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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ANNIE ALBRITTON, 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.

ALLIED PROFESSIONAL NURSING
CARE, INC., a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVSB2124648

Honorable Jessica Morgan
Department S26

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Helene Mayer); Declaration of Proposed
Class Representative (Annie Albritton);
and [Proposed] Order filed concurrently
herewith]

Date: July 30, 2024
Time: 8:30 a.m.
Department: S26

Complaint Filed: August 26, 2021
FAC Filed: May 29, 2024
Trial Date: None Set

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

PLEASE TAKE NOTICE that on July 30, 2024 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Jessica Morgan in Department S26 of the Superior Court of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Annie Albritton (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action and PAGA settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Helene Mayer, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Litigation Costs to Class Counsel, Enhancement Payment to Plaintiff, and Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Annie Albritton as Class Representative;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Helene Mayer 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 Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests

1 for the Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Payment
2 for Plaintiff, and Administration Costs to the Settlement Administrator.

3 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
4 of Court, which provide for approval by the Court the settlement of a putative class action and
5 allows the Court to preliminarily certify a class for settlement purposes, and permits the Court to
6 extend the page limit for memoranda.

7 This motion is based upon the following memorandum of points and authorities, the
8 Settlement Agreement, the Declarations of Proposed Class Counsel (Helene Mayer) and
9 Proposed Class Representative (Annie Albritton) in support thereof, the pleadings and other
10 records on file with the Court in this matter, and such evidence and oral argument as may be
11 presented at the hearing on this motion.

12 Dated: July 8, 2024

LAWYERS for JUSTICE, PC

13
14 By: Helene Mayer
15 Helene Mayer
16 Attorneys for Plaintiff Annie Albritton
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Annie Albritton (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated, on the one hand, and Defendant Allied Professional Nursing Care, Inc. (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle the lawsuit for a Maximum Settlement Amount of One Million Three Hundred Fifty Thousand Dollars and Zero Cents (\$1,350,000.00).¹ The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount²; (2) the Enhancement Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff³; (3) the Attorneys’ Fees and Litigation Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or \$472,000.00, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00)⁴; (4) the Administration Costs to the Settlement Administrator in the amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00);⁵ and (5) the amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$150,00.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$50,000.00) will be distributed all current and former hourly-

¹ Settlement Agreement, attached as “EXHIBIT 1” to Declaration of Helene Mayer (“Mayer Decl.”), § I.L. Defendant represented that there were 65,632 Workweeks during the period from August 26, 2017 to July 19, 2023. If the number of Workweeks during this period is actually more than ten percent (10%) higher than 65,632, i.e., there are more than 72,195 Workweeks for the referenced time period (“Workweeks Threshold”), Defendant shall have the option of: (1) increasing the Maximum Settlement Amount on a proportional basis by the same number of percentage points above ten percent (10%) (e.g., if the number of Workweeks increases by eleven percent (11%) to 72,852 workweeks, the Maximum Settlement Amount will increase by one percent (1%)), or (2) cutting off the Class Period as of the date there are 72,195 workweeks. See *id.*, § V.III.B.

² *Id.*, § I.J.

³ *Id.*, § XV.

⁴ *Id.*, § XIV.

⁵ *Id.*, § IX.

1 paid or non-exempt employees who worked for Defendant within the State of California at any
2 time during the PAGA Period (“PAGA Members”).⁶

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

5 All current and former hourly-paid or non-exempt employees who worked for
6 Defendant within the State of California at any time during the Class Period
(collectively referred to as the “Class” or “Class Members”).⁷

7 Based on information provided by Defendant, the Class is estimated to consist of
8 approximately five hundred and thirty-one (531) individuals.⁸

9 Class Members who do not submit a valid and timely Request for Exclusion from the
10 Class Settlement (“Settlement Class Members”) will receive a share of the Net Settlement
11 Amount (“Individual Settlement Payment”) on a *pro rata* basis based upon the number of weeks
12 that a Class Member worked for Defendant as an hourly-paid or non-exempt employee in
13 California during the Class Period (based on the number of workweeks in the Class List that
14 Defendant provides to the Settlement Administrator), which includes any week in which a Class
15 Member had a time worked entry in Defendant’s timekeeping system. (“Workweeks”).⁹

16 All PAGA Members will receive a *pro rata* share of the 25% portion of the PAGA
17 Penalties (“Individual PAGA Payment”) based on the number of the number of Workweeks of
18 each PAGA Member during the PAGA Period (“PAGA Workweeks”).¹⁰

19 The Settlement, if granted preliminary and final approval by the Court, will operate to
20 resolve the Released Class Claims of Plaintiff and Settlement Class Members and the Released
21 PAGA Claims of the State of California and PAGA Members, against the Released Parties.¹¹

22 In order to efficiently present the Court with adequate information to determine whether
23

24 ⁶ Settlement Agreement, §§ I.N and I.O. “PAGA Period” is defined as means the period from March 22, 2023
25 through the date of preliminary approval of the Settlement by the Court. *See id.*, § I.P.

26 ⁷ *Id.*, § I.C. “Class Period” is defined as means the period August 26, 2017 through the date of preliminary approval
of the Settlement by the Court. *See id.*, § I.D.

27 ⁸ Mayer Decl., ¶ 9.

28 ⁹ Settlement Agreement, §§ I.J, I.U, and I.W.

¹⁰ *Id.*, §§ I.I and XII.B.1.

¹¹ *Id.*, at §§ VII.A and VII.B. *See id.* at § VII.A for the full scope of the “Released Class Claims,” *id.* at § VII.B for
the full scope of the “Released PAGA Claims,” and *id.* at § VII.A for the definition of the “Released Parties.”

to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant was founded in 1996 and focuses on serving Southern California families with at-home health care services. Defendant employs Licensed Vocational Nurses and Registered Nurses. Defendant covers a service area that spans from Barstow to Temecula and from El Monte to Palm Desert. Plaintiff Annie Albritton is a former employee of Defendant.

On August 26, 2021, Plaintiff filed a Class Action Complaint for Damages, Case No. CIVSB2124648, in the San Bernardino County Superior Court, which is a wage and hour class action against Defendant. In this class action (“the Action”), Plaintiff alleges, inter alia, on behalf of herself and all others similarly situated, that Defendant violated California state wage and hour laws and the California Business and Professions Code Section 17200 et seq. as a result of Defendant’s California wage and hour policies and practices. Specifically, Plaintiff alleged that Defendant violated the following provisions of the California Labor Code: (1) California Labor Code sections 510 and 1198 (failure to pay overtime); (2) California Labor Code sections 226.7 and 512(a) (failure to provide compliant meal periods and associated premiums); (3) California Labor Code section 226.7 (failure to provide rest periods and associated premiums); (4) California Labor Code sections 1194, 1197, and 1197.1 (failure to pay minimum wages); (5) California Labor Code sections 201-203 (failure to timely pay final wages); (6) California Labor Code section 204 (failure to timely pay wages during employment); (7) California Labor Code section 226(a) (failure to provide accurate wage statements); (8) California Labor Code section 1174(d) (failure to keep requisite payroll records); (9) California Labor Code sections 2800 and 2802 (failure to reimburse necessary business expenses); and (10) California Business & Professions Code sections 17200, et seq.

On January 13, 2022, Defendant filed an Answer to the Class Action Complaint for Damages.

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On March 22, 2024, Plaintiff sent a letter to the Labor and Workforce Development Agency, pursuant to California Labor Code section 2699.3, providing notice of her intention to seek civil penalties under the Private Attorneys General Act, California Labor Code section 2698, et seq., for Defendant's alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders ("LWDA Letter").

In order to facilitate the global settlement of the Action and the claims alleged in the LWDA Letter, on May 29, 2024, Plaintiff filed a First Amended Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, § 2698 Et Seq. (the "First Amended Complaint"), which adds an eleventh cause of action seeking penalties pursuant to the California Labor Code Private Attorneys' General Act, California Labor Code section 2698, et seq. ("PAGA") on behalf of the PAGA Members.

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 giving rise to penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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 March 16, 2022, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents (Set One); Special Interrogatories (Sets One and Two); and Form Interrogatories - General (Set One), on Defendant, and noticed the depositions of Defendant's person most knowledgeable regarding job duties and organizational structure, along with accompanying requests for production of documents.

The Parties have actively litigated the Action since it was commenced on August 26, 2021. On July 19, 2023, the Parties participated in a formal, full-day mediation conducted by Brian C. Sinclair (the "Mediator"), 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. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Maximum 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 from the Class Settlement (i.e., Settlement Class Members) and the Released PAGA Claims of the State of California and the PAGA Members 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 Maximum Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five (35%) of the Maximum Settlement Amount (i.e., \$472,500.00) ("Attorneys' Fees) and reimbursement of costs and expenses in an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00) to Class Counsel ("Litigation Costs"); (2) settlement administration costs, which are currently estimated not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) to the Settlement Administrator ("Administration Costs"); (3) Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) allocated to penalties under PAGA ("PAGA Penalties"); and payment in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff Annie Albritton ("Enhancement Payment").¹³ The

¹² Settlement Agreement, §§ VII.A and VII.B.

¹³ *Id.*, §§ IX, XIV, XV, and XVII.

Parties have agreed to retain Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member’s *pro rata* share of the available Net Settlement Amount (“Individual Settlement Payment”), in accordance with the Settlement Agreement and as follows: (1) Defendant will calculate the number of Workweeks of each Settlement Class Member during the Class Period and include this information in the Class List; (2) the value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks of all Settlement Class Members (“Class Workweek Point Value”); and (3) each Settlement Class Member’s individual Workweeks will be multiplied by the Class Workweek Point Value to arrive at his or her Individual Settlement Payment.¹⁴ Individual Settlement Payments for each Settlement Class Member will be reduced by any required legal deductions for the employee’s share of taxes and withholdings on the wages portion of the Individual Settlement Payments.¹⁵

The Parties have agreed that the Settlement Administrator will determine each PAGA Member’s *pro rata* share of the twenty-five percent (25%) portion of the PAGA Penalties (i.e., “Employee PAGA Amount”) (“Individual PAGA Payments”) in accordance with the Settlement Agreement and as follows: (1) Defendant will calculate the number of PAGA Workweeks of each PAGA Member during the PAGA Period and include this information in the Class List; (2) the value of each PAGA Workweek shall be determined by the Settlement Administrator by dividing the Employee PAGA Amount by the total number of PAGA Workweeks of all PAGA Members (“PAGA Workweek Point Value”); and (3) each PAGA Member’s individual PAGA Workweeks will be multiplied by the PAGA Workweek Point Value to arrive at his or her Individual PAGA Payment.¹⁶

¹⁴ Settlement Agreement, §§ XII.A.1 - XII.A.3.

¹⁵ *Id.*, § XII.A.3.

¹⁶ *Id.*, §§ XII.B.1 - XII.B.3.

Each Settlement Class Member's Individual Settlement Payment will be allocated as follows: fifteen percent (15%) as wages, which will be reported on an IRS Form W-2; and eighty-five percent (85%) penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁷ Settlement Class Members will be issued payment of their Individual Settlement Payments subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.¹⁸ The employer's share of payroll taxes and contributions on the wages portion of Individual Settlement Payments will be paid by Defendant in addition to, and not as a deduction from, the Maximum Settlement Amount.¹⁹ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.²⁰

The Individual Settlement Payment and Individual PAGA Payment checks will be negotiable for one hundred eighty (180) calendar days after the date of mailing, and thereafter, will be canceled.²¹ The funds remaining and associated with cancelled Individual Settlement Payment and/or Individual PAGA Payment checks will be paid to Legal Aid at Work.²²

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit a written request ("Request for Exclusion") to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days after the Settlement Administrator mails the Class Notice to Class Members and PAGA Members ("Response Deadline").²³ A Request for Exclusion must: (1) contain the case name and number of the Action; (2) contain the Class Member's full name, address, telephone number, and last four digits of his or her Social Security number; (3) be signed by the Class Member or his or her authorized representative; (4) contain a clear statement that the Class Member requests to be excluded from the Class

¹⁷ Settlement Agreement, § XVI.C.

¹⁸ *Id.*, § XVI.A.3.

¹⁹ *Id.*, § XVI.F.

²⁰ *Id.*, § XVI.D.

²¹ *Id.*, § XII.D.3.

²² *Ibid.*

²³ *Id.*, §§ X.A.5 and X.C.1.

1 Settlement; and (5) be sent to the Settlement Administrator, postmarked by no later than the
2 Response Deadline.²⁴ Any Class Member who opts out of the Class Settlement will not be
3 bound by the terms of the Class Settlement, will not receive an Individual Settlement Payment,
4 and will not have the right to object to the Class Settlement.²⁵ However, PAGA Members will
5 still receive an Individual PAGA Payment regardless of whether they submit a valid and timely
6 Request for Exclusion and will be bound to the PAGA Settlement.²⁶ If five percent (5%) or
7 more members of the Class Members exercise their rights to exclude themselves and opt out of
8 the Settlement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate
9 the Settlement no later than five (5) days prior to the date of the Final Approval Hearing. In the
10 event of Defendant's withdrawal, no party may use the fact that the Parties agreed to the
11 Settlement for any reason. In the event that Defendant elects to terminate this Settlement,
12 Defendant shall pay all of the Administration Costs incurred by the Settlement Administrator up
13 to that point.²⁷

14 To object to the Class Settlement, Class Members who have not opted out of the Class
15 Settlement (i.e., Settlement Class Members) may submit a timely and complete written objection
16 to the Class Settlement to the Settlement Administrator, on or before the Response Deadline or
17 appear at the Final Approval Hearing with or without submitting a written objection to the Class
18 Settlement.²⁸ The written objection to the Class Settlement must: (1) contain the case name and
19 number of the Action; (2) contain the Settlement Class Member's full name, address, telephone
20 number, signature, and last four digits of his or her Social Security number; (3) clearly state the
21 grounds for the objection; (4) state whether the Settlement Class Member intends to appear at the
22 Final Approval Hearing; and (5) be mailed to the Settlement Administrator, postmarked no later
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26 ²⁴ Settlement Agreement, § X.C.1.

27 ²⁵ *Id.*, § X.C.3.

28 ²⁶ *Ibid.*

²⁷ *Id.* § X.C.4.

²⁸ *Id.*, § X.B.

1 than the Response Deadline.²⁹ Class Members who have opted-out have no right to object to the
2 Class Settlement.³⁰

3 A Class Member and/or PAGA Member who wishes to challenge the number of
4 Workweeks and/or PAGA Workweeks which have been credited to him or her, as reflected in his
5 or her Class Notice, may do so by submitting a written letter to the Settlement Administrator
6 (“Workweeks Dispute”) on or before the Response Deadline.³¹ The Workweeks Dispute must:
7 (1) contain the case name and number of the Action; (2) contain the Class Member’s and/or
8 PAGA Member’s full name, address, telephone number, signature, and last four digits of his or
9 her Social Security number; (3) contain a statement setting forth the number of Workweeks
10 during the Class Period and/or PAGA Period that he or she contends is correct and attach any
11 relevant documentation in support thereof; and (4) be submitted to the Settlement Administrator
12 by mail, postmarked no later than the Response Deadline.³²

13 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
14 **SETTLEMENTS**

15 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
16 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
17 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
18 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve
19 or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.*
20 (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and
21 reasonable, whether certification of the class was proper, and whether the attorney fee award was
22 proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s
23 decision to approve a class action settlement may be reversed only upon a strong showing of
24 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;
25 *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

26 ²⁹ Settlement Agreement, § X.B.

27 ³⁰ *Id.*, § X.C.2.

28 ³¹ *Id.*, § XI.A.

³² *Ibid.*

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 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

1 settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the
2 court is free to engage in a balancing and weighing of the factors depending on the circumstances
3 of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give “proper
4 deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027
5 (citation omitted).

6 The proponent of the settlement has the burden to show that it is fair and reasonable.
7 *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the
8 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
9 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
10 litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at
11 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
12 1151.

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

15 The Parties have actively litigated the Action since it was commenced on August 26,
16 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and
17 scope of the claims, and Class Counsel was actively preparing the matter for class certification
18 and trial.³³

19 Prior to engaging in mediation, Class Counsel conducted significant investigation and
20 formal and informal discovery regarding the facts of the cases, including and not limited to, the
21 exchange, review, and analysis of a large volume of documents and data obtained from
22 Defendant, Plaintiff, and other sources.³⁴ The volume of data and documents that Class Counsel
23 reviewed and analyzed included and was not limited to: Plaintiff’s employment records, a
24 detailed sampling of Plaintiff’s and other Class Members’ time data and pay records, job
25 descriptions, new hire checklists, Defendant’s Employee Handbooks, daily activity records,
26 internal memorandum, company policy acknowledgements (including but not limited to,

27 ³³ Mayer Decl., ¶¶ 12-14.

28 ³⁴ *Id.*, ¶ 13.

1 Alternate Workweek Schedule Acknowledgments), forms (including but not limited to On the
2 Job Paid Meal Agreement), procedures, and policies (Safety Policies, Ethics at Allied
3 Professional Nursing, Staffing Cancellation, Nursing Notes/Timesheet Submission Policy, Cell
4 Phone/Laptop Computers/Smoking/Timecard Policy, Transportation, Patient Abandonment, and
5 Behavior Policy, Attendance Policy, Afterhours/Overtime Policy, and Policy and Procedure for
6 Standards of Care and Practice), among other information and documents.³⁵ Class Counsel
7 conducted interviews to gather information regarding the facts and circumstances surrounding
8 Plaintiff's and putative class members' employment and to identify potential witnesses.³⁶ Class
9 Counsel propounded multiple sets of formal written discovery requests on Defendant and noticed
10 the deposition of Defendant's Person Most Knowledgeable designee regarding organizational
11 structure and job duties.³⁷ Counsel for the Parties met and conferred on numerous occasions,
12 e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and
13 data prior to the mediation.³⁸ Class Counsel drafted Plaintiffs' mediation brief and prepared for
14 and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁹

15 The Parties engaged in extensive settlement negotiations and participated in a formal,
16 full-day mediation conducted by Brian C. Sinclair, a well-respected mediator experienced in
17 mediating complex labor and employment matters.⁴⁰ Prior to and in during the mediation and
18 settlement discussions, the Parties exchanged class information and engaged in intensive
19 discussion regarding their evaluations of the cases and various aspects of the cases, including but
20 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with
21 class certification and/or representative adjudication, the law relating to off-the-clock theory,
22 meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as
23 well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴¹

24
25 ³⁵ Mayer Decl., ¶ 13.

26 ³⁶ Ibid.

27 ³⁷ Ibid.

28 ³⁸ Ibid.

³⁹ Ibid.

⁴⁰ *Id.*, ¶ 12.

⁴¹ Ibid.

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 all 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, formal and 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.⁴⁴

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at class 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' and PAGA Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, 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. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement, which provides for a Maximum Settlement Amount of One Million Three Hundred Fifty Thousand Dollars and Zero Cents (\$1,350,000.00), represents a fair,

⁴² Mayer Decl., ¶ 12.

⁴³ *Id.*, ¶¶ 12, 17-19.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 12-14 & 17-19.

⁴⁸ *Id.*, ¶¶ 6-7.

adequate, and reasonable resolution of the matter.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 matter at issue.⁵¹ Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁵²

Assuming that the Attorneys' Fees and Litigation Costs, Enhancement Payment, PAGA Penalties, and Administration Costs 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 Six Hundred Seventeen Thousand Five Hundred Dollars and Zero Cents (\$617,500.00).⁵³ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement 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 Workweeks during the PAGA Period.⁵⁴ 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.⁵⁵

⁴⁹ Mayer Decl., ¶¶ 12, 14, 15 & 23.

⁵⁰ *Id.*, ¶¶ 12-14.

⁵¹ *Id.*, ¶¶ 17-19.

⁵² *Id.*, ¶¶ 12, 14, & 23.

⁵³ *Id.*, ¶ 15.

⁵⁴ Settlement Agreement, §§ XII.A and XII.B.

⁵⁵ Mayer Decl., ¶¶ 12, 14, & 23.

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 have 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 formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁶ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant' defenses thereto.⁵⁷ As outlined in the Declaration of Helene Mayer, Class Counsel performed an analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁸

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.⁵⁹ 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

⁵⁶ Mayer Decl., ¶¶ 12-14 & 19.

⁵⁷ *Id.*, ¶ 19.

⁵⁸ *Id.*, ¶¶ 12-14 & 17-19.

⁵⁹ Settlement Agreement, § IV.A.

1 affecting any individual Class Member. Further, Plaintiff's claims are typical of the claims of
2 the Class Members, and Class Counsel will fairly and adequately protect the interests of the
3 Class. Finally, prosecution of separate actions by individual Class Members would create the
4 risk of inconsistent or varying adjudications, and a class action is superior to other available
5 means for the fair and efficient adjudication of the cases. The Class is amenable to class
6 certification for settlement purposes as discussed below.

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

8 "Ascertainability is required in order to give notice to putative class members as to whom
9 the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001)
10 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs
11 by describing a set of common characteristics sufficient to allow a member of that group to
12 identify himself or herself as having a right to recover based on the description." *Bartold v.*
13 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
14 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

15 This matter involves a class of approximately five hundred and thirty-one (531)
16 individuals.⁶⁰ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126
17 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity
18 requirement as joinder is not practical at that point). Further, all Class Members can and will be
19 identified by Defendant to the Settlement Administrator through a review of Defendant's
20 employment records regarding hourly-paid or non-exempt employees in California during the
21 Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

23 The community of interest requirement "embodies three factors: (1) predominant
24 common questions of law or fact; (2) class representative with claims or defenses typical of the
25 class; and (3) class representative who can adequately represent the class." *Sav-On, supra*, 34
26 Cal.4th at 326. "[T]he community of interest requirement for certification *does not mandate that*

27
28 ⁶⁰ Mayer Decl., ¶ 9.

1 class members have uniform or identical claims.” *Capitol People First v. Dep’t of*
2 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
3 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess
4 whether that common behavior toward similarly situated plaintiff renders class certification
5 appropriate.” *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

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

11 Here, common issues of fact and law predominate as to each of the claims alleged and
12 asserted in the complaints. Based on the documents and information obtained through formal
13 and informal discovery and exchange of information in the cases, Plaintiff contends that Class
14 Members were subject to the same or similar job duties and uniform operations and employment
15 practices, policies, and procedures during the time period at issue.⁶¹ Plaintiff’s claims arise from
16 Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the
17 Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours
18 worked, failing to provide compliant meal and rest periods and associated premium pay, failing
19 to timely pay wages during employment and upon termination of employment, failing to provide
20 compliant wage statements, failing to keep requisite payroll records, and failing to reimburse
21 necessary business-related expenses.⁶²

22 Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect
23 to Plaintiff and the Class Members were substantially the same during the time period at issue.⁶³
24 As a result, Plaintiff claims that all of the Class Members were uniformly not paid all
25 compensation due to them from Defendant during the time period at issue.⁶⁴

26 ⁶¹ Mayer Decl., ¶ 17.

27 ⁶² *Ibid.*

28 ⁶³ *Ibid.*

⁶⁴ *Ibid.*

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 their 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 ATTORNEYS' FEES AND LITIGATION COSTS

Class Counsel has litigated the matter for over two (2) years and was actively preparing the matter for class certification and trial.⁶⁵ 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 cases and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant, and noticing the deposition of Defendant's Person Most Knowledgeable designee. Class Counsel reviewed a large volume of documents and data⁶⁶ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁶⁷ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁶⁸

Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁶⁹

The Settlement establishes a Maximum Settlement Amount of One Million Three Hundred Fifty Thousand Dollars and Zero Cents (\$1,350,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Litigation Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount

⁶⁵ Mayer Decl., ¶¶ 12-14.

⁶⁶ *Id.*, ¶ 13.

⁶⁷ *Ibid.*

⁶⁸ *Id.*, ¶ 12.

⁶⁹ *Id.*, ¶¶ 6-7.

(i.e., \$472,500.00) and an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00) for litigation costs and expenses.⁷⁰ The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, PAGA Members, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Litigation Costs, and that an award of the Attorneys' Fees and Litigation Costs will be sought, as provided for by the Settlement.⁷¹

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

⁷⁰ Settlement Agreement, § XIV.

⁷¹ *Id.*, Exh. A.

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

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

17 Class Counsel has borne all of the risks and costs of litigation and will not receive any
18 compensation until recovery is obtained.⁷²

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

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

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

27
28 ⁷² Mayer Decl., ¶ 20.

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 Notice⁷³ describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or submit a Workweeks Dispute, and the date and time set for the Final Approval Hearing.⁷⁴

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁷⁵ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁶ The proposed Class Notice also apprises the Class Members and PAGA Members of, *inter alia*, how their Individual Settlement Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks and, if applicable, PAGA Workweeks, credited to them.⁷⁷

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.

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⁷³ Settlement Agreement, Exh. A.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE ADMINISTRATOR

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

Within ten (10) calendar days after receiving the Class List, the Settlement Administrator will run all the addresses provided through the United States Postal Service NCOA database to obtain current address information, and shall mail the Class Notice, to the Class Members via first-class U.S. Mail using the most current mailing address information available.⁷⁸ If a Class Notice is returned as undeliverable within thirty (30) calendar days after the initial mailing, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address within three (3) business days of receipt of the returned mail and will re-mail the Class Notice to the Class Member as soon as possible.⁷⁹ Any Class Notices returned with a forwarding address to the Settlement Administrator before the Response Deadline, shall be re-mailed to the forwarding address affixed thereto.⁸⁰ For all Class Members whose Class Notice is re-mailed, the deadlines for Class Members' written objections to the Class Settlement, Workweeks Dispute, and Requests for Exclusion will be extended an additional fifteen (15) calendar days from the original Response Deadline provided in the Class Notice.⁸¹ The Administrator will receive and process Requests for Exclusions, objections, and any Workweeks Disputes.⁸²

No later than twenty-five (25) calendar days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to the completion of the settlement notice administration process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Notices, as well as the number of Workweeks Disputes, Requests for Exclusion, and objections received.⁸³

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal

⁷⁸ Settlement Agreement, § X.A.2.

⁷⁹ *Id.*, § X.A.4.

⁸⁰ *Ibid.*

⁸¹ *Id.*, § X.A.5.

⁸² *Id.*, § IX.

⁸³ *Id.*, § X.A.6.

taxes in connection with the wage portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payments to PAGA Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Litigation Costs, Enhancement Payment, and PAGA Penalties; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁸⁴ The Administration Costs are currently estimated to be Twenty Thousand Dollars and Zero Cents (\$20,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.⁸⁵

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant' records.⁸⁶

Not later than fourteen (14) business days after the Court grants preliminary approval of the Settlement, Defendant will provide to the Settlement Administrator the following information for each Class Member: (1) full name; (2) last known address; (3) last known telephone number; (4) the number of Workweeks worked during the Class Period; (5) number of Workweeks during the PAGA Period; (6) Social Security number; and (7) last known email address (collectively, "Class List").⁸⁷

No later than ten (10) calendar days after receiving the Class List, the Settlement Administrator will run all the addresses provided through the United States Postal Service NCOA database to obtain current address information, and shall mail the Class Notice to the

⁸⁴ Settlement Agreement, § IX.

⁸⁵ *Ibid.*

⁸⁶ *Id.*, §§ X.A.1 & X.A.2.

⁸⁷ *Id.*, § X.A.1.

Class Members via first-class U.S. Mail using the most current mailing address information available.⁸⁸ If a Class Notice is returned as undeliverable within thirty (30) calendar days after the initial mailing, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address within three (3) business days of receipt of the returned mail and will re-mail the Class Notice to the Class Member as soon as possible.⁸⁹ Class Members will have until the applicable Response Deadline to submit a Request for Exclusion from the Class Settlement, Workweeks Dispute, and/or objection to the Class Settlement.⁹⁰ With respect to any Class Notice that is re-mailed, the Response Deadline for the Class Member whose Class Notice is re-mailed will be extended an additional fifteen (15) calendar days from the original Response Deadline.⁹¹

Within thirty (30) calendar days following the Effective Date⁹², Defendant will deposit the Maximum Settlement Amount into an interest-bearing account established by the Settlement Administrator for administration of the Settlement.⁹³ Within ten (10) calendar days after Defendant deposits the Maximum Settlement Amount, the Settlement Administrator shall distribute the following payments: Court-approved Attorney's Fees and Litigation Costs to Class Counsel, Court-approved Enhancement Payment to Plaintiff, Court-approved Administration Costs to the Settlement Administrator, LWDA Payment to the LWDA, Individual Settlement Payments to Settlement Class Members, and the Individual PAGA Payments to PAGA Members.⁹⁴

If an Individual Settlement Payment and/or Individual PAGA Payment check is returned to the Settlement Administrator as undeliverable within thirty (30) calendar days of the mailing of the check, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the

⁸⁸ Settlement Agreement, § X.A.2.

⁸⁹ *Id.*, § X.A.4.

⁹⁰ *Id.*, § X.A.5.

⁹¹ *Ibid.*

⁹² *See id.*, § I.G for the full definition of "Effective Date."

⁹³ *Id.*, § XII.C.

⁹⁴ *Id.*, § XII.D.1.

1 check to the newly identified address.⁹⁵ The Settlement Administrator may, at its discretion,
2 distribute the Individual Settlement Payment and Individual PAGA Payment by way of a single
3 check that combines both payments (if applicable).⁹⁶

4 Individual Settlement Payment and Individual PAGA Payment checks will remain valid
5 and negotiable for one hundred and eighty (180) calendar days from the date of their mailing.⁹⁷
6 Checks that are not negotiated within the 180-day period will be canceled.⁹⁸ The Administrator
7 shall transmit the funds associated with such canceled checks to the Legal Aid at Work.⁹⁹

8 **XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR**
9 **ENHANCEMENT PAYMENT**

10 Plaintiff Annie Albritton respectfully requests that the Court appoint her as the Class
11 Representative and preliminarily approve the Enhancement Payment in an amount up to Ten
12 Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff.¹⁰⁰ It is within the Court's discretion
13 to award payment to a class representative for their efforts and work. *Vranken v. Atlantic*
14 *Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a
15 single class representative). The factors that courts may consider in determining whether to
16 make an enhancement payment include: (1) the risk to the class representative in commencing
17 suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the
18 class representative; (3) the amount of time and effort spent by the class representative; (4) the
19 duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class
20 representative as a result of the litigation. *Id.*

21 The Enhancement Payment is fair and appropriate. Plaintiff spent a substantial amount of
22 time and effort in producing relevant documents and past employment records and providing the
23 facts and evidence necessary to attempt to prove the allegations.¹⁰¹ Plaintiff was available

24 ⁹⁵ Settlement Agreement, § XII.D.2.

25 ⁹⁶ *Ibid.*

26 ⁹⁷ *Id.*, § XII.D.3.

27 ⁹⁸ *Ibid.*

28 ⁹⁹ *Ibid.*

¹⁰⁰ *Id.*, § XV.

¹⁰¹ Mayer Decl., ¶ 21; Declaration of Annie Albritton in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Albritton Decl."), ¶ 4.

1 whenever Class Counsel needed her and actively tried to obtain and provide information that
2 would facilitate the pursuit of the class claims.¹⁰² Accordingly, it is appropriate and just for
3 Plaintiff to receive \$10,000.00 for her services on behalf of the Class, in addition to her
4 Individual Settlement Payment.

5 **XII. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
7 approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary
8 appoint and designate Arby Aiwazian, Joanna Ghosh, and Helene Mayer of Lawyers *for* Justice,
9 PC as Class Counsel; preliminary appoint and designate Plaintiff Annie Albritton as Class
10 Representative; appoint Simpluris, Inc. as the Settlement Administrator; preliminarily approve
11 the allocations for Attorneys' Fees and Litigation Costs, Enhancement Payment, PAGA
12 Penalties, and Administration Costs; approve the proposed Class Notice; direct the Settlement
13 Administrator to undertake the notice and settlement administration process in conformity with
14 the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval
15 Hearing to take place in approximately five (5) months; and permit the filing of a memorandum
16 that exceeds the page limit.

17 Dated: July 8, 2024

LAWYERS *for* JUSTICE, PC

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19 By: Helene Mayer
20 Helene Mayer
21 *Attorneys for* Plaintiff Annie Albritton
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28 ¹⁰² Mayer Decl., ¶ 21; Albritton Decl., ¶¶ 3-6.