

[Counsel on following page]

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

Coordination Proceeding
Special Title (Rule 3.550)

RCSH WAGE AND HOUR CASES

Included Actions:

Eddie Castillo, et al. v. RCSH Operations, Inc., et al., San Francisco County Superior Court Case No. CGC-21-594237

Eddie Castillo v. RCSH Operations, Inc., et al., Los Angeles County Superior Court Case No. 21SMCV01530

Adrian Quiroz Guerrero, et al. v. Ruth's Hospitality Group, Inc., Riverside County Superior Court Case No. RIC1804127

Amanda M. Patterson v. RCSH Operations, Inc., Contra Costa County Superior Court Case No. MSC21-02077

Case No.: JCCP5243

Honorable Harold W. Hopp
Department 10

CLASS ACTION

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

[Declarations of Proposed Class Counsel (Brian J. St. John, Jean-Claude Lapuyade, Sahni O. Zakay, and Daniel Srourian); Declaration of Proposed Administrator (Eric Springer); Declaration of Proposed Cy Pres (Tessie D. Solorzano); Declaration of Defendant's Counsel (Sabrina Shadi); Declaration of Defendant (Marcy Johnson); Compliance Chart; and [Proposed] Order filed concurrently herewith]

Date: October 16, 2023
Time: 8:30 a.m.
Department: 1
Reservation No.: 547365648692

Castillo Complaint Filed: July 29, 2021
Castillo PAGA Complaint Filed: Sept. 17, 2021
Patterson Complaint Filed: Oct. 20, 2021
Guerrero Complaint Filed: Feb. 26, 2018
Trial Date: None Set

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Brian J. St. John (SBN 304112)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs EDDIE CASTILLO and JUAN CARLOS MENENDEZ FUNES

Jean-Claude Lapuyade (SBN 248676)
Sydney Castillo-Johnson (SBN 343881)
JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

Shani O. Zakay (SBN 277924)
Jackland K. Hom (SBN 327243)
ZAKAY LAW GROUP, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 255-9047
Fax: (858) 404-9203

Attorneys for Plaintiff AMANDA M. PATTERSON

Sarkis Sirmabekian (SBN 278588)
SIRMABEKIAN LAW FRIM, P.C.
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Tel: (818) 473-5003
Fax: (818) 476-5619

Daniel Srourian (SBN 285678)
SROURIAN LAW FRIM, P.C.
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Tel: (310) 601-3131
Fax: (310) 388-8444

*Attorneys for Plaintiffs ADRIAN QUIROZ GUERRERO,
LUCAS MARTIN AREL, and ANTON KAASA*

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

PLEASE TAKE NOTICE that on October 16, 2023 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Harold W. Hopp in Department 1 of the Superior Court of California for the County of Riverside, located at 4050 Main Street, Riverside, California 92501, Plaintiffs Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda Patterson (“Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation and Class Action and PAGA Settlement Agreement and Amendment No. 1 to Joint Stipulation and Class Action and PAGA Settlement Agreement (together, “Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Brian J. St. John, 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, Fee Award and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payments to Plaintiffs, and Administration Expenses Payment to the Administrator;
- Conditionally certifying the Class for only settlement purposes;
- Preliminarily appointing Plaintiffs Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda Patterson as Class Representatives;
- Preliminarily appointing Lawyers *for* Justice, PC; JCL Law Firm, APC; Zakay Law Group, APLC; Srourian Law Firm, P.C.; and Sirmabekian Law Firm, P.C. as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), Objection Form (“Objection Form”), and Request for Exclusion Form (“Request for Exclusion Form”), attached

as “**EXHIBIT 1**,” “**EXHIBIT 2**,” and “**EXHIBIT 3**,” respectively, to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;

- Directing the mailing of the Class Notice, Objection Form, and Request for Exclusion Form (collectively, “Notice Packet”) 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 Fee Award and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payments for Plaintiffs, and Administration Expenses Payment to Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel, Counsel for Defendants, Defendant, Proposed Administrator, and Proposed Cy Pres Recipient, and 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: October 9, 2023

LAWYERS for JUSTICE, PC

By:



Brian J. St. John
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. SUMMARY OF MOTION.....1

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....3

III. SUMMARY OF THE SETTLEMENT TERMS5

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT10

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.10

B. The Settlement Is Fair, Reasonable, and Adequate.....15

C. The Settlement Is of Significant Value.....16

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.17

A. The Class Is Ascertainable and Sufficiently Numerous.17

B. The Class Members Share a Well-Defined Community of Interest....18

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR FEE AWARD AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT19

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.20

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE ADMINISTRATOR.....21

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS22

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENTS26

XII. CONCLUSION27

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	10
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	16
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	19
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 .	16
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	20, 21
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	20
<i>City of Detroit v. Grinnell Corporation</i> (2d Cir. 1974) 495 F.2d 448	9
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1982) 955 F.2d 1268.....	9
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 10
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	20
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	9, 10
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	15
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	14
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	19
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	19
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	14, 15
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	19
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	19
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	16
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	20
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	20
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	9
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	16
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	15, 16

1	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	8
2	<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	24
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	8, 10
4	Statutes	
5	Cal. Code Civ. Proc. § 1781.....	20
6	Cal. Code Civ. Proc. § 1781(f).....	8
7	Other Authorities	
8	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	9
9	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	22
10	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	14
11	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	19
12	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	21
13	Conte & Newberg, Newberg on Class Actions § 8.39 (4th Ed.)	20, 21
14	<i>Manual for Complex Litigation</i> § 21.311 (4th ed. 2007)	21
15	<i>Manual for Complex Litigation</i> § 21.312 (4th ed. 2007)	21
16	Rules	
17	Fed. R. Civ. P. 23(c)(2)	21
18	Fed. R. Civ. P. 23(e).....	21
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda Patterson (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the Joint Stipulation and Class Action and PAGA Settlement Agreement and Amendment No. 1 to Joint Stipulation and Class Action and PAGA Settlement Agreement (together, “Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Ruth’s Hospitality Group, Inc. and RCSH Operations, Inc. (“Defendants”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of Six Million Dollars and Zero Cents (\$6,000,000.00).¹ The Gross Settlement Amount includes the following: (1) Individual Class Payments to Participating Class Members which will be distributed from the Net Settlement Amount²; (2) the Class Representative Service Payments of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) each to Plaintiffs (\$150,000 total)³; (3) the Fee Award and Class Counsel Litigation Expenses Payment to Class Counsel, consisting of attorneys’ fees in the amount of forty percent (40%) of the Gross Settlement Amount, or \$2,400,000.00, and reimbursement of litigation costs and expenses not to exceed Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00)⁴; (4) the Administration Expenses Payment to the Administrator in the amount not to exceed Twenty-Seven Thousand Dollars and Zero Cents (\$27,000.00);⁵ and (5) the amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) allocated to penalties

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Brian J. St. John (“St. John Decl.”), § 1.22. Based on a review of Defendants’ records through December 24, 2021, Defendants estimate that the Class worked an aggregate total of 301,737 Workweeks from February 26, 2014 through December 24, 2021. If as of the date of Preliminary Approval, the number of Workweeks worked by the Class through December 24, 2021 exceeds 301,737 by more than Seven and One-Half Percent (7.5%) (i.e., 324,368) (the “Threshold”), then the amount of the Gross Settlement Amount shall correspondingly increase in proportion to the increased percentage. *See id.*, § 5.1.

² *Id.*, § 1.23.

³ *Id.*, § 1.14.

⁴ *Id.*, §§ 1.7, 1.19, and 4.2.2.

⁵ *Id.*, §§ 1.3 and 4.2.4.

under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$562,500.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$187,500.00) will be distributed to all current and/or former hourly-paid or non-exempt employees of Defendants in California at any time during the PAGA Period (“Allegedly Aggrieved Employees”).⁶

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

All current and/or former hourly-paid or non-exempt employees of Defendants in California at any time during the Class Period (“Class” or “Class Members”).⁷

As of December 24, 2021, The Class is estimated to consist of approximately four thousand one hundred seven (4,107) individuals and the Allegedly Aggrieved Employees are estimated to consist of approximately three thousand forty-two (3,042) individuals.⁸

Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement (“Participating Class Member”) will receive a share of the Net Settlement Amount (“Individual Class Share”) on a *pro rata* basis based upon the number of weeks each Class Member worked for Defendants for at least one day during the Class Period (“Workweek”).⁹

The Settlement resolves the Released Class Claims of Plaintiffs and Participating Class Members, and Released PAGA Claims of the State of California and Allegedly Aggrieved Employees, against the Released Parties.¹⁰

⁶ Settlement Agreement, §§ 1.4, 1.36 and 4.2.6. “PAGA Period” is defined as the period from August 13, 2017 through the date that the Court grants final approval of the settlement. *See id.*, § 1.37.

⁷ *Id.*, § 1.5. “Class Period” is defined as the period from February 26, 2014 through the date that the Court grants preliminary approval of the settlement. *See id.*, § 1.12.

⁸ St. John Decl., ¶ 9.

⁹ Settlement Agreement, §§ 1.24, 1.39, and 1.48.

¹⁰ *See id.* at § 6.2, for the full scope of the “Released Class Claims,” *id.* at § 6.3, for the full scope of the “Released PAGA Claims,” and *id.* at § 1.44 for the definition of the “Released Parties.” The Settlement Agreement provides for a release by Plaintiffs of Defendant any of its/their past and/or present parents, subsidiaries, divisions, and/or affiliated companies and entities, and each of its/their past and/or present owners, officers, directors, members, managers, corporate-level and/or management-level employees, consultants, partners, subsidiaries, shareholders, attorneys, insurers, joint venturers, agents, successors, assigns, legal representatives, and/or any other persons acting on its/their behalf. Parties understand that the Parties released is different than what the Court discusses in its March 12, 2018 Case Management Order. Parties crafted the language in accordance to usual custom and

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

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

6 Defendants are a publicly held company which operates 150 upscale steak houses
7 nationwide as well as internationally in twenty-one (21) countries. Plaintiffs Adrian Quiroz
8 Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and
9 Amanda Patterson are former employees of Defendants.

10 On February 26, 2018, Plaintiff Adrian Quiroz Guerrero filed a Class Action Complaint
11 in the Riverside County Superior Court ("Court"), thereby commencing a putative class action
12 entitled *Adrian Quiroz Guerrero v. Ruth's Hospitality Group, Inc.*, Case No.: RIC1804127 (the
13 "*Guerrero Action*").

14 On September 2, 2020, Plaintiff Adrian Quiroz Guerrero filed a First Amended
15 Complaint in the *Guerrero Action*, adding a cause of action under PAGA.

16 On July 14, 2021, Plaintiff Eddie Castillo provided written notice by online submission
17 to the LWDA and by certified mail to Defendants of the specific provisions of the California
18 Labor Code that were alleged to be violated ("*Castillo LWDA Notice*").

19 On July 29, 2021, Plaintiff Eddie Castillo filed a Class Action Complaint for Damages
20 in the San Francisco County Superior Court, thereby commencing a putative class action entitled
21 *Eddie Castillo v. RCSH Operations, Inc., et al.*, Case No.: CGC-21-594237 (the "*Castillo Class*
22 *Action*").

23 On September 17, 2021, Plaintiff Eddie Castillo filed a Complaint for Enforcement
24 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Los
25 Angeles County Superior Court, thereby commencing a representative action entitled *Eddie*
26

27
28 practice within the realm of settlement agreements in employment law in the State of California. The parties
released by the settlement agreement only extend to Defendants' legally associated entities and subsidiaries that
are, from Plaintiff and Defense counsel's experience, routinely released as part of settlement of legal claims.

1 *Castillo v. RCSH Operations, Inc., et al.*, Case No.: 21SMCV01530 (the “*Castillo* PAGA
2 Action,” collectively with the *Castillo* Class Action, the “*Castillo* Action”).

3 On October 19, 2021, Plaintiff Amanda Patterson filed a Class Action Complaint in the
4 Contra Costa County Superior Court, thereby commencing a putative class action entitled
5 *Amanda M. Patterson v. RCSH Operations, Inc.*, Case No.: MSC21-02077 (the “*Patterson*
6 Action”).

7 On October 21, 2021, Plaintiff Eddie Castillo filed a First Amended Class Action
8 Complaint for Damages in the *Castillo* Class Action (“*Castillo* First Amended Complaint”),
9 adding Juan Carlos Menendez Funes as a named plaintiff.

10 On December 7, 2021, Plaintiff Adrian Quiroz Guerrero filed a Second Amended Class
11 Action Complaint in the *Guerrero* Action, adding Lucas Martin Arel and Anton Kaasa as named
12 plaintiffs, and adding class causes of actions.

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

23 Following the filing of the initial complaint, Parties engaged in initial written discovery
24 regarding Defendants’ policies, procedures, and organization chart. Srourian Decl. ¶ 5. As
25 Guerrero counsel pressed Defense counsel for the setting of depositions (even making
26 themselves available to travel to North Carolina and Florida to take the deposition of key out-
27 of-state witnesses), the Defendants agreed to stay formal discovery and attend early mediation.
28 *Id.* This mediation took place in-person in Los Angeles, California, on November 27, 2019 with

esteemed wage-and-hour mediator Steve Pearl, Esq., following a pre-mediation exchange of tens of thousands of pages of documents and data points for Guerrero counsel to analyze in preparation of mediation. *Id.* Guerrero counsel engaged experts to analyze the data and assess damages. *Id.* It is notable that Defendants turned over 100% of the class time and pay records for Guerrero counsel to analyze (under the mediation privilege), which is significantly less than the usual 20-30% produced by Defendants in similar cases. *Id.* As such, Guerrero counsel was prepared for mediation with the most accurate data possible. *Id.*

Following a full day of mediation, settlement efforts were unsuccessful, and formal discovery pressed on. Srourian Decl. ¶ 6. Guerrero counsel took the deposition of Dale Brandsberg, General Manager of Defendant's Palm Desert location where Plaintiff Adrian Guerrero was employed during his employment with Defendants. *Id.* This deposition occurred in-person at Defense counsel's office on January 16, 2020. *Id.* During this deposition, Plaintiff's counsel uncovered a plethora of new information that was previously unknown through written discovery, including specifics on timekeeping, meal break policies, employee complaints regarding issues raised in the lawsuit, employee training, and identity of other key witnesses. *Id.* This put Guerrero counsel in a good position to conduct further discovery to prepare the case for class certification. *Id.* Defendants took the deposition of Plaintiff Adrian Guerrero on January 17, 2020. *Id.*

Guerrero counsel followed up by propounding further interrogatories, requests for admissions, and requests for production of documents. Srourian Decl. ¶ 7. The litigation was full throttle. *Id.* Significantly, around this time in January 2020, Guerrero counsel obtained the full class list (name, address, and phone numbers) from Defense counsel. *Id.* Guerrero counsel moved swiftly to send postcard mailers to all 2,000+ putative class members informing them of the existing lawsuit and to contact Guerrero counsel if they wanted to speak with counsel. Guerrero counsel worked diligently to communicate with the over 100 individuals who responded to the postcard mailer via telephone or email. *Id.* Guerrero counsel obtained crucial testimony from a host of these witnesses, some of whom even signed declarations under oath. *Id.* Two of the witnesses who contacted Guerrero counsel – Anton Kasaa and Lucas Arel –

1 agreed to serve as additional class representatives, and Guerrero counsel added them in the suit.
2 *Id.*

3 It was at this time that Covid-19 hit and the pandemic shut down the world. Srourian
4 Decl. ¶ 8. After months of a lull while firms generally adjusted to life in the new world,
5 Guerrero's counsel still had difficulties setting depositions, as the world was in flux. *Id.*
6 However, Guerrero counsel kept pressing on written discovery, since written discovery was
7 relatively uninterrupted from Covid due to the Court's availability to resolve discovery disputes
8 if necessary. *Id.* After some additional delay due to the unexpected and tragic death of one of
9 Defense counsel's family members, as well as some delays due to various individuals tied to the
10 suit in some capacity contracting Covid, Guerrero counsel vigorously met and conferred and
11 teed up all outstanding written discovery issues. *Id.* After significant time spent meeting and
12 conferring, including submitting summaries of outstanding issues to Judge Sunshine Sykes,
13 Guerrero counsel was left no choice but to file three separate Motions to Compel and request
14 significant monetary sanctions. *Id.*

15 It was at this juncture that Plaintiffs Castillo and Patterson filed their related action
16 alleging claims for various similar violations of the California Labor Code. Srourian Decl. ¶ 9.
17 Parties agreed to continue the hearings on the Motion to Compels and make a second attempt at
18 mediation, which occurred on February 5, 2022. *Id.*

19 On January 3, 2022, Defendant RCSH Operations, Inc. filed its Answer in the *Patterson*
20 Action.

21 On February 15, 2022, Defendants filed an Answer to both the *Castillo* First Amended
22 Complaint and the *Castillo* PAGA Action.

23 Defendants have denied, and continue to deny, any liability and wrongdoing of any kind
24 associated with any of the allegations in the Action, and further deny that the Action is
25 appropriate for class treatment or representative adjudication for any purpose other than for
26 settlement purposes only.

27 On March 10, 2022, Plaintiff Eddie Castillo propounded multiple sets of discovery in
28 the *Castillo* Class Action including Requests for Production of Documents, (Set One); Special

Interrogatories, (Sets One, Two, and Three); and Form Interrogatories – General, (Set One) on Defendants, and noticed the depositions of persons most knowledgeable at Defendants regarding organizational structure and wage-and-hour practices, along with accompanying requests for production of documents. Thereafter, on April 12, 2022, Defendants responded to Plaintiff Eddie Castillo’s Special Interrogatories, (Set One).

On March 21, 2022, Plaintiff Eddie Castillo propounded multiple sets of discovery on Defendants in the *Castillo* PAGA Action including Requests for Production of Documents, (Set One); Special Interrogatories, (Sets One, Two, and Three); and Form Interrogatories – General, (Set One), and noticed the depositions of persons most knowledgeable at Defendants regarding organizational structure and wage-and-hour practices, along with accompanying requests for production of documents.

On June 14, 2022, Plaintiffs Eddie Castillo and Juan Carlos Menendez Funes propounded additional sets of discovery on Defendants in the *Castillo* Class Action including Form Interrogatories – General (Set Two); Requests for Production of Documents, (Set Two); and Special Interrogatories, (Set Four).

The Parties actively litigated the Actions since the *Guerrero* Action was commenced on February 26, 2018, the *Castillo* Action was commenced on July 29, 2021, and the *Patterson* Action was commenced on October 20, 2021. On February 5, 2022, the Parties participated in a formal, full-day mediation conducted by Steven J. Rottman, Esq. (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, Defendants will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members and Participating Class Members and the Released PAGA Claims of Allegedly Aggrieved Employees and the State of California with respect to the Released Parties.¹¹ Subject to approval by the Court, the Net

¹¹ Settlement Agreement, §§ 6.1 and 6.2.

Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed Two Million Four Hundred Thousand Dollars and Zero Cents (\$2,400,000.00) (i.e., up to 40% of the Gross Settlement Amount) ("Fee Award"); (2) reimbursement of costs and expenses in an amount not to exceed Seventy Five Thousand Dollars and Zero Cents (\$75,000.00) to Class Counsel ("Class Counsel Litigation Expenses Payment"); (3) settlement administration costs, which are currently estimated not to exceed Twenty Seven Thousand Dollars and Zero Cents (\$27,000.00) to the Administrator ("Administration Expenses Payment"); (4) payment to the LWDA of its 75% share of the PAGA Penalties (i.e., \$562,500.00 out of \$750,000.00) ("LWDA PAGA Payment"); and (5) payments in the amount of up to Twenty Five Thousand Dollars and Zero Cents (\$25,000.00) each to Plaintiffs Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda Patterson (for a combined total of \$150,000.00) ("Class Representative Service Payments").¹² The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Administrator") to handle the notice and settlement administration process.

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

- a. Dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period;¹³ and
- b. Multiplying the result by the individual total number of Workweeks worked by each Participating Class Member during the Class Period.¹⁴

The Parties have agreed that the Administrator will determine each Allegedly Aggrieved Employee's *pro rata* share of twenty-five percent (25%) of the PAGA Penalties ("Individual PAGA Payment"), in accordance with the Settlement Agreement and as follows:

- a. Dividing the amount of the Allegedly Aggrieved Employees' 25% share of PAGA Penalties (\$187,500) by the total number of PAGA Pay Periods worked by all Allegedly Aggrieved Employees;¹⁵ and

¹² Settlement Agreement, § 1.29; see also, §§ 4.2.1, 4.2.2, 4.2.4, and 4.2.6.

¹³ *Id.*, § 4.2.5.

¹⁴ *Ibid.*

¹⁵ *Id.*, § 4.2.6.1.

b. Multiplying the result by the total PAGA Pay Periods worked by each Allegedly Aggrieved Employees.¹⁶

Each Individual Class Share will be allocated as follows: twenty percent (20%) as wages (the “Wage Portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages (the “Non-Wage Portion”), which will be reported on an IRS Form 1099.¹⁷ Participating Class Members will be issued payment of their Individual Class Share subject to reduction for the employee’s share of taxes and withholdings with respect to the Wage Portion of each Individual Class Share (the net payment is referred to as an “Individual Class Payment”).¹⁸ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the Wage Portion of Individual Class Shares (“Employer Taxes”) in addition to the Gross Settlement Amount.¹⁹

The Individual Class Payment and Individual PAGA Payment checks will be valid for one hundred eighty (180) days after the date of mailing, and thereafter, shall be voided.²⁰ The funds associated with such cancelled checks will be transmitted by the Administrator after the expiration of the 180-day period, and sent to Inland Counties Legal Services, Inc., or such other cy pres recipient agreed to by the Parties subject to Court approval, in the name of the Participating Class Member and/or Allegedly Aggrieved Employee whose check is cancelled and in the respective amount of the cancelled check.²¹

Class Members who wish to exclude themselves from (or opt-out of) the Class Settlement must send the Administrator, by mail, a written request to be excluded from the Class Settlement (“Request for Exclusion”) by submitting a Request for Exclusion Form, or by way of submitting a separate written request that contains substantially the same information as the form.²² To be timely, the Class Member must mail the Request for Exclusion to the Administrator, postmarked on or before the date that is forty-five (45) days after the

¹⁶ Settlement Agreement, § 4.2.6.1.

¹⁷ *Id.*, § 4.2.5.1.

¹⁸ *Id.*, § 1.23.

¹⁹ *Id.*, § 1.22.

²⁰ *Id.*, § 5.4.1.

²¹ *Id.*, § 5.4.3.

²² *Id.*, §§ 1.45 and 8.6.1.

1 Administrator mails Notice Packets to Class Members (“Response Deadline”).²³ A Class
2 Member who does not submit a valid and timely Request for Exclusion from the Class
3 Settlement will be deemed a Participating Class Member and will be bound by all terms of the
4 Class Settlement.²⁴

5 Only Participating Class Members may object to the Class Settlement.²⁵ Participating
6 Class Members who wish to object to the Settlement must submit a written objection to the Class
7 Settlement (“Objection”) by submitting an Objection Form, or by way of a separate written
8 objection that contains substantially the same information as the form.²⁶ To be timely, the Class
9 Member must submit the Objection to the Administrator, postmarked on or before the Response
10 Deadline.²⁷ Non-Participating Class Members have no right to object to the Class Settlement.²⁸

11 Class Members who wish to challenge the number of Workweeks allocated to them in
12 their Class Notice may do so by mailing a written letter to the Administrator on or before the
13 Response Deadline.²⁹ The challenge must be made in writing that is submitted to the
14 Administrator by mail, and must include a reference to the case title and number of the Action;
15 the individual’s full name, mailing address, telephone number, and last four (4) digits of Social
16 Security Number; a clear statement indicating that he or she challenges the number of
17 Workweeks allocated and indicating the number that he or she contends should be allocated;
18 and attachment of any supporting documentation relied upon for the challenge.³⁰

19 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
20 **SETTLEMENTS**

21 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
22 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to
23 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at
24

25 ²³ Settlement Agreement, § 1.46.

26 ²⁴ *Id.*, § 8.6.1.

27 ²⁵ *Id.*, § 8.7.1.

28 ²⁶ *Id.*, §§ 1.32 and 8.7.2.

²⁷ *Id.*, § 8.7.2.

²⁸ *Id.*, § 8.7.3.

²⁹ *Id.*, § 8.6.4.

³⁰ *Id.*, § 8.6.4.

1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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

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

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

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

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

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

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

The Parties actively litigated the Actions since the *Guerrero* Action was commenced on February 26, 2018, the *Castillo* Action was commenced on July 29, 2021, and the *Patterson* Action was commenced on October 20, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.³¹

³¹ St. John Decl., ¶¶ 11-13.

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendants.³² The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiffs Eddie Castillo and Juan Carlos Menendez Funes, a detailed sampling of Plaintiffs Eddie Castillo's and Juan Carlos Menendez Funes' time and pay data, multiple iterations of Defendants' Associate Handbook Addendum, company policy acknowledgements and forms (including, but not limited to, Application for Employment, Acknowledgment of Receipt of Notification of Possible Error in Social Security Information and Request for Correction, Acknowledgment of Inability to Explain Discrepancy in Social Security Information, Tax Credit Questionnaire, Meal Period Verification Form, California Vacation/Sick Time Request Form, Acknowledgment and Receipt of Ruth's Chris Steak House California Discrimination/Harassment/Retaliation Policy, Meal Period Waivers Rest Break And Meal Period Policy Acknowledgment, Acknowledgment of Human Resources Training, Basic Employee Data Sheet, and Tip Acknowledgement), employment policies, practices, and procedures (including, but not limited to, Sick Leave Policy, Mutual Meal Period Waiver, Alcohol Policy, Performance Assessment, Personnel Action Request, and Notice to Employee as to Change in Relationship), among other information and documents.³³ Class Counsel interviewed Plaintiffs and conducted investigations to gather facts and circumstances surrounding Plaintiff and putative class members' employment and to identify potential witnesses.³⁴ Class Counsel propounded multiple sets of formal written discovery requests on Defendants (specifically, Requests for Production of Documents, (Sets One and Two); Special Interrogatories, (Sets One, Two, Three, and Four); and Form Interrogatories – General, (Sets One and Two)), reviewed Defendants' responses, and noticed the depositions of Defendants' Person Most Knowledgeable designees regarding organizational structure and job duties.³⁵

³² St. John Decl., ¶ 12.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.³⁶ Class Counsel also drafted pleadings and mediation brief and prepared for and attended court proceedings, mediation, and settlement negotiations, among other tasks.³⁷

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Steven J. Rottman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.³⁸ In the course of mediation and settlement discussions, the Parties exchanged class information and engaged in an extensive discussion regarding their evaluations of the cases and various aspects of the cases, 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, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was acceptable to all Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴¹ After conducting investigations, formal and informal discovery, exchange of information, and extensive settlement negotiations, and with the aid of the Mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.⁴²

///

///

³⁶ St. John Decl., ¶ 12.

³⁷ Ibid.

³⁸ *Id.*, ¶ 11.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ *Id.*, ¶¶ 11, 16-18.

⁴² Ibid.

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 certification and trial.⁴³ The Parties have had the opportunity to interview and obtain information from their respective witnesses.⁴⁴ Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁵ The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.⁴⁶

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

The Settlement, which provides for a Gross Settlement Amount of Six Million Dollars and Zero Cents (\$6,000,000.00), represents a fair, adequate, and reasonable resolution of the matter.⁴⁷ The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.⁴⁸ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.⁴⁹ Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class, Allegedly Aggrieved Employees, and the State of California.⁵⁰

Assuming that the Fee Award, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, LWDA PAGA Payment, and Administration Expenses Payment are approved by the Court and paid in the full amounts provided for by the Settlement,

⁴³ St. John Decl., ¶¶ 11, 16-18.

⁴⁴ Ibid.

⁴⁵ *Id.*, ¶¶ 11-13 & 16-18.

⁴⁶ *Id.*, ¶¶ 2-7; Declaration of Jean-Calude Lapuyade ("Lapuyade Decl."), ¶¶ 3-11; Declaration of Shani O. Zakay ("Zakay Decl."), ¶ 3; Declaration of Daniel Srourian ("Srourian Decl."), ¶¶ 49-50.

⁴⁷ *Id.*, ¶¶ 11, 13, 14 & 21.

⁴⁸ *Id.*, ¶¶ 11-13.

⁴⁹ *Id.*, ¶¶ 16-18.

⁵⁰ *Id.*, ¶¶ 11, 13, & 21.

the Settlement provides for a Net Settlement Amount that is currently estimated to be Two Million Five Hundred Ninety-Eight Thousand Dollars and Zero Cents (\$2,598,000.00).⁵¹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members and the PAGA Penalties will be fully paid out to the LWDA and Allegedly Aggrieved Employees, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Class Share will be calculated based on his or her Workweeks during the Class Period and the amount of each Allegedly Aggrieved Employee's Individual PAGA Payment will be calculated based on his or her PAGA Pay Periods during the PAGA Period.⁵² 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 believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, the Allegedly Aggrieved Employees, and the State of California.⁵³ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear 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 formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁵⁴ The discovery and information that Class Counsel

⁵¹ St. John Decl., ¶ 14.

⁵² Settlement Agreement, §§ 1.24 and 1.25.

⁵³ St. John Decl., ¶¶ 11, 13, & 21.

⁵⁴ *Id.*, ¶¶ 11-13 & 18.

obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.⁵⁵ As outlined in the Declaration of Brian J. St. John, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁵⁶

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

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

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

A. The Class Is Ascertainable and Sufficiently Numerous.

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

⁵⁵ St. John Decl., ¶ 18.

⁵⁶ *Id.*, ¶¶ 11-13 & 16-18.

⁵⁷ Settlement Agreement, § 3.1.

by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

This matter involves a class of approximately four thousand two hundred thirty-seven (4,237) individuals.⁵⁸ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Administrator through a review of Defendants’ employment records regarding hourly and non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

///

⁵⁸ St. John Decl., ¶ 9.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the *Guerrero* Action, *Castillo* Actions, and *Patterson* Action. Based on the documents and information obtained through formal and informal discovery and exchange of information in the cases, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁵⁹ Plaintiffs' claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁶⁰

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

Plaintiffs maintain that the outcome of this litigation would be determined by Defendants' 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 FEE AWARD
AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT**

Class Counsel have litigated the matter for over two (2) years, and was actively preparing the matter for class certification and trial.⁶³ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel

⁵⁹ St. John Decl., ¶ 16.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ *Id.*, ¶¶ 11-13.

1 conducted extensive investigations into the facts of the cases and formal and informal discovery,
2 including, and not limited to, propounding multiple formal written discovery requests onto
3 Defendants. Class Counsel also noticed the depositions of Defendants' Person Most
4 Knowledgeable designees. Class Counsel reviewed a large volume of documents and data⁶⁴ and
5 also interviewed and obtained information from Plaintiffs and other Class Members, researched
6 applicable law, undertook damages and penalties valuation calculations, and met and conferred
7 with Defendants' counsel regarding the pleadings, discovery, and the production of documents
8 and data prior to mediation.⁶⁵ Counsel for the Parties also undertook extensive settlement
9 discussions, which included participating in a formal, full-day mediation.⁶⁶

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

12 The Settlement establishes a Gross Settlement Amount of Six Million Dollars and Zero
13 Cents (\$6,000,000.00), and provides for Class Counsel to apply to the Court for Fee Award and
14 Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount not to
15 exceed forty percent (40%) of the Gross Settlement Amount (i.e., \$2,400,000.00) and an amount
16 not to exceed Seventy Five Thousand Dollars and Zero Cents (\$75,000.00) for costs and
17 expenses.⁶⁸ The attorneys' fees provided for by the Settlement is commensurate with: (1) the
18 risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort
19 and expense that Class Counsel dedicated to the cases, (3) the skill and determination that Class
20 Counsel have shown, (4) the results that Class Counsel have achieved throughout the litigation,
21 (5) the value of the Settlement that Class Counsel have achieved for the Class Members, and (6)
22 the other cases that Class Counsel had to turn down in order to devote their time and efforts to
23 this matter. The proposed Class Notice provides Class Members with information about the
24 amount allocated toward the Fee Award and Class Counsel Litigation Expenses Payment, and
25

26 ⁶⁴ St. John Decl., ¶ 12.

27 ⁶⁵ Ibid.

28 ⁶⁶ *Id.*, ¶ 11.

⁶⁷ *Id.*, ¶¶ 2-7.

⁶⁸ Settlement Agreement, §§ 1.22 and 4.2.2.

that an award of the Fee Award and Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.⁶⁹

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

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’

⁶⁹ Settlement Agreement, Exh. A.

fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

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

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice⁷¹ describes the Settlement, the deadlines and procedures to submit an Objection, Request for Exclusion, and/or challenge regarding Workweeks, and the date and time set for the Final Approval Hearing.⁷²

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*

⁷⁰ St. John Decl., ¶ 19.

⁷¹ Settlement Agreement, Exh. A.

⁷² *Ibid.*

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.⁷³ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁷⁴ The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Class Share and Individual PAGA Payment is calculated and the number of Workweek credited to them.⁷⁵

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

The Administrator will mail the Class Notice to each Class Member by First-Class U.S.P.S. mail.⁷⁶ The Administrator will receive and process Requests for Exclusions, Objections, and challenges to Workweeks.⁷⁷

The Administrator will calculate the amounts of the Individual Class Share and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the Wage Portion of Individual Class Shares; mail the Individual Class Payment checks to Participating Class Members and the Individual PAGA Payment checks to the Allegedly Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Fee Award, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and LWDA PAGA Payment; and perform such other tasks necessary to effectuate the terms of

⁷³ Settlement Agreement, Exh. A.

⁷⁴ *Ibid*.

⁷⁵ *Ibid*.

⁷⁶ *Id.*, § 8.5.2.

⁷⁷ *Id.*, §§ 8.6.1, 8.6.4, and 8.7.2.

the Settlement Agreement.⁷⁸ The Administration Expenses Payment is currently estimated to be Twenty Seven Thousand Dollars and Zero Cents (\$27,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁷⁹

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.⁸⁰

Within thirty (30) days after the Court grants Preliminary Approval, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. The Class Data shall include each and every each and every Class Member's full name, last-known mailing address, last known telephone number, Social Security number, number of Workweeks, and number of Workweeks during the period from February 26, 2014 through December 24, 2021 ("Class Data").⁸¹

Within fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class U.S.P.S. mail, the Class Notice.⁸² No later than three (3) business days after the Administrator's receipt of any Class Notice returned, on or before the Response Deadline, by the USPS as undeliverable, the Administrator shall undertake a single re-mailing of the returned Class Notice, via first-class USPS mail, using any forwarding address provided by the USPS.⁸³ If the USPS does not provide

⁷⁸ Settlement Agreement, § 4.2.4; St John Decl., § 15.

⁷⁹ Settlement Agreement, § 4.2.4.

⁸⁰ *Id.*, § 8.5.2.

⁸¹ *Id.*, §§ 1.8 and 5.2.

⁸² *Id.*, § 8.5.2.

⁸³ *Id.*, § 8.5.3.

a forwarding address, the Administrator shall conduct a Class Member Address Search, and conduct a single re-mailing of the Class Notice to the most current address obtained.⁸⁴ Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, Objection, and/or challenge to Workweek.⁸⁵ For Class Members to whom Notice Packets are re-mailed after having been returned undeliverable to the Administrator on or before the Response Deadline, the Response Deadline shall be extended by an additional fourteen (14) days (“Extended Response Deadline”).⁸⁶

Defendants shall fully fund the Gross Settlement Amount and Employer Taxes, by transmitting such funds to the Administrator no later than thirty (30) days after the Effective Date.⁸⁷ Within ten (10) days after Defendants fund the Gross Settlement Amount and Employer Taxes, the Administrator will distribute: (1) the Individual Class Payments to Participating Class Members; (2) the Individual PAGA Payments to Allegedly Aggrieved Employees; (3) the Court-approved Class Representative Service Payments to Plaintiffs; (4) the Court-approved Fee Award and Class Counsel Litigation Expenses Payment to Class Counsel; (5) the LWDA PAGA Payment to the LWDA; and (6) the Court-approved Administration Expenses Payment to itself.⁸⁸

The Individual Class Payment and Individual PAGA Payment checks will remain valid for one hundred and eighty (180) calendar days after the date of mailing.⁸⁹ Checks that are not negotiated within the 180-day period will be voided.⁹⁰ The funds associated with such canceled checks will be tendered by the Administrator after the void date to Inland Counties Legal Services, Inc., or such other cy pres recipient agreed to by the Parties, in accordance with California Code of Civil Procedure section 384.⁹¹

///

⁸⁴ Settlement Agreement, § 8.5.3.

⁸⁵ *Id.*, §§ 8.6.1, 8.6.4, and 8.7.2.

⁸⁶ *Id.*, § 1.46.

⁸⁷ *Id.*, § 5.3.

⁸⁸ *Id.*, § 5.4.

⁸⁹ *Id.*, § 5.4.1.

⁹⁰ *Ibid.*

⁹¹ *Id.*, § 5.4.3.

**XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR
CLASS REPRESENTATIVE SERVICE PAYMENTS**

Plaintiffs Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda Patterson respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Class Representative Service Payments in an amount up to Twenty Five Thousand Dollars and Zero Cents (\$25,000.00) each to Plaintiffs Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda Patterson (for a combined total of \$150,000).⁹² It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Class Representative Service Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁹³ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.⁹⁴ Accordingly, it is appropriate and just for Plaintiffs to each receive a Class Representative Service Payment, in addition to an Individual Class Payment and Individual PAGA Payment, for services performed in the matter on behalf of the Class, State of California, and Allegedly Aggrieved Employees.

///

⁹² Settlement Agreement, § 4.2.1.

⁹³ St. John Decl., ¶ 20.

⁹⁴ *Ibid.*

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes only; preliminary appoint and designate Lawyers *for* Justice, PC; JCL Law Firm, APC; Zakay Law Group, APLC; Srourian Law Firm, P.C.; and Sirmabekian Law Firm, P.C. as Class Counsel; preliminary appoint and designate Plaintiffs Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda Patterson as Class Representatives; appoint Simpluris, Inc. as Administrator; preliminarily approve the allocations for Fee Award and Class Counsel Litigation Expenses Payment, Class Representative Service Payments, PAGA Penalties, and Administration Expenses Payment; 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 months; and permit the filing of a memorandum that exceeds the page limit.

Dated: October 9, 2023

LAWYERS *for* JUSTICE, PC

By:



Brian J. St. John
Attorneys for Plaintiffs