlement Administrator will calculate the total number of Workweeks
22 worked by each individual Class Member and add them together to obtain the
23 Workweeks of all Class Members ("Total Workweeks").¹¹
24 b. The Settlement Administrator will divide the Net Settlement Amount by the
25 Total Workweeks ("Workweek Rate").¹²

26 ⁹ Settlement Agreement, §§ 6 & 60.

27 ¹⁰ *Id.*, §§ 45, 49, 50, 51, & 52.

28 ¹¹ *Id.*, § 46(a).

¹² *Id.*

1 c. The Settlement Administrator will then multiply the Workweek Rate by each
2 Class Member's Workweeks which results in their estimated Individual
Settlement Share.¹³

3 Each Individual Settlement Share will be allocated as follows:
4 thirty-three percent (33%) as wages, which will be reported on an IRS Form W-2; and sixty-
5 seven percent (67%) as interest and penalties, which will be reported on an IRS Form 1099.¹⁴
6 Settlement Class Members will be issued payment of their Individual Settlement Share subject
7 to reduction for the employee's share of taxes and withholdings with respect to the wage portion
8 of each share (the net payment is the "Individual Settlement Payment").¹⁵ Defendants have
9 agree to pay the employer's share of payroll taxes and contributions with respect to the wage
10 portion of the Individual Settlement Shares separately and in addition to the Maximum
Settlement Amount.¹⁶

11 The Individual Settlement Payment checks issued to Settlement Class Members will
12 remain valid and negotiable for one hundred eighty (180) calendar days from the date of
13 issuance.¹⁷ Funds associated with checks not cashed or deposited within the 180-day period or
14 returned as undeliverable plus any accrued interest that has not otherwise been distributed
15 ("Unused Funds"), will be transmitted as follows: 25% to the State Treasury for deposit in the
16 Trial Court Improvement and Modernization Fund and 75% to the State Treasury for deposit
17 into the Equal Access Fund of the Judicial Branch.¹⁸

18 Any Class Member may elect to seek exclusion from the Settlement by mailing a written
19 request for exclusion from the Settlement ("Request for Exclusion") to the Settlement
20 Administrator.¹⁹ To be timely, the Request for Exclusion must be postmarked on or before the
21 date that is thirty (30) calendar days from the mailing of the Class Notice ("Response
22 Deadline"), or in the case of a re-mailed Class Notice fifteen (15) calendar days after the
23 Settlement Administrator re-mails the Class Notice to the Class Member, whichever is later
24

25 ¹³ *Id.*

26 ¹⁴ *Id.*, § 46(b).

27 ¹⁵ *Id.*, § 48.

28 ¹⁶ *Id.*, § 44.

¹⁷ *Id.*, § 54.

¹⁸ Settlement Agreement, § 54.

¹⁹ *Id.*, § 36.

1 (“Extended Response Deadline”).²⁰ A Request for Exclusion must contain: (1) the Class
2 Member’s full name, address, signature, and last four digits of his or her Social Security number;
3 (2) the case name and number of the action; and (3) a clear statement that the Class Member
4 seeks to be excluded from the Settlement.²¹

5 Only Class Members who do not exclude themselves from the Settlement (i.e.,
6 Settlement Class Members) can object to the Settlement.²² Settlement Class Members may
7 object to the Settlement by submitting a written objection that is either mailed or hand delivered
8 to the Settlement Administrator, postmarked by no later than the Response Deadline.²³ The
9 written objection must contain: (1) the objector’s full name, address, signature, telephone
10 number, and the last four digits of his or her Social Security number; (2) the case name and
11 number of the action; (3) a clear statement indicating that he or she wishes to object to the
12 Settlement and the basis for any objection; (4) identification of the name and address of the
13 objector’s counsel, if he or she is represented by counsel; and (5) a statement of whether or not
14 he or she intends to appear at the Final Approval Hearing, either in person or through his or her
15 counsel, to present argument.²⁴ Settlement Class Members who fail to object in accordance with
16 these requirements will be deemed to have waived all objections to the Settlement.²⁵ If a Class
17 Member submits a Request for Exclusion and an objection, the objection will be ignored and
18 the Request for Exclusion will be processed.²⁶

19 Class Members who wish to challenge the Workweeks credited to them in their Class
20 Notice may do so by mailing a written statement to the Settlement Administrator on or before
21 the Response Deadline, or if applicable, Extended Response Deadline.²⁷ A written dispute must
22 contain: (1) the Class Member’s full name, address, signature, telephone number, and last four
23 digits of his or her Social Security number; (2) the case name and number of the action; (3) a

24 ²⁰ *Id.*, §§ 33 & 35.

25 ²¹ *Id.*, § 36.

26 ²² Settlement Agreement, § 37.

27 ²³ *Ibid.*

²⁴ *Id.*, § 37.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Id.*, § 35.

1 clear statement indicating that the Class Member disputes the number of Workweeks credited
2 to him or her; and (4) facts supporting the Class Member's dispute along with any supporting
3 documents.²⁸ The Settlement Administrator will forward all disputes it receives to the Parties
4 within three (3) calendar days of receipt and meet and confer with the Parties within a reasonable
5 time thereafter to determine the number of Workweeks to be properly credited to the Class
6 Member.²⁹

7 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
8 **SETTLEMENTS**

9 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
10 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
11 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
12 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
13 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*
14 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair
15 and reasonable, whether certification of the class was proper, and whether the attorney fee award
16 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's
17 decision to approve a class action settlement may be reversed only upon a strong showing of
18 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
19 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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28 ²⁸ *Id.*, § 35.

²⁹ Settlement Agreement, § 35.

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

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

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

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

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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 January 5, 2016. 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 matter for a motion for class certification.³⁰

Prior to engaging in the mediation, the Parties conducted significant investigation into the facts of the case and the Parties engaged in extensive motion practice, formal and informal discovery, and the formal and informal exchange, review, and analysis of thousands of pages of documents and data produced by Defendants.³¹ The volume of data and documents that Class Counsel reviewed and analyzed includes but was not limited to: Plaintiffs 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, agreements (including but not limited to the Employee Handbook Acknowledgement and Agreement), internal memoranda, job descriptions, and Defendants’ operations and employment practices, forms, procedures, and policies (including but not limited to Defendants’ Recording Time and Meal Period Policy and Travel Time Policy), among other information and documents. Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.³² Class Counsel propounded multiple sets of

³⁰ Aiwazian Decl., ¶¶ 11-13.

³¹ *Id.*, ¶ 12.

³² *Ibid.*

1 formal written discovery requests on Defendant and reviewed responses thereto. Plaintiffs
2 reviewed and worked with Class Counsel to respond to multiple sets of formal written discovery
3 request propounded by Defendant.³³ Class Counsel also took the depositions of Defendants'
4 Persons Most Knowledgeable designee and prepared for and defended the depositions of
5 Plaintiffs (including, with respect to Plaintiff Hernandez, two separate sessions of deposition).³⁴
6 Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues
7 relating to the pleadings, motion practice, discovery, and the production of documents and data
8 prior to the mediation.³⁵ Class Counsel also drafted Plaintiffs' mediation brief, and prepared for
9 and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁶

10 The Parties engaged in extensive settlement negotiations and participated in a formal,
11 full-day mediation conducted by the Paul Grossman, Esq., a well-respected mediator
12 experienced in mediating complex labor and employment matters.³⁷ Prior to and during the
13 mediation and settlement discussions, the Parties exchanged class information and engaged in
14 an intensive discussion regarding their evaluations of the lawsuit and various aspects of the
15 lawsuit, including but not limited to, the risks and delays of further litigation, the risks to the
16 Parties of proceeding with class certification and/or representative adjudication, the law relating
17 to alleged "off-the-clock" work, meal and rest periods, rounding of time-worked, wage-and-
18 hour enforcement, and PAGA representative claims, as well as the evidence produced and
19 analyzed, and the possibility of appeals, among other things.³⁸ During all settlement discussions,
20 the Parties conducted their negotiations at arm's length in an adversarial position.³⁹ Arriving at
21 a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt
22 strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class
23 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁰ After

24 ³³ *Ibid.*

25 ³⁴ *Ibid.*

26 ³⁵ Aiwazian Decl., ¶ 12.

27 ³⁶ *Ibid.*

28 ³⁷ *Id.*, ¶ 11.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶¶ 16-18.

1 conducting investigations, extensive formal and informal discovery, multiple depositions, and
2 extensive settlement negotiations, and with the aid of the mediator's evaluations, the Parties
3 have agreed that this case is well-suited for settlement given the legal issues relating to Plaintiffs'
4 principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴¹

5 The Settlement takes into account the strengths and weaknesses of each side's position
6 and the uncertainty of how the case might have concluded at certification and/or trial.⁴²,
7 Plaintiffs have had the opportunity to interview and obtain information from witnesses.⁴³
8 Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and
9 the Class Members' employment with Defendants and performed significant research into the
10 law concerning class certification, PAGA representative actions, off-the-clock theory, meal and
11 rest periods, rounding time-worked, wage-and-hour enforcement, Plaintiffs' claims, and
12 Defendants' defenses thereto, as well as facts discovered.⁴⁴ The Parties have reached the
13 Settlement based on this large volume of facts, evidence, and investigation. In addition, Class
14 Counsel have extensive experience in employment class actions, including significant
15 experience in California wage-and-hour litigation.⁴⁵

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

17 The Maximum Settlement Amount of seven hundred fifty thousand dollars (\$750,000)
18 represents a fair, adequate, and reasonable resolution of this case.⁴⁶ The Settlement was
19 calculated using the information and data uncovered during the litigation, case investigation, as
20 well as the formal and informal discovery and exchange of information.⁴⁷ The Settlement takes
21 into account the potential risks and rewards inherent in any case and, in particular, in this case.⁴⁸
22 Specifically, throughout both the litigation and mediation process Plaintiffs considered the
23 serious risk of proceeding to the class certification stage and to trial, including, without
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25 ⁴¹ *Ibid.*

26 ⁴² Aiwazian Decl., ¶¶ 16-18.

27 ⁴³ *Ibid.*

28 ⁴⁴ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁵ *Id.*, ¶¶ 6-7.

⁴⁶ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁷ *Id.*, ¶¶ 11-13.

⁴⁸ *Id.*, ¶¶ 16-18.

1 limitation, Defendants defenses regarding, what if contended were: (1) the individualized
2 inquiry required as to many of the claims given the numerous differing positions, duties and
3 responsibilities, and locations of employees; (2) the nominal percentage of Class Members
4 having ever received a non-discretionary bonus; (3) the limited time-period during which certain
5 alleged violative policies were in place; and (4) the arbitration agreement Defendants alleged
6 was enforceable as to a significant percentage of the Class Members. While the trier of fact is
7 the ultimate arbiter as to these issues amongst other defenses, the risks presented make the
8 settlement amount fair and reasonable.⁴⁹ Considering all of the facts and circumstances of this
9 case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵⁰

10 Assuming that the Attorneys' Fees and Litigation Costs and Expenses, Service
11 Payments, PAGA Penalties, and Settlement Administration Costs are approved by the Court and
12 paid in the full amounts provided for by the Settlement, the Settlement provides for a Net
13 Settlement Amount that is currently estimated to be three hundred eighty-eight thousand dollars
14 (\$388,000).⁵¹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully
15 paid out to the Settlement Class Members. The amount of each Settlement Class Member's
16 Individual Settlement Share will be calculated based on their Workweeks.⁵² There is no reason
17 to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of
18 preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have
19 a reasonable, rational basis [to warrant approval], particularly if recommended by experienced
20 and competent class counsel." *In re American Bank Note Holographics, Inc., Securities*
21 *Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

22 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
23 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁵³
24 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
25 the recommendations into account, particularly if Class Counsel appears to be competent, and

26 ⁴⁹ Aiwazian Decl., ¶ 13

27 ⁵⁰ *Id.*, ¶¶ 11, 13, & 21.

⁵¹ Aiwazian Decl., ¶ 14.

⁵² Settlement Agreement, § 46.

28 ⁵³ Aiwazian Decl., ¶¶ 11, 13, & 21.

has experience with this type of litigation, and significant discovery and investigation have been completed. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

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

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

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

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs' claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the

⁵⁴ *Id.*, ¶¶ 11-13 & 18.

⁵⁵ *Id.*, ¶ 18.

⁵⁶ Aiwarzian Decl., ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, § 26.

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 only 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 five hundred (500) individuals.⁵⁸ 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 Defendants to the Settlement Administrator through a review of Defendants’ employment records regarding their hourly-paid or non-exempt employees within the State of California during the period from January 5, 2012 to March 16, 2018 (“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 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

⁵⁸ Aiwazian Decl., ¶ 9.

1 focus on the Defendants' internal policies and "pattern and practice . . . in order to assess whether
2 that common behavior toward similarly situated plaintiff renders class certification appropriate."
3 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

9 Here, common issues of fact and law predominate as to each of the claims alleged and
10 asserted in this lawsuit. Based on the documents and information obtained through formal and
11 informal discovery and exchange of information in this case, Plaintiffs contend that all of the
12 hourly-paid or non-exempt employees who worked for Defendants were subject to the same or
13 similar job duties and uniform operations and employment practices, policies, and procedures
14 during the time period at issue.⁵⁹ Plaintiffs' claims arise from Defendants' alleged uniform
15 policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*,
16 failing to properly pay overtime and minimum wages for all hours worked, failing to provide
17 compliant meal and rest periods and associated premium pay, failing to timely pay wages during
18 and after employment, failing to provide complaint wage statements, failing to maintain
19 requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁰

20 Plaintiffs also contend that Defendants' payroll and recordkeeping practices with respect
21 to Plaintiffs and the Class Members were substantially the same during the Class Period.⁶¹ As
22 a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation
23 due to them from Defendants during the time period at issue.⁶²

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26 _____
27 ⁵⁹ Aiwazian Decl., ¶ 16.

28 ⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

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

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

8 Class Counsel has litigated this action for over two years and were actively preparing
9 for class certification.⁶³ The ongoing work has been extensive, demanding, and ultimately
10 successful in achieving a substantial settlement resolution. Class Counsel conducted extensive
11 investigations into the facts of the case, extensive motion practice, and formal and informal
12 discovery, including, and not limited to, propounding multiple formal written discovery requests
13 onto Defendants and reviewing Defendants' responses thereto, working with Plaintiffs to review
14 and respond to multiple formal written discovery requests propounded by Defendants, taking
15 the depositions of each of Defendants' Person Most Knowledgeable designee, preparing and
16 defending the deposition of Plaintiffs (including, with respect to Plaintiff Hernandez, two
17 separate sessions of deposition), and reviewing thousands of pages of documents and data.⁶⁴
18 Class Counsel also interviewed and obtained information from Plaintiffs and other Class
19 Members, researched applicable law, undertook damages/valuation calculations, and met and
20 conferred with Defendants' counsel regarding the pleadings, motion practice, discovery, and the
21 production of documents and data prior to mediation.⁶⁵ Counsel for the Parties also undertook
22 extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁶

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

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26 ⁶³ *Id.*, ¶¶ 11-13.

27 ⁶⁴ Aiwazian Decl., ¶ 12.

28 ⁶⁵ *Ibid.*

⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 6-7.

1 The Settlement establishes a Maximum Settlement Amount of seven hundred fifty
2 thousand dollars (\$750,000), and provides for Class Counsel to apply to the Court for an award
3 in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e.,
4 \$262,500) for attorneys' fees and an amount not to exceed fifty thousand dollars (\$50,000) for
5 litigation costs and expenses.⁶⁸ The attorneys' fees and costs provided for by the Settlement is
6 commensurate with (1) the risk that Class Counsel took in bringing and litigating this case, (2)
7 the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and
8 determination that Class Counsel have shown, (4) the results that Class Counsel have achieved
9 throughout the litigation, (5) the value of the Settlement that Class Counsel have achieved for
10 the Class Members, and (6) the other cases that Class Counsel had to turn down in order to
11 devote their time and efforts to this matter. The proposed Class Notice provides the Class
12 Members with information about the amount allocated toward Attorneys' Fees and Litigation
13 Costs and Expenses, and that Attorneys' Fees and Litigation Costs and Expenses will be sought,
14 as provided for by the Settlement.⁶⁹

15 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
16 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
17 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
18 "experienced trial judge is the best judge of the value of professional services rendered in his
19 court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney
20 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result
21 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal. 5th 480, 503 (citing
22 *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to
23 a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should
24 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
25 in comparable litigation." *Id.* at 50. In cases where class members present claims against a
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28 ⁶⁸ Settlement Agreement, §§ 10 & 23.

⁶⁹ Settlement Agreement, Exh. A.

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

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

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

21 Class Counsel has borne all of the risks and costs of litigation and will not receive any
22 compensation until recovery is obtained.⁷⁰

23 Class Counsel will provide extensive evidence as to the time worked, litigation efforts,
24 and further argument at the time of filing Plaintiffs' motion for final approval of the Settlement
25 and application for attorneys' fees and costs and at the Final Approval Hearing. Considering
26 the work performed and the risks incurred, the Attorneys' Fees and Litigation Costs and
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28 ⁷⁰ Aiwazian Decl., ¶ 19.

Expenses provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177). The proposed Class 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 Notice⁷¹ describes the Settlement, the deadlines and procedures to object to the Settlement, Request for Exclusion from the Settlement, or submit a challenge to the credited Workweeks, as well as the date and time set for the Final Approval Hearing.⁷²

The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share is calculated, and the number of Workweeks credited to them.⁷⁵

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

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

1 in the assertion of claims of class members against the opposing parties in any lawsuit, and
2 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

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

4 **ADMINISTRATOR**

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

7 The Settlement Administrator will mail the Class Notice to each Class Member by first-
8 class U.S. mail.⁷⁶ Prior to mailing the Class Notice to the Class Members, the Settlement
9 Administrator will perform address updates and verifications, as necessary, prior to the first
10 mailing using the National Change of Address Database.⁷⁷ In the event that a Class Notice is
11 returned as undeliverable before the Response Deadline, the Settlement Administrator will
12 perform one skip-trace search within five (5) calendar days of receipt of the returned Class
13 Notice and undertake a single re-mailing of the Class Notice.⁷⁸ The Settlement Administrator
14 will receive Requests for Exclusion, objections, and challenges to Workweeks.⁷⁹

15 The Settlement Administrator will calculate the amounts of the Individual Settlement
16 Shares; deduct and transmit applicable state and/or federal taxes thereon; mail the Individual
17 Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate
18 and disburse the Attorneys’ Fees and Litigation Costs and Expenses, Service Payments, and
19 LWDA Payment; and perform such other tasks necessary to effectuate the terms of the
20 Settlement Agreement.⁸⁰ The Settlement Administration Costs are currently estimated to be
21 twelve thousand dollars (\$12,000) and will be paid out of the Maximum Settlement Amount,
22 subject to approval by the Court.⁸¹

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26 ⁷⁶ *Id.*, § 33.

27 ⁷⁷ *Id.*, § 33.

28 ⁷⁸ *Ibid.*

⁷⁹ *Id.*, §§ 35-37.

⁸⁰ *Ibid.*; Aiwasian Decl., ¶ 15.

⁸¹ Settlement Agreement, § 52.

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸²

Within fifteen (15) business days after the date on which the Court enters an order granting preliminary approval of the Settlement, Defendants will provide the Settlement Administrator with the following information for each Class Member: (1) full name; (2) last known address and telephone number(s); (3) Social Security number; and (4) dates of employment as a non-exempt or hourly-paid employee of Defendants in California (collectively, "Class Information").⁸³

Within fifteen (15) business days of the receipt of the Class Information, the Settlement Administrator will mail the Class Notice to the Class Members via first-class U.S. Mail.⁸⁴ If a Class Notice is returned as undeliverable, then the Settlement Administrator will conduct one skip-trace to locate a better address within five (5) calendar days of receipt and will re-mail the Class Notice to the updated address.⁸⁵ Class Members will have thirty (30) calendar days from the original mailing of the Class Notice, or if the Class Notice is re-mailed, the Class Member will have fifteen (15) calendar days after re-mailing of the Class Notice, whichever is later, to mail and postmark a Request for Exclusion, objection, or challenge to Workweeks to the Settlement Administrator.⁸⁶

⁸² Settlement Agreement, § 59.

⁸³ *Id.*, § 31.

⁸⁴ *Id.*, § 33.

⁸⁵ *Ibid.*

⁸⁶ *Id.*, §§ 33, 35-37.

Defendants will deliver the Maximum Settlement Amount within ten (10) calendar days after the Effective Date into a qualified settlement account created by the Settlement Administrator.⁸⁷ Within ten (10) calendar days after Defendants deposit the funds comprising the Maximum Settlement Amount into a qualified settlement fund, the Settlement Administrator will distribute the: (1) Individual Settlement Payments to Settlement Class Members; (2) the Court-approved Services Payments to Named Plaintiffs; (3) the Court-approved Attorneys' Fees and Litigation Costs and Expenses to Class Counsel; (4) the payment to the Labor and Workforce Development Agency; and (5) the Court-approved Settlement Administration Costs to itself.⁸⁸

The Individual Settlement Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance.⁸⁹ Such checks will automatically be cancelled if not cashed or deposited by the Settlement Class Member within the 180-day period, and the funds associated with such cancelled checks will be transmitted as follows: 25% to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund, 75% to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch.⁹⁰

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR SERVICE PAYMENTS

Plaintiffs William Campos and Juanita Hernandez respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the allocation for Service Payments in an amount up to eight thousand dollars (\$8,000) to Plaintiff Campos and in an amount up to seven thousand dollars (\$7,000) to Plaintiff Hernandez, as provided for by the Settlement.⁹¹ It is within the Court's discretion to award payment to class representatives 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

⁸⁷ *Id.*, § 43. See *id.*, § 42 for the definition of "Effective Date."

⁸⁸ Settlement Agreement, § 54.

⁸⁹ *Id.*, § 54.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, § 51.

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

6 The Service Payments to Plaintiffs are fair and appropriate. Plaintiffs spent a substantial
7 amount of time and effort in producing relevant documents and past employment records and
8 providing the facts and evidence necessary to attempt to prove the allegations.⁹² Plaintiffs were
9 available whenever Class Counsel needed them and actively tried to obtain and provide
10 information that would benefit the Class.⁹³ For example, both Plaintiffs reviewed and responded
11 to multiple sets of formal discovery requests and prepared for and attended a full day of
12 deposition (with Plaintiff Hernandez attending two separate days of deposition) and reviewed
13 their transcripts thereafter.⁹⁴ Accordingly, it is appropriate and just for Plaintiffs to receive
14 reasonable Service Payments for their services on behalf of the Class, in addition to their
15 Individual Settlement Payments.

16 **XII. CONCLUSION**

17 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
18 approval of the Settlement; conditionally certify the Class for settlement purposes; provisionally
19 appoint and designate Lawyers for Justice, PC as Class Counsel; provisionally appoint and
20 designate Plaintiffs William Campos and Juanita Hernandez as Class Representatives; appoint
21 Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys'
22 Fees and Litigation Costs and Expenses, Service Payments, PAGA Penalties, and Settlement
23 Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator
24 to undertake the notice and settlement administration process in conformity with the deadlines
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27 ⁹² Aiwazian Decl., ¶ 20; Declaration of William Campos ("Campos Decl."), ¶¶ 3-4; Declaration of Juanita
Hernandez ("Hernandez Decl."), ¶¶ 3-4

28 ⁹³ Aiwazian Decl., ¶ 20; Campos Decl., ¶¶ 3, 4, & 7; Campos Decl., ¶¶ 3, 4, & 8.

⁹⁴ Campos Decl., ¶ 5; Hernandez Decl., ¶ 5-6.

1 and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing
2 to take place in approximately January 2019.

3 Dated: July 27, 2018

LAWYERS for JUSTICE, PC

4
5 By:


Edwin Aiwazian
Attorneys for Plaintiffs