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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

DANIEL 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

Plaintiff,

vs.

ISLANDS RESTAURANTS, L.P., a  
Delaware limited partnership; ISLANDS  
RESTAURANTS, LLC, a Delaware limited  
liability company; ISLANDS FINE  
BURGERS & DRINKS, an unknown  
business entity; and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: 30-2023-01320258-CU-OE-CXC

Honorable Melissa McCormick  
Department CX104

**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  
(Arman Marukyan); Declaration of Proposed  
Class Representative (Daniel Hernandez); and  
[Proposed] Order filed concurrently  
herewith]

Reservation No.: 74381391  
Date: January 30, 2025  
Time: 2:00 PM  
Department: CX104

Complaint Filed: April 19, 2023  
FAC Filed: August 30, 2024  
Trial Date: None Set

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

**PLEASE TAKE NOTICE** that on January 30, 2025 at 2:00 p.m. or as soon thereafter as the matter may be heard before the Honorable Melissa McCormick in Department CX104 of the Superior Court of California for the County of Orange, located at Civil Complex Center, 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiff Daniel Hernandez (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action Settlement Agreement and Amendment No. 1 to the Class Action Settlement Agreement (together, “Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1-A**” and “**EXHIBIT 1-B**” to the Declaration of Arman Marukyan, 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 Attorneys’ Fees and Class Counsel Litigation Costs, Class Representative Service Payment to Plaintiff, and Settlement Administration Costs to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Daniel Hernandez as Class Representative;
- Preliminarily appointing Edwin Aiwazian and Arman Marukyan of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“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

- 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 Attorneys' Fees and Class Counsel Litigation Costs, Class Representative Service Payment to Plaintiff, and Settlement Administration Costs to the 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 a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Arman Marukyan) and Proposed Class Representative (Daniel 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: September 12, 2024

**LAWYERS for JUSTICE, PC**

By: \_\_\_\_\_



Arman Marukyan  
*Attorneys for Plaintiff*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Daniel Hernandez (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Class Action Settlement Agreement and Amendment No. 1 to the Class Action Settlement Agreement (together, “Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Islands Restaurants, LLC successor in interest of Islands Restaurants, L.P. (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of Two Million Five Hundred Thousand Dollars and No Cents (\$2,500,000.00).<sup>1</sup> The Gross Settlement Amount includes the following: (1) Individual Class Payment to Participating Class Members which will be distributed from the Net Settlement Amount<sup>2</sup>; (2) the Class Representative Service Payment of Fifteen Thousand Dollars and No Cents (\$15,000.00) to Plaintiff<sup>3</sup>; (3) the Class Counsel Attorneys’ Fees and Class Counsel Litigation Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$875,000.00, and reimbursement of litigation costs and expenses not to exceed Fifty Thousand Dollars and No Cents (\$50,000.00)<sup>4</sup>; (4) the Settlement Administration Costs to the Administrator in the amount not to exceed Thirty Nine Thousand Dollars and No Cents (\$39,000.00);<sup>5</sup> and (5) the amount of One Million Dollars and No Cents (\$1,000,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$750,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$250,000.00) will be distributed to all current

<sup>1</sup> Settlement Agreement, attached as “**EXHIBIT 1-A**” to Declaration of Arman Marukyan (“Marukyan Decl.”), ¶ 1.17. The Settlement is based on the representation that there were approximately 332,277 Workweeks worked by the Class Members during the period from January 10, 2019 through May 8, 2024. If that number increases by more than 10% during the Class Period, the Class Period will end when the Workweeks exceed ten percent (10%). *See Id.*, ¶ 7.

<sup>2</sup> *Id.*, ¶ 2.2.5.

<sup>3</sup> *Id.*, ¶¶ 1.11, 2.2.1.

<sup>4</sup> *Id.*, ¶¶ 1.5, 2.2.2; Amendment No. 1 to the Class Action Settlement Agreement (“Amendment No.1”), attached as “**EXHIBIT 1-B**” to Marukyan Decl., ¶¶ 4, 8.

<sup>5</sup> Settlement Agreement, ¶¶ 1.43, 2.2.3.

1 and former non-exempt hourly employees who worked for Defendants in the State of California  
2 at any time during the PAGA Period (“PAGA Members”).<sup>6</sup>

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

5 All current and former non-exempt employees employed by Defendants, in  
6 California at any time during the Class Period (“Class” or “Class Members”).<sup>7</sup>

7 Based on information provided by Defendants, as of May 8, 2024, the Class is estimated  
8 to consist of approximately 10,637 individuals, and the PAGA Members are estimated to consist  
9 of approximately 9,776 individuals.<sup>8</sup>

10 Class Members who do not submit a valid and timely Request for Exclusion  
11 (“Participating Class Members”) will receive a share of the Net Settlement Amount on a *pro*  
12 *rata* basis based upon the number of weeks each Participating Class Member worked as a non-  
13 exempt employee of Defendants in California during the Class Period.<sup>9</sup>

14 All PAGA Members will receive a share (“Individual PAGA Payment”) of the twenty-  
15 five percent (25%) portion of the PAGA Payment (“Net PAGA Payment”) on a *pro rata* basis  
16 based upon their number of PAGA Pay Periods during the PAGA Period.<sup>10</sup>

17 The Settlement, if granted preliminary and final approval by the Court, will operate to  
18 resolve the Released Class Claims of Plaintiff and Participating Class Members and the Released  
19 PAGA Claims of Plaintiff, the State of California (with respect to the PAGA Members) and  
20 PAGA Members, against the Released Parties.<sup>11</sup>

21 In order to efficiently present the Court with adequate information to determine whether  
22 to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the

23 <sup>6</sup> Settlement Agreement, ¶¶ 1.36, 2.2.4. “PAGA Period” is defined as the period of time from February 11, 2020 to  
24 the earlier of preliminary approval or when total PAGA Pay Periods exceed 120,195 Pay Periods by 10% (e.g.,  
more than 132,215 Pay Periods). *See Id.*, ¶ 1.33; Amendment No. 1, ¶ 5.

25 <sup>7</sup> Settlement Agreement, ¶ 1.3. “Class Period” is defined as the period of time from January 11, 2019 to the earlier  
of preliminary approval or when the total number of Workweeks exceeds 332,277 by 10% (e.g., more than 365,505  
Workweeks). *See Id.*, ¶ 1.9.

26 <sup>8</sup> Marukyan Decl., ¶ 8.

27 <sup>9</sup> Settlement Agreement, ¶¶ 1.18, 1.28, 2.2.5.

28 <sup>10</sup> Settlement Agreement, ¶¶ 1.20, 2.2.4.

<sup>11</sup> *See Id.*, at ¶ 4.2 and Amendment No. 1, at ¶ 9 for the full scope of the “Release by Participating Class Members;”  
*Id.*, at ¶ 4.3 and Amendment No. 1, at ¶ 10 for the full scope of the “Release by PAGA Members;” and *Id.*, at ¶  
1.39 for the definition of the “Released Parties.”



filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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

Defendants are a casual dining restaurant chain that specializes in burgers, fresh cut fries, and specialty drinks. Plaintiff Daniel Hernandez is a former employee of Defendants.

On February 13, 2023, Plaintiff provided written notice by certified mail to Defendant Islands Restaurants, L.P. and by online submission to the LWDA of the specific provisions of the California Labor Code that were alleged to be violated (“Original LWDA Notice”).<sup>12</sup>

On April 19, 2023, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“PAGA Complaint”) in the Orange County Superior Court against Defendant Islands Restaurants, L.P., thereby commencing the above captioned lawsuit (the “PAGA Action”).<sup>13</sup>

On May 15, 2023, Plaintiff provided written notice by certified mail to Defendants Islands Restaurant, LLC and Islands Fine Burgers & Drinks<sup>14</sup> and by online submission to the LWDA of the specific provisions of the California Labor Code that were alleged to be violated (“Second LWDA Notice”).<sup>15</sup>

On or about June 2, 2023, Defendant Islands Restaurants, L.P. filed its Motion to Compel Individual Arbitration of PAGA Claim and Dismiss the Representative PAGA Action (“Motion to Compel Arbitration”), and accompanying papers.<sup>16</sup> Plaintiff filed his Opposition to the Motion to Compel Arbitration, and accompanying papers, on July 28, 2023.<sup>17</sup> Defendant Islands Restaurants, L.P. filed its Reply in Support of the Motion to Compel Arbitration on or about August 3, 2023.<sup>18</sup> On August 10, 2023, the Court denied the Motion to Compel Arbitration.<sup>19</sup>

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<sup>12</sup> Marukyan Decl., ¶ 10.

<sup>13</sup> *Id.*, ¶ 11.

<sup>14</sup> Islands Fine Burger & Drinks is a registered trademark of Islands Restaurants, LLC, and not a business entity or employer.

<sup>15</sup> *Id.*, ¶ 10.

<sup>16</sup> *Id.*, ¶ 12.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

On August 8, 2023, Plaintiff filed Amendments to Complaint substituting Defendant DOE 1 with Defendant Islands Restaurant, LLC, and Defendant DOE 2 with Defendant Islands Fine Burgers & Drinks in the PAGA Action.<sup>20</sup>

On or about August 23, 2023, Defendants filed a Notice of Appeal regarding the Court's denial of the Motion to Compel Arbitration ("Defendants' Appeal").<sup>21</sup> The California Court of Appeal ultimately dismissed Defendants' Appeal, per the Parties' stipulation, on April 18, 2024.<sup>22</sup>

On October 10, 2023, Plaintiff filed a separate Class Action Complaint for Damages ("Class Complaint") in the Orange County Superior Court against Defendants Islands Restaurants, L.P., Islands Restaurants, LLC, and Islands Fine Burgers & Drinks, thereby commencing the class action entitled Hernandez v. Islands Restaurants, L.P., et al., Orange County Superior Court Case No. 30-2023-01354916-CU-OE-CXC (the "Class Action").<sup>23</sup>

Plaintiff's core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA 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 he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.<sup>24</sup>

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the PAGA Action and Class Action, and further deny

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<sup>20</sup> Marukyan Decl., ¶ 13.

<sup>21</sup> *Id.*, ¶ 14.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Id.*, ¶ 15.

<sup>24</sup> *Id.*, ¶ 16.

that the Class Action and PAGA Action are appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.<sup>25</sup>

On August 11, 2023, Plaintiff propounded multiple sets of formal written discovery requests in the PAGA Action on Defendant Islands Restaurants, L.P., including Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Form Interrogatories – General (Set One), and notices of depositions of Person Most Knowledgeable designee(s) at Defendant Islands Restaurants, L.P. along with requests for production of documents.<sup>26</sup>

On March 29, 2024, Plaintiff propounded multiple sets of formal written discovery requests in the Class Action on each of Defendants Islands Restaurants, L.P. and Islands Restaurants, LLC, including Requests for Production of Documents (Set One), Special Interrogatories (Sets One and Two), and Form Interrogatories – General (Set One), and notices of depositions of Person Most Knowledgeable designee(s) at Defendants along with requests for production of documents.<sup>27</sup>

On August 2, 2024, Plaintiff submitted an amended notice to the LWDA and Defendants regarding the specific provisions of the California Labor Code that were alleged to be violated by Defendants (“Amended LWDA Notice”).<sup>28</sup>

On August 30, 2024, Plaintiff filed his First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”) in the PAGA Action, thereby consolidating his PAGA Action and Class Action into a single action (the “Action”).<sup>29</sup>

The Parties have actively litigated the Action since it was commenced on April 19, 2023.<sup>30</sup> On March 25, 2024, the Parties participated in a formal, full-day mediation conducted by Jonathan D. Andrews, Esq., which was ultimately unsuccessful.<sup>31</sup> On May 8, 2024, the

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<sup>25</sup> Marukyan Decl., ¶ 28.

<sup>26</sup> *Id.*, ¶ 17.

<sup>27</sup> *Id.*, ¶ 18.

<sup>28</sup> *Id.*, ¶ 12.

<sup>29</sup> *Id.*, ¶ 20.

<sup>30</sup> *Id.*, ¶ 21.

<sup>31</sup> *Id.*, ¶ 19.

Parties participated in another formal, full-day mediation conducted by Dave Carothers, Esq. (the “Mediator”).<sup>32</sup> With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.<sup>33</sup>

### III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a valid and timely Request for Exclusion (i.e., Participating Class Members) and Released PAGA Claims of Plaintiff, the State of California (with respect to the PAGA Members), and the PAGA Members, with respect to the Released Parties.<sup>34</sup> 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 up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., up to \$875,000.00) (“Class Counsel Attorneys’ Fees”) and reimbursement of costs and expenses in an amount not to exceed Fifty Thousand Dollars and No Cents (\$50,000.00) to Class Counsel (“Class Counsel Litigation Costs”); (2) settlement administration costs, which are currently estimated not to exceed Thirty Nine Thousand Dollars and No Cents (\$39,000.00) to the Administrator (“Settlement Administration Costs”); (3) the amount of One Million Dollars and No Cents (\$1,000,000.00) allocated to penalties under PAGA (“PAGA Payment”); and (4) payments in the amounts of up to Fifteen Thousand Dollars and No Cents (\$15,000.00) to Plaintiff Daniel Hernandez (“Class Representative Service Payment”).<sup>35</sup> The Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Administrator”) to handle the notice and settlement administration process.

The Administrator will determine each Class Member’s individual share of the Net Settlement Amount, in accordance with the Settlement Agreement and as follows:

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<sup>32</sup> Marukyan Decl., ¶ 19.

<sup>33</sup> *Ibid.*

<sup>34</sup> Settlement Agreement, ¶¶ 1.17, 2. *See Id.*, at ¶ 4.2 and Amendment No. 1, at ¶ 9 for the full scope of the “Release by Participating Class Members;” *Id.*, at ¶ 4.3 and Amendment No. 1, at ¶ 10 for the full scope of the “Release by PAGA Members;” and *Id.*, at ¶ 1.39 for the definition of the “Released Parties.”

<sup>35</sup> Settlement Agreement, ¶ 1.25 *See Id.*, at ¶ 1.5 and Amendment No. 1, ¶ 4 for “Class Counsel Attorneys’ Fees” and “Class Counsel Litigation Costs;” *Id.*, at ¶ 1.43 for “Settlement Administration Costs;” *Id.*, at ¶ 1.36 for “PAGA Payment;” and *Id.*, at ¶ 1.11 for “Class Representative Service Payment.”

- a. After Preliminary Approval of the Settlement, the Administrator will divide the Net Settlement Amount by the total number of Workweeks credited to all Class Members during the Class Period, which is calculated by dividing the number of Workdays worked by each Class Member during the Class Period by 7, and multiply the result by the number of Workweeks credited to each Class Member to yield his or her estimated Individual Class Payment that he or she may be eligible to receive under the Class Settlement.<sup>36</sup>
- b. After Final Approval of the Settlement, the Administrator will divide the final Net Settlement Amount by the total number of Workweeks credited to all Participating Class Members during the Class Period, which is calculated by dividing the number of Workdays worked by each Participating Class Member during the Class Period by 7, and multiply the result by the number of Workweeks credited to each Participating Class Member to yield his or her Individual Class Payment.<sup>37</sup>

The Administrator will also determine each Individual PAGA Payment, in accordance with the Settlement Agreement and as follows:

The Administrator will divide the Net PAGA Payment by all PAGA Members' total PAGA Pay Periods during the PAGA Period, which is calculated by totaling the number of Workdays worked by each PAGA Member during the PAGA Period and dividing that sum by 14, and multiply the result by the number of PAGA Pay Periods credited to each PAGA Member to yield his or her Individual PAGA Payment that he or she will receive under the PAGA Settlement.<sup>38</sup>

Each Participating Class Member's Individual Class Payment will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.<sup>39</sup> Participating Class Members will be issued payment of their Individual Class Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Class Payment.<sup>40</sup> Defendants will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Class Payments in addition to the Gross Settlement Amount.<sup>41</sup> Each PAGA Member's Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Administrator.<sup>42</sup>

<sup>36</sup> Amendment No. 1, ¶ 12. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement. See Settlement Agreement, ¶ 1.37.

<sup>37</sup> Amendment No. 1, ¶ 12. "Final Approval" means the Court's order granting final approval of the Settlement. See Settlement Agreement, ¶ 1.15.

<sup>38</sup> Amendment No. 1, ¶ 12; See Settlement Agreement, at ¶ 1.20 for "Individual PAGA Payment;" *Id.*, at ¶ 1.24 for "Net PAGA Payment;" and *Id.*, at ¶ 1.34 and Amendment No. 1, at ¶ 6 for "PAGA Pay Periods."

<sup>39</sup> Settlement Agreement, ¶ 2.2.6.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Id.*, ¶¶ 1.19, 2.1, 3.2.

<sup>42</sup> *Id.*, ¶ 2.2.4.

1 The Individual Settlement Payment checks issued to Participating Class Members and  
2 Individual PAGA Payment checks issued to PAGA Members will be valid and negotiable for  
3 one hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall  
4 be cancelled.<sup>43</sup> The funds associated with such cancelled checks will be transmitted by the  
5 Administrator to Public Law Center of Orange County, or to another *cy pres* recipient to the  
6 extent the Court orders so, in accordance with California Code of Civil Procedure § 384.<sup>44</sup>  
7 Public Law Center of Orange County is a nonprofit law firm providing free legal services to  
8 low-income residents and other nonprofits in Orange County.<sup>45</sup> The Parties and their counsel  
9 do not have any interests or involvement within the governance or work of Public Law Center  
10 of Orange County.<sup>46</sup>

11 Any Class Member wishing to be excluded from the Class Settlement must submit a  
12 signed written letter indicating a request to be excluded from the Class Settlement (“Request for  
13 Exclusion”) to the Administrator, by mail or email, postmarked on or before the date that is  
14 forty-five (45) calendar days from the initial mailing of the Class Notice (“Response  
15 Deadline”).<sup>47</sup> A Request for Exclusion must: (a) contain the name, last four (4) digits of the  
16 Social Security Number, address, email address or telephone number, and signature, of the Class  
17 Member requesting exclusion; (c) state that the Class Member does not wish to be included in  
18 the Class Settlement; and (d) be returned by mail or email to the Administrator at the specified  
19 address, postmarked on or before the Response Deadline.<sup>48</sup> Class Members who submit a timely  
20 and valid Request for Exclusion will not be bound by the Class Settlement and will not be issued  
21 an Individual Settlement Payment.<sup>49</sup> All PAGA Members will be bound to the PAGA  
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24 <sup>43</sup> Settlement Agreement, ¶ 3.3.1.

25 <sup>44</sup> *Id.*, ¶ 3.3.3.

26 <sup>45</sup> Marukyan Decl., ¶ 31.

27 <sup>46</sup> *Ibid.*; Declaration of Daniel Hernandez in Support of Plaintiff’s Motion for Preliminary Approval of Class Action  
Settlement (“Hernandez Decl.”), ¶ 11; and Declaration of Mia Farber Re Cy Pres [Code Civ. Proc. § 382.4] (“Farber  
Decl.”), ¶ 2.

28 <sup>47</sup> Settlement Agreement, ¶ 6.5.1.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Id.*, ¶ 6.5.4.

1 Settlement and will be issued their Individual PAGA Payment, irrespective of whether they  
2 submit a Request for Exclusion.<sup>50</sup>

3 To object to the Class Settlement, Class Members who have not opted out of the Class  
4 Settlement (i.e., Participating Class Members) must submit a timely and complete written  
5 objection to the Class Settlement (“Objection”) to the Administrator, by fax, email, or mail, on  
6 or before the Response Deadline.<sup>51</sup> Alternatively, Participating Class Members may appear in  
7 Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval  
8 Hearing.<sup>52</sup>

9 Class Members who wish to dispute the number of Workweeks credited to them in their  
10 Class Notices may do so by submitting a written letter via fax, mail, or email to the  
11 Administrator postmarked on or before the Response Deadline.<sup>53</sup> The Administrator must  
12 encourage the challenging Class Member to submit supporting documentation.<sup>54</sup> In the absence  
13 of any contrary documentation, the Administrator is entitled to presume that the Workweeks  
14 contained in the Class Notice are correct so long as they are consistent with the Class Data.<sup>55</sup>  
15 Defendants’ employment history data will be presumed correct unless the Class Member  
16 otherwise proves to the Administrator by providing written documentation to support the  
17 correction.<sup>56</sup> The Administrator’s determination of each Class Member’s allocation of  
18 Workweeks shall be final and not appealable or otherwise susceptible to challenge.<sup>57</sup> The  
19 Administrator shall promptly provide copies of all challenges to calculation of Workweeks to  
20 Defense Counsel and Class Counsel and the Administrator’s determination of the challenges.<sup>58</sup>

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24 <sup>50</sup> Settlement Agreement, ¶ 6.5.1.

25 <sup>51</sup> *Id.*, ¶ 6.7.2.

26 <sup>52</sup> *Id.*, ¶ 6.6.

27 <sup>53</sup> *Ibid.*

28 <sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Id.*, ¶ 6.6.

1 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
2 **SETTLEMENTS**

3 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*  
4 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to  
5 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at  
6 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve  
7 or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer,*  
8 *Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair  
9 and reasonable, whether certification of the class was proper, and whether the attorney fee award  
10 was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's  
11 decision to approve a class action settlement may be reversed only upon a strong showing of  
12 "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;  
13 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

26 In considering a potential class settlement, a court need not reach any ultimate  
27 conclusions on the issues of fact and law which underlie the merits of the dispute and need not  
28 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 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.

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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 April 19, 2023.<sup>59</sup> Prior to reaching the Settlement, Class Counsel investigated the veracity, strength, and scope of the claims, and was actively preparing for class certification and trial.<sup>60</sup> Class Counsel conducted significant investigation 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 Defendants, Plaintiff, and other sources.<sup>61</sup> The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, Defendants’ Employee Handbook, a detailed sampling of Class Members’ time and pay records, company agreements and acknowledgements (including, but not limited to, CA Meal Period and Rest Period Policy Acknowledgment, Arbitration Agreement which included a class action waiver, and daily written and electronic employee attestations regarding meal and rest breaks and meal break waivers), Defendants’ operations and employment practices, procedures, and policies (including, but not limited to, Defendants’ policies regarding clocking in and out, overtime, meal and rest breaks, and business expense reimbursements), among other information and documents.<sup>62</sup> Class Counsel had the opportunity to interview Plaintiff and other percipient witnesses to gather information regarding the facts and circumstances surrounding Plaintiff’s and putative class members’ employment and to identify potential witnesses.<sup>63</sup> Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, Defendants’ Motion to Compel Arbitration, discovery, and the production of documents and data prior to the mediation.<sup>64</sup> Class Counsel also drafted pleadings, engaged in motions practice (i.e.,

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<sup>59</sup> Marukyan Decl., ¶ 21.

<sup>60</sup> *Id.*, ¶ 22.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

Defendants’ Motion to Compel Arbitration), drafted the mediation brief and prepared for and attended court proceedings, mediation, and settlement negotiations, among other tasks.<sup>65</sup>

The Parties engaged in extensive settlement negotiations and participated in two (2) formal, full-day mediations, first conducted by Jonathan Andrews, Esq., and second conducted by Dave Carothers, Esq.<sup>66</sup> Prior to and during the mediations and settlement discussions, 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 off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, and PAGA representative actions, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.<sup>67</sup> During all settlement discussions, the Parties conducted their negotiations at arm’s length in an adversarial position.<sup>68</sup> Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their 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.<sup>69</sup> After conducting extensive investigations, informal discovery, exchange of information, and 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.<sup>70</sup>

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, trial, and/or upon appeal.<sup>71</sup> The Parties have had the opportunity to interview and obtain information from their

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<sup>65</sup> Marukyan Decl., ¶ 22.

<sup>66</sup> *Id.*, ¶ 19.

<sup>67</sup> *Id.*, ¶ 21.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Id.*, ¶ 28.

1 respective witnesses.<sup>72</sup> Counsel for the Parties have also reviewed documents and information  
2 relating to Plaintiff's and the Class Members' employment with Defendants and performed  
3 significant research into the law concerning class certification, PAGA representative actions,  
4 off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's  
5 claims and damages, and Defendants' defenses thereto, as well as facts discovered.<sup>73</sup> The Parties  
6 have reached the Settlement based on this large volume of facts, evidence, and investigation. In  
7 addition, Class Counsel has extensive experience in employment class actions, including  
8 significant experience in California wage-and-hour litigation.<sup>74</sup>

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

10 The Settlement, which provides for a Gross Settlement Amount of Two Million Five  
11 Hundred Thousand Dollars and No Cents (\$2,500,000.00), represents a fair, adequate, and  
12 reasonable resolution of the matter.<sup>75</sup> The Settlement was calculated using the information and  
13 data uncovered during litigation, case investigation, as well as the informal exchange of data  
14 and information.<sup>76</sup> The Settlement takes into account the potential risks and rewards inherent  
15 in any case and, in particular, in the case at issue.<sup>77</sup> Moreover, considering all of the facts and  
16 circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery  
17 for the Class, the PAGA Members, and the State of California.<sup>78</sup>

18 Assuming that the Class Counsel Attorneys' Fees and Class Counsel Litigation Costs,  
19 Class Representative Service Payment, PAGA Payment, and Settlement Administration Costs  
20 are approved by the Court and paid in the full amounts provided for by the Settlement, the  
21 Settlement provides for a Net Settlement Amount that is currently estimated to be Five Hundred  
22 Seventy One Thousand Dollars and No Cents (\$571,000.00).<sup>79</sup> As discussed in Part III, *supra*,  
23 the entire Net Settlement Amount will be fully paid out to the Participating Class Members and  
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25 <sup>72</sup> Marukyan Decl., ¶ 28.

26 <sup>73</sup> *Id.*, ¶¶ 21-23, 28.

27 <sup>74</sup> *Id.*, ¶¶ 2-6.

28 <sup>75</sup> *Id.*, ¶¶ 21, 23, 24, 37, 38.

<sup>76</sup> *Id.*, ¶¶ 36.

<sup>77</sup> *Id.*, ¶¶ 27, 36-37.

<sup>78</sup> *Id.*, ¶¶ 21, 23, 37, 38.

<sup>79</sup> *Id.*, ¶ 24.

the PAGA Payment will be fully paid out to the LWDA and PAGA Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Class Payment will be calculated based on his or her Workweeks during the Class Period and the amount of each PAGA Member's Individual PAGA Payment will be calculated based on his or her PAGA Pay Periods during the PAGA Period.<sup>80</sup> 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, the PAGA Members, and the State of California.<sup>81</sup> 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. The Settlement Is of Significant Value.**

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery and exchanged a large volume of documents, data, and information in the course of mediation and settlement negotiations.<sup>82</sup> The discovery and information that Class Counsel obtained from Defendants, 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 Defendants' defenses thereto.<sup>83</sup> As outlined  
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<sup>80</sup> Settlement Agreement, ¶¶ 1.18, 1.20.

<sup>81</sup> Marukyan Decl., ¶¶ 21, 23, 37, 38.

<sup>82</sup> *Id.*, ¶¶ 21-23, 28.

<sup>83</sup> *Id.*, ¶ 28.

1 in the Declaration of Arman Marukyan, Class Counsel performed an extensive analysis of each  
2 and every claim pursuant to *Kullar* prior to entering into the Settlement.<sup>84</sup>

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

4 For settlement purposes, the requisites for establishing class certification are met, and  
5 the Parties have stipulated to conditional certification of the Class for settlement purposes only.<sup>85</sup>  
6 California Code of Civil Procedure Section 382 “authorizes class actions when the question is  
7 one of a common or general interest, of many persons, or when the Parties are numerous, and it  
8 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*  
9 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies  
10 “both [1] an ascertainable class and [2] a well-defined community of interest among class  
11 members.” *Id.*

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

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

21 “Ascertainability is required in order to give notice to putative class members as to whom  
22 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)  
23 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs  
24 by describing a set of common characteristics sufficient to allow a member of that group to  
25 identify himself or herself as having a right to recover based on the description.” *Bartold v.*  
26

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28 <sup>84</sup> Marukyan Decl., ¶¶ 21-23, 26-28, 36.

<sup>85</sup> Settlement Agreement, ¶ 11.1.

1 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be  
2 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

3 This action involves a class of approximately 10,637 individuals.<sup>86</sup> This class is  
4 sufficiently numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35  
5 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is  
6 not practical at that point). Further, all Class Members can and will be identified by Defendants  
7 to the Administrator through a review of Defendants' employment records regarding hourly-  
8 paid or non-exempt employees in California during the Class Period. As such, the Class is  
9 ascertainable and sufficiently numerous.

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

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

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

25 Here, common issues of fact and law predominate as to each of the claims alleged and  
26 asserted in the Operative Complaint. Based on the documents and information obtained through  
27 informal discovery and exchange of information in this case, Plaintiff contends that Class  
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<sup>86</sup> Marukyan Decl., ¶ 8.

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.<sup>87</sup> Plaintiff's claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.<sup>88</sup>

Plaintiff also contends that Defendants' payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.<sup>89</sup> As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.<sup>90</sup>

Plaintiff maintains that the outcome of this litigation would be determined by Defendants' 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.<sup>91</sup> Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over a year and was actively preparing the matter for class certification and trial.<sup>92</sup> 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 informal discovery.<sup>93</sup> Class Counsel reviewed a large volume of information, documents, and data and also interviewed and obtained information from Plaintiff, researched applicable law, undertook damages and penalties

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<sup>87</sup> Marukyan Decl., ¶ 26.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Id.*, ¶ 21.

<sup>93</sup> *Id.*, ¶ 22.



valuation calculations, interviewed witnesses, and met and conferred with Defendants' counsel regarding the pleadings, motions practice, discovery, and the production of documents and data in the course of litigation and mediation.<sup>94</sup> Counsel for the Parties also undertook extensive settlement discussions, which included participating in two formal, full-day mediations.<sup>95</sup>

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.<sup>96</sup>

The Settlement establishes a Gross Settlement Amount of Two Million Five Hundred Thousand Dollars and No Cents (\$2,500,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Attorneys' Fees and Class Counsel Litigation Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$875,000.00 if the Gross Settlement Amount remains \$2,500,000.00) and an amount not to exceed Fifty Thousand Dollars and No Cents (\$50,000.00) for costs and expenses.<sup>97</sup> 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, 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 Attorneys' Fees and Class Counsel Litigation Costs, and that an award of the Class Counsel Attorneys' Fees and Class Counsel Litigation Costs will be sought, as provided for by the Settlement.<sup>98</sup>

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

<sup>94</sup> Marukyan Decl., ¶¶ 22-23, 28, 36.

<sup>95</sup> *Id.*, ¶ 19.

<sup>96</sup> *Id.*, ¶¶ 2-6.

<sup>97</sup> Settlement Agreement, ¶¶ 1.5, 1.17, 2.2.2.; Amendment No. 1, ¶¶ 4, 8.

<sup>98</sup> See Class Notice.

“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’ 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).

1 Class Counsel have borne all of the risks and costs of litigation and will not receive any  
2 compensation until recovery is obtained.<sup>99</sup>

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

9 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE**

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

15 The proposed Class Notice describes the Settlement, the deadlines and procedures to  
16 submit an Objection, Request for Exclusion, and/or Challenges to Calculation of Workweeks,  
17 and the date and time set for the Final Approval Hearing.<sup>100</sup>

18 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.  
19 *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class  
20 members to make an informed decision about their participation." *Manual for Complex*  
21 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the  
22 proceedings to date and the terms and conditions of the Settlement in an informative and  
23 coherent manner.<sup>101</sup> The proposed Class Notice recognizes that the Court has not yet granted  
24 final approval of the settlement.<sup>102</sup> The proposed Class Notice also apprises the Class Members

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27 <sup>99</sup> Marukyan Decl., ¶ 29.

<sup>100</sup> See Class Notice.

<sup>101</sup> See Class Notice.

<sup>102</sup> See Class Notice.

of, *inter alia*, how Individual Class Payments and Individual PAGA Payments are calculated and the number of Workweeks and PAGA Pay Periods credited to them.<sup>103</sup>

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.<sup>104</sup> The Administrator will receive and process Requests for Exclusion, Objections, and Challenges to Calculation of Workweeks.<sup>105</sup>

The Administrator will calculate the amounts of the Individual Class Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Class Payments; mail the Individual Class Payment checks to Participating Class Members and Individual PAGA Payment checks to PAGA Members; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Attorneys’ Fees and Class Counsel Litigation Costs, Class Representative Service Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.<sup>106</sup> The Settlement Administration Costs are currently estimated not to exceed Thirty-Nine Thousand Dollars and No Cents (\$39,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.<sup>107</sup>

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris as the Administrator and direct the mailing of the Class Notice to the Class Members in the manner

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<sup>103</sup> See Class Notice.

<sup>104</sup> Settlement Agreement, ¶ 6.4.2; Amendment No. 1, ¶ 11.

<sup>105</sup> Settlement Agreement, ¶¶ 6.5, 6.6, 6.7, 6.8.

<sup>106</sup> Settlement Agreement, ¶¶ 3.3, 3.4, 6.8; Amendment No. 1, ¶ 12; Marukyan Decl., ¶ 16.

<sup>107</sup> Settlement Agreement, ¶ 1.43.

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.<sup>108</sup>

Within twenty-one (21) calendar days of Preliminary Approval, Defendants will provide the Administrator with the following information for each Class Member: (1) name; (2) last known mailing address; (3) Social Security Number; (4) Workweeks during the Class Period; and (5) PAGA Pay Periods during the PAGA Period (collectively, "Class Data").<sup>109</sup>

Within fourteen (14) calendar days after receiving the Class Data, the Administrator will perform a search based on the National Change of Address Database or any other similar services available for information to update and correct for any known or identifiable address changes and will mail a Class Notice to the Class Members in English and Spanish via First-Class U.S. Mail using the most current, known mailing addresses identified by the Administrator.<sup>110</sup> If a Class Notice is returned to the Administrator, then the Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice to the Class Member within three (3) calendar days.<sup>111</sup> Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, Challenges to Calculations of Workweeks, and/or Objection.<sup>112</sup> In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fourteen (14) calendar days.<sup>113</sup>

Within fourteen (14) calendar days of the Effective Date, Defendants will make a one-time deposit of the Gross Settlement Amount, and the amounts necessary to fully pay

<sup>108</sup> Settlement Agreement, ¶ 6.4.2.

<sup>109</sup> *Id.*, ¶ 3.1. *See Id.*, at ¶ 1.6 for the definition of "Class Data."

<sup>110</sup> *Id.*, ¶ 6.4.2; Amendment No. 1, ¶ 11.

<sup>111</sup> Settlement Agreement, ¶ 6.4.3.

<sup>112</sup> *Id.*, ¶¶ 1.41, 6.5.1, 6.6, 6.7.2.

<sup>113</sup> *Ibid.*

Defendants' share of payroll taxes, into a settlement account to be established by the Administrator.<sup>114</sup> Within ten (10) calendar days of the funding of the Gross Settlement Amount, the Administrator will distribute the Court-approved: (1) Individual Class Payments to Participating Class Members; (2) Individual PAGA Payments to PAGA Members; (3) LWDA PAGA Payment to the LWDA; (4) Class Representative Service Payment to Plaintiff; (5) Class Counsel Attorneys' Fees and Class Counsel Litigation Costs to Class Counsel; and (6) Settlement Administration Costs to itself.<sup>115</sup>

The Individual Class Payment and Individual PAGA Payment checks will be valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance, and thereafter, shall be cancelled.<sup>116</sup> The funds associated with such cancelled checks will be transmitted by the Administrator to Public Law Center of Orange County, or to another *cy pres* recipient to the extent the Court orders so, in accordance with California Code of Civil Procedure § 384.<sup>117</sup>

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

Plaintiff Daniel Hernandez respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Service Payment in an amount up to Fifteen Thousand Dollars and No Cents (\$15,000.00).<sup>118</sup> 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 a 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

<sup>114</sup> Settlement Agreement, ¶ 3.2. *See Id.*, at ¶ 1.14 for the definition of "Effective Date."

<sup>115</sup> *Id.*, ¶ 3.3.

<sup>116</sup> *Id.*, ¶ 3.3.1.

<sup>117</sup> *Id.*, ¶ 3.3.3.

<sup>118</sup> *Id.*, ¶¶ 1.11, 2.2.1. *See Id.*, at ¶ 1.10 for the definition of "Class Representative."

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.<sup>119</sup> Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.<sup>120</sup> Accordingly, it is appropriate and just for Plaintiff to receive the Class Representative Service Payment, in addition to his individual settlement payments, for services performed in the matter on behalf of the Class, PAGA Members, and the State of California.

## **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 Edwin Aiwasian, Arby Aiwasian, Joanna Ghosh, and Arman Marukyan of Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Daniel Hernandez as the Class Representative; appoint Simpluris, Inc. as the Administrator; preliminarily approve the allocations for Class Counsel Attorneys' Fees and Class Counsel Litigation Costs, Class Representative Service Payment, PAGA Payment, and Settlement Administration Costs; 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; and permit the filing of a memorandum that exceeds the page limit.

Dated: September 12, 2024

**LAWYERS for JUSTICE, PC**

By:



Arman Marukyan  
Attorneys for Plaintiff

<sup>119</sup> Marukyan Decl., ¶ 30; Hernandez Decl., ¶¶ 3-5.

<sup>120</sup> Marukyan Decl., ¶ 30; Hernandez Decl., ¶¶ 3-5, 9.