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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

MICHELLE MOJICA, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

vs.

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

Defendants.

Case No.: 20STCV36088

Honorable Stuart M. Rice
Department SSC-1

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Joanna Ghosh); Declaration of Proposed Class Representative (Michelle Mojica); Declaration of Defendant (Shannon Chou); Declaration of Defendant's Counsel (Tiffany L. Luu); Declaration of Proposed Administrator (Eric Springer); and [Proposed] Order filed concurrently herewith]

Date:	June 2, 2023
Time:	10:30 a.m.
Department:	1
Complaint Filed:	September 22, 2020
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on June 2, 2023 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Stuart M. Rice in Department 1 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 Spring Street, Los Angeles, California 90012, Plaintiff Michelle Mojica ("Plaintiff" or "Class Representative") 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 Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Joanna Ghosh, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Administration Expenses to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Michelle Mojica as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date For Final Court Approval ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Administrator; and

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

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes, 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 Declaration of Proposed Class Counsel (Joanna Ghosh) and Proposed Class Representative (Michelle Mojica), Defendant's Counsel (Tiffany L. Luu), Defendant (Shannon Chou), and Proposed Administrator (Eric Springer) 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: May 10, 2023 **LAWYERS *for* JUSTICE, PC**

Meg Razi

By: ____________________________
Meg Razi
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Michelle Mojica ("Plaintiff" or "Class Representative") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Mini Pharmacy Enterprises, Inc. ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to settle this lawsuit for a Gross Settlement Amount of One Million One Hundred Twenty-Five Thousand Dollars And No Cents ($1,125,000.00).[1] The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Class Representative Service Payment of Ten Thousand Dollars and Zero Cents ($10,000.00) to Plaintiff[3]; (3) the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or $393,750.00, and reimbursement of litigation costs and expenses not to exceed thirty five thousand dollars and no cents ($35,000.00)[4]; (4) the Administration Expenses to the Administrator in the amount not to exceed Twelve Thousand Dollars And No Cents ($12,000.00);[5] and (5) the PAGA Penalties of One Hundred Twenty Five Thousand Dollars And No Cents ($125,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $93,750.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $31,250.00) will be distributed to Aggrieved Employees on a *pro rata* basis, based on PAGA Pay Periods during the PAGA Period.[6]

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Joanna Ghosh ("Ghosh Decl."), § 1.21.
[2] *Ibid.*
[3] *Id.*, § 3.2.1
[4] *Id.*, § 3.2.2.
[5] *Id.*, § 3.2.3.
[6] *Id*, §1.35.

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

> All current and former hourly-paid or non-exempt employees employed by Defendant within the State of California at any time during the Class Period. ("Class" or "Class Members").[7]

The Class is estimated to consist of approximately Three Hundred Eighty-Six (386) individuals.[8]

Class Members who does not submit a valid and timely Request for Exclusion ("Participating Class Member") will receive a share of the Net Settlement Amount ("Individual Settlement Share") on a *pro rata* basis based either or a combination of the following: (1) weeks during which at least one day was worked; or (2) hire dates and, where applicable, last dates worked or separation dates, re-hire dates, dates of any periods of leave, and dates of any transition between non-exempt and exempt status ("Workweeks") .[9]

All current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period ("Aggrieved Employees") will receive a share of the 25% of the PAGA Penalties on a *pro rata* basis ("Individual PAGA Payment") based on either a combination of the following: (1) pay periods during which at least one day was worked; or (2) hire dates and, where applicable, last dates worked or separation dates, re-hire dates, dates of any periods of leave, and dates of any transition between non-exempt and exempt status ("PAGA Pay Period").[10]

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

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[7] Settlement Agreement, § 1.5 "Class Period" is defined as the period of time from April 6, 2016, through January 1, 2023. *See id.*, § 1.12.

[8] Ghosh Decl., ¶ 10; Settlement Agreement, § 4.1.

[9] Settlement Agreement, §§ 1.25 and 1.45.

[10] *Id.*, §§ 1.22 and 1.31.

[11] *Id.*, §§ 5.2 & 5.3.

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a medical service provider specializing in providing diabetes management solutions and supplies to patients nationwide. Plaintiff Michelle Mojica is a former employee of Defendant.

On September 22, 2020, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On February 3, 2021, Defendant filed an Answer to Plaintiff's Class Action Complaint.

On November 22, 2022, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code that were alleged to be violated (the "LWDA Notice").

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, 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 maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that she, the Class Members, and the Aggrieved Employees are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On May 8, 2023, the Parties submitted a Joint Stipulation Granting Plaintiff Leave to File First Amended Complaint, along with the [Proposed] First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code section 2698, *Et Seq.*, for the Court's review and approval. Parties have agreed to the filing of the proposed amended complaint to implement the Settlement.

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

On August 6, 2021, Plaintiffs propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One), on Defendant and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. On September 1, 2021, Defendant responded to Plaintiff's notices of deposition of Defendant's person most knowledgeable.

The Parties have actively litigated the Action since it was commenced on September 22, 2020. On November 2, 2022, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. <u>SUMMARY OF THE SETTLEMENT TERMS</u>

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who does not submit a valid and timely Request for Exclusion (i.e., Participating Class Members) and the Released PAGA Claims of Plaintiff the Aggrieved Employees with respect to the Released Parties.[12] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (which is presently $393,750.00) and reimbursement of costs and expenses in an amount not to exceed Thirty Five Thousand Dollars And No Cents ($35,000.00) to Class Counsel (collectively referred to as Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment"); (2) administration expenses, which are currently estimated not to exceed Twelve Thousand Dollars And No Cents

[12] Settlement Agreement, §§ 5.2 & 5.3.

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($12,000.00) to the Administrator ("Administration Expenses"); (3) PAGA Penalties of One Hundred Twenty-Five Thousand Dollars and Zero Cents ($125,000.00), of which seventy-five percent (75%) (i.e., $93,750.00 out of $125,000) ("LWDA Payment"), and twenty-five percent (25%) (i.e., $31,250.00 out of $125,000.00) will be distributed to the Aggrieved Employees on a *pro rata* basis; and (4) payment in the amount of up to Ten Thousand Dollars And No Cents ($10,000.00) to Plaintiff Michelle Mojica ("Class Representative Service Payment").[13] The Parties have agreed to retain Simpluris, Inc. ("Simpluris, Inc." or Administrator) to handle the notice and settlement administration process.

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

a. "After Preliminary Approval of the Settlement, the Administrator will divide the Net Settlement Amount by the total number of Workweeks worked by all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.[14]

b. After Final Approval of the Settlement, the 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 or her Individual Settlement Share.[15]

The Administrator will calculate each Aggrieved Employee's *pro rata* share of the 25% share of the PAGA Penalties (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties, i.e., $31,250.00, by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.[16]

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: ten percent (10%) as wages (the "Wage Portion"), which will be reported on an IRS

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[13] Settlement Agreement, §§ 3.2.1, 3.2.2, 3.2.3, and 3.2.5.
[14] *Id.*, § 3.2.4.1.
[15] *Id.*, § 3.2.4.2.
[16] *Id.*, § 3.2.5.1.

Form W-2; and the remaining ninety percent (90%) as interest and penalties (the "Non-Wage Portion"), which will be reported on an IRS Form 1099.[17] Participating Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").[18] The Individual PAGA Payments will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.[19] The Administrator will have the option to pay the Individual Settlement Payment and Individual PAGA Payment by way of a single check. Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares in addition to the Gross Settlement Amount.[20]

Each Individual Settlement Payment checks and the Individual PAGA Payments will be valid and negotiable for one hundred eighty (180) calendar days from the date of mailing.[21] The Administrator will cancel all checks after the void date.[22] The Administrator shall transmit the leftover funds represented by canceled Individual Settlement Payment and Individual PAGA Payment checks to the California Controller's Unclaimed Property Fund in the name of the Class Member or Aggrieved Employee.[23]

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must send the Administrator in writing by sending a letter indicating that they want to exclude themselves. To be timely, the Class Member must mail a written Request for Exclusion to the Administrator, postmarked on or before the date that is sixty (60) calendar days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees ("Response Deadline").[24] A Request for Exclusion must include the Class Member's full name, address,

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[17] Settlement Agreement, § 3.2.4.3.
[18] *Id.*, § 3.2.1.
[19] *Id.*, § 3.2.5.2.
[20] *Id.*, § 1.21.
[21] *Id.*, § 4.4.4.
[22] *Ibid.*
[23] *Id.*, § 4.4.6
[24] *Id.*, §§ 1.44 & 7.5.1.

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and email address or telephone number.[25] Class Members who submit a valid and timely Request for Exclusion are Non-Participating Class Members and will not be bound by the terms of the Settlement and Final Approval Order and Judgment.[26] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[27]

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Participating Class Members) may object to the Class Settlement.[28] Participating Class Members who wish to object to the Class Settlement may send written objections to the Administrator by email or mail.[29] In addition to submitting a written objection or as an alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.[30] A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline. The objection must reasonably communicate to the Administrator what the Participating Class Member is objecting to, why they are objection, and any facts to support the objection and must include the case name, Participating Class Member's name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection.

Class Members and Aggrieved Employees who wish to dispute the number of Workweeks and/or PAGA Pay Periods (if any) credited to them in their Class Notice may do so by mailing a written letter to the Administrator via mail or email on or before the Response Deadline.[31] The letter must be supported by copies of pay stubs or other records.[32]

IV. <u>LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS</u>

[25] Settlement Agreement, § 7.8.2.
[25] *Id.*, § 7.5.1.
[26] *Id.*, § 7.5.4.
[27] *Id.*, § 7.5.1.
[28] *Id.*, § 7.7.1.
[29] *Id.*, § 7.7.2.
[30] *Ibid.*
[31] *Id.*, § 7.6.
[32] *Ibid.*

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

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

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required

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for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg,* § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

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

The Parties actively litigated the Action since it was commenced on September 22, 2020.[33]

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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 a large volume of information, documents, and data obtained from Plaintiff, Defendant, and other sources.[34] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members' time and pay data, earning statements, multiple iterations of Defendant's Employee Handbook, company policy acknowledgements, internal memoranda, job descriptions, operations and employment policies, practices, and procedures documents (including, but not limited to, Use of Personal Vehicles, Business Expense Reimbursement, Dress Code, 10-Minute Rest Break Obligations, Overtime Policy, Rest and Meal Break Policy, Meal Break Policy, Meal Break/Period Waiver, Second Meal Period Waiver, and Punctuality and Attendance Policy), and Defendant's confidential financial statements, among other information and documents.[35] Class Counsel interviewed Plaintiff and conducted investigations to gather facts and to identify potential witnesses.[36] Class Counsel propounded multiple sets of formal written discovery requests on Defendant, noticed the depositions of Defendant's Person Most Knowledgeable designees (along with accompanying requests for production of documents), and reviewed Defendant's objections to the deposition notices and accompanying requests for production of documents.[37] 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 in the course of litigation and in connection with mediation and settlement negotiations.[38] Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[39]

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[34] Ghosh Decl., ¶ 13.
[35] *Ibid.*
[36] *Id.*, ¶ 13.
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*

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The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[40] In the course of litigation and in connection with the mediation and settlement negotiations, the Parties exchanged extensive information and engaged in discussions 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 class certification, off-the-clock theory, meal and rest periods, representative PAGA actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[41] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[42] Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[43] 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 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[44]

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.[45] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[46] Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the applicable law, which is often evolving as it relates to class certification, representative PAGA

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[40] Ghosh Decl., ¶ 12.
[41] *Ibid.*
[42] *Ibid.*
[43] *Id.*, ¶¶ 12, 18.
[44] *Id.*, ¶¶ 12, 18.
[45] *Ibid.*
[46] *Id.*, ¶ 13.

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claims, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts discovered.[47] 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.[48]

B. **<u>The Settlement Is Fair, Reasonable, and Adequate.</u>**

The Settlement, which provides for a Gross Settlement Amount of One Million One Hundred Twenty-Five Thousand Dollars and Zero Cents ($1,125,000.00), represents a fair, adequate, and reasonable resolution of the action.[49] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[50] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[51] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, the Aggrieved Employees, and the State of California.[52]

Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, PAGA Penalties, and Administration Expenses are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Five Hundred Forty-Nine Thousand Two Hundred and Fifty Dollars and Zero Cents ($549,250.00).[53] Additionally, 75% of the PAGA Penalties, which is $93,750.00 out of $125,000.00, will be distributed to the LWDA (i.e., LWDA Payment) and 25% of the PAGA Penalties, which is $31,250.00 out of $125,000.00, will be distributed to Aggrieved Employees.[54] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class

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[47] Ghosh Decl., ¶¶ 12-14 & 18.
[48] *Id.*, ¶¶ 2-7.
[49] *Id.*, ¶¶ 12, 14, & 30.
[50] *Id.*, ¶¶ 12-14.
[51] *Id.*, ¶18.
[52] *Id.*, ¶¶ 11, 14, & 30.
[53] *Id.*, ¶ 15.
[54] Settlement Agreement, § 1.35.

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Members and the PAGA Penalties will be fully paid out to the LWDA and Aggrieved Employees, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Payment will be calculated based on his or her Workweeks and each Aggrieved Employees Individual PAGA Payment will be calculated based on his or her PAGA Pay Periods.[55] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, Aggrieved Employees, and the State of California.[56] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. <u>The Settlement Is of Significant Value.</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information in the course of litigation and in connection with the mediation and settlement negotiations.[57] The discovery and information that Class Counsel obtained from Defendant, Plaintiff, and 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 Defendant's defenses thereto.[58] As outlined in the Declaration of Joanna Ghosh, Class

[55] Settlement Agreement, §§ 3.2.4 and 3.2.5.1.
[56] Ghosh Decl., ¶¶ 12, 14, & 19.
[57] *Id.*, ¶¶ 12-14 & 17.
[58] *Id.*, ¶ 19.

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Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[59]

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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.[60] 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, Plaintiff's claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to

[59] Ghosh Decl., ¶¶ 12-13 & 16-18.
[60] Settlement Agreement, § 2.4.

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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 three hundred eighty-six (386) individuals.[61] 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. <u>The Class Members Share a Well-Defined Community of Interest.</u>

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

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through

[61] Ghosh Decl., ¶ 10.

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formal and informal discovery and exchange of information in this case, Plaintiff contends 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.[62] Plaintiff's 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 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[63]

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.[64] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.[65]

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

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT

Class Counsel has litigated the matter for over two (2) years and was actively preparing the matter for class certification and trial prior to reaching the Settlement.[66] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal

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[62] Ghosh Decl., ¶ 17.
[63] *Ibid.*
[64] *Ibid.*
[65] *Ibid.*

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written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel reviewed a large volume of documents and data[67] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages and penalties valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data in the course of litigation and in connection with mediation and settlement negotiations.[68] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[69]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[70]

The Settlement establishes a Gross Settlement Amount of One Million One Hundred Twenty Five Thousand Dollars And No Cents ($1,125,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., $393,750.00) and an amount not to exceed Thirty Five Thousand Dollars And No Cents ($35,000.00) for costs and expenses.[71] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, the Aggrieved Employees, 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 Class Notice provides Class Members with information about the amount allocated toward the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and that an award of the Class Counsel Fees Payment

[67] Ghosh Decl., ¶ 13.
[68] *Ibid.*
[69] *Id.*, ¶ 12.
[70] *Id.*, ¶¶ 2-7.
[71] Settlement Agreement, § 3.2.2.

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and Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.[72]

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 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'

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[72] Settlement Agreement, Exh. A.

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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.[73]

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

VIII. <u>THE PROPOSED CLASS NOTICE IS ADEQUATE</u>

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[74] describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, mail a Request for Exclusion from the Class Settlement, and/or mail a dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[75]

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

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[73] Ghosh Decl., ¶ 20.
[74] Settlement Agreement, Exh. A.
[75] *Ibid.*

members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[76] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[77] The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Shares and Individual PAGA Payments are calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[78]

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

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE ADMINISTRATOR

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

The Administrator will mail the Class Notice in English and Spanish to each Class Member by First-Class U.S. mail.[79] If the Administrator receives any Class Notices returned by the USPS as undelivered, before the Response Deadline, then, not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[80] If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.[81] The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.[82] The

[76] *Ibid.*
[77] *Ibid.*
[78] *Ibid.*
[79] Settlement Agreement, § 7.4.2.
[80] *Id.*, § 7.4.3.
[81] *Ibid.*
[82] *Ibid.*

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deadlines for Class Members' written objections to the Class Settlement, disputes regarding Workweeks and/or Pay Periods, and Requests for Exclusion from the Class Settlement will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for those Class Members to whom Class Notices are resent after having been returned as undeliverable to the Administrator.[83] The Administrator will receive and process Requests for Exclusion, objections, and any disputes regarding Workweeks and/or PAGA Pay Periods.

The Administrator will also calculate the amounts of the Individual Settlement Share; deduct and transmit applicable state and/or federal taxes in connection with the wages portion of the Individual Settlement Shares; mail the Individual Settlement Payment checks to Participating Class Members and Individual PAGA Payments to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and LWDA Payment; and perform any other tasks necessary to effectuate the terms of the Settlement Agreement.[84] The Administration Expenses are currently estimated to be Twelve Thousand Dollars And Zero Cents ($12,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[85]

The Parties and their counsel have no interest or relationship, financial or otherwise, with the Administrator and that Class Counsel has worked with Simpluris on prior occasions in connection with their administration of settlements in other unrelated cases.[86]

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

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[83] Settlement Agreement, § 7.4.4.
[84] *Id.*, § 7.8.4.; Ghosh Decl., ¶ 16.
[85] Settlement Agreement, § 3.2.3.
[86] Ghosh Decl., ¶ 16.; Declaration of Shannon Chou ("Chou Decl."), ¶ 3.

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X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.[87]

Within fifteen (15) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant shall provide the Settlement Administrator with the following information about each Class Member: full name, last known mailing address, Social Security number, and number of Workweeks and PAGA Pay Periods (collectively referred to as the "Class Data").[88]

Within fourteen (14) calendar days after receiving the Class Data, the Administrator will mail the Class Notice in English and Spanish to each Class Member by First-Class U.S. mail.[89] If the Administrator receives any Class Notices returned by the USPS as undelivered, before the Response Deadline, then, not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[90] If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.[91] The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.[92] The deadlines for Class Members' written objections to the Class Settlement, disputes regarding Workweeks and/or Pay Periods, and Requests for Exclusion from the Class Settlement will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members who notice is remailed.[93]

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[87] Settlement Agreement, § 7.4.2.
[88] *Id.*, § 4.2.
[89] *Id*, §7.4.2.
[90] *Id.*, § 7.4.3.
[91] *Ibid.*
[92] *Ibid.*
[93] *Id.*, § 7.4.4.

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Defendant will fund the Gross Settlement Amount by way of two (2) installments. Defendant shall fund fifty percent (50%) of the Gross Settlement Amount (i.e., $562,500.00) plus half of the employer payroll taxes and contributions owed on the Wage Portions of the Individual Settlement Shares ("First Installment") by transmitting the funds to the Administrator no later than nine (9) months from November 2, 2022 or fourteen (14) calendar days after the Effective Date, whichever date is later.[94] Defendant will fund the remaining fifty percent (50%) of the Gross Settlement Amount (i.e., $562,500.00 plus half of the employer payroll taxes and contributions owed on the Wage Portions of the Individual Settlement Share ("Second Installment"), by transmitting the funds to the Administrator no later than fifteen (15) months from November 2, 2022 or fourteen (14) calendar days after the Effective Date, whichever date is later.[95] Within fourteen (14) calendar days after Defendant funds the First Installment, the Administrator will transmit payment for (i) fifty percent (50%) of each and all Individual Settlement Payments, (ii) all Individual PAGA Payments, (iii) the LWDA PAGA Payment, and (iv) the Class Representative Service Payment.[96] Within fourteen (14) calendar days after Defendant funds the Second Installment, the Administrator will transmit payment for: (i) remaining fifty percent (50%) of each and all Individual Settlement Payments, (ii) the Administration Expenses, (iii) the Class Counsel Fees Payment, and (iv) the Class Counsel Litigation Expenses Payment.[97]

The Individual Settlement Payment and Individual PAGA Payment checks will remain negotiable for one hundred eighty (180) calendar days from the date of mailing.[98] The Administrator will cancel all checks after the void date.[99] The Administrator shall transmit the leftover funds represented by canceled Individual Settlement Payment and Individual PAGA Payment checks to the California Controller's Unclaimed Property Fund in the name of the Class Member or Aggrieved Employee.[100]

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[94] Settlement Agreement, § 4.3.
[95] *Ibid.*
[96] *Id.*, § 4.4.1.
[97] *Id.*, § 4.4.2.
[98] *Id.*, § 4.4.4.
[99] *Ibid.*
[100] *Id.*, § 4.4.6.

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENT

Plaintiff Michelle Mojica respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Service Payment in an amount up to Ten Thousand Dollars ($10,000.00) to Plaintiff Michelle Mojica.[101] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an service payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Class Representative Service Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[102] Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would benefit the Class.[103] Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Service Payment for her services on behalf of the Class, State of California, and Aggrieved Employees, in addition to her individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and

[101] Settlement Agreement, § 3.2.1.
[102] Ghosh Decl., ¶ 21; Declaration of Michelle Mojica in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Mojica Decl."), ¶ 3.
[103] Ghosh Decl., ¶ 21; Mojica Decl., ¶¶ 3-6.

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designate Plaintiff Michelle Mojica as Class Representative appoint; Simpluris, Inc. as Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, PAGA Penalties, and Administration Expenses; approve the proposed Class Notice; direct the Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: May 10, 2023

LAWYERS *for* JUSTICE, PC

By: Meg Razi

Meg Razi
Attorneys for Plaintiff

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