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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

Judicial Council Coordination Proceeding No. 5243
Riverside County Superior Court Case No.: JCCP5243

Honorable Harold W. Hopp
Department 1

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: July 11, 2024
Time: 8:30 a.m.
Department: 1

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PLEASE TAKE NOTICE that on July 11, 2024 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 450 Main Street, Riverside, California 92501, Plaintiffs Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda Patterson (collectively, "Plaintiffs" or "Class Representatives") will, and hereby do, move for an order granting final approval of:

The proposed class action settlement described herein and as set forth in the partes' Joint Stipulation of Class Action and PAGA Settlement Agreement executed on April 27, 2023, Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement Agreement executed on October 9, 2023, and Joint Stipulation to Modify Settlement and Continue Motion for Final Approval Hearing Date executed on February 21, 2024 and approved by the Court on March 13, 2024 (together, "Settlement," "Agreement," or "Settlement Agreement") on the grounds that the Settlement is fair, adequate, and reasonable.

This motion is made pursuant to Rules 3.769, 3.764, and 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement, allow memoranda in support of a motion for class certification to be up to twenty (20) pages, and permit the Court to extend the page limit for memoranda.

This motion is based upon the following Memorandum of Points and Authorities; the soon to be filed Declaration of the Administrator (Jennifer Beliveau of Simpluris), and concurrently-filed Declarations of Class Counsel (Joanna Ghosh, Jean-Claude Lapuyade, and Shani O. Zakay), and Class Representatives (Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda M. Patterson) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this motion.

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Dated: June 17, 2024

LAWYERS *for* JUSTICE, PC

By: ______________________________

Yasmin Hosseini
Attorney for Plaintiffs Eddie Castillo and Juan Carlos Menendez Funes and the Class

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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 M. Patterson (collectively, "Plaintiffs" or "Class Representatives") seek final approval of the Joint Stipulation of Class Action and PAGA Settlement Agreement executed on April 27, 2023, Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement Agreement executed on October 9, 2023, and Joint Stipulation to Modify Settlement and Continue Motion for Final Approval Hearing Date executed on February 21, 2024 and approved by the Court on March 13, 2024 (collectively, "Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, and Defendants Ruth's Hospitality Group, Inc. and RCSH Operations, Inc. (together, "Defendants") (collectively with Plaintiffs, the "Parties").

The Settlement provides for a Gross Settlement Amount of ($6,000,000.00)[1] and seeks relief on behalf of the following Class:

> 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.").[2]

Plaintiffs move for final approval of all payments allocated and provided for by the Settlement, to be paid from the Gross Settlement Amount, including but not limited to, Class Representative Service Payments in the amount of $25,000.00 each to Plaintiffs (for a total of $150,000.00), attorneys' fees in the amount of $2,400,000.00 (which is forty percent (40%) of the Gross Settlement Amount) ("Fee Award") and reimbursement of litigation costs and expenses in the amount of up to $75,000.00 ("Class Counsel Litigation Expenses Payments") to Class Counsel, Administration Expenses Payment in the amount of $23,995.00 to Simpluris, Inc. (Simpluris" or "Administrator"), and the amount of $750,000.00 for Private Attorneys General Act ("PAGA") penalties in settlement of the Released PAGA Claims ("PAGA Penalties"), of

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[1] Joint Stipulation of Class Action and PAGA Settlement Agreement ("Long-Form Settlement Agreement"), ¶ 1.22.

[2] Settlement Agreement, ¶ 1.5. "Class Period" is defined as the period from February 26, 2014 through December 7, 2023. See id., ¶ 1.12.

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which $562,500.00 will be paid to the California Labor and Workforce Development Agency ("LWDA") for its portion of the PAGA Penalties ("LWDA Payment"), and $187,500.00 will be distributed to the Allegedly Aggrieved Employees, on a *pro rata* basis.

The Settlement is fair, adequate, and reasonable, and is the product of arm's-length, good-faith negotiations by experienced counsel, presided over by a highly regarded mediator who is experienced in mediating wage-and-hour class action lawsuits.

Accordingly, the Court should grant final approval of the Settlement, and all payments allocated and provided for by the Settlement Agreement.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Ruth's Hospitality Group, Inc. was a publicly held company (until it was acquired by Darden Restaurants, Inc.), and Defendant RCSH Operations, Inc. is a publicly held company, operating approximately one hundred and fifty (150) upscale steak houses nationwide, as well as internationally, in approximately twenty-one (21) countries. Plaintiffs Adrian Quiroz Guerrero, Anton Kassa, Lucas Martin Arel, Eddie Castillo, Juan Carlos Menendez Funes, and Amanda M. Patterson are former employees of Defendants.

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

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

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

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

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On September 17, 2021, Plaintiff Eddie Castillo filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Los Angeles County Superior Court, thereby commencing a PAGA representative action entitled *Eddie Castillo v. RCSH Operations, Inc., et al.*, Case No. 21SMCV01530 (the "*Castillo* PAGA Action," collectively with the *Castillo* Class Action, the "*Castillo* Actions").

On October 19, 2021, Plaintiff Amanda M. Patterson filed a Class Action Complaint in the Contra Costa County Superior Court, thereby commencing a putative class action entitled *Amanda M. Patterson v. RCSH Operations, Inc.*, Case No.: MSC21-02077 (the "*Patterson* Action") (collectively the *Guerrero* Action, *Castillo* Class Action, *Castillo* PAGA Action, and *Patterson* Action are referred to as the "Action").

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

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

Plaintiffs' core allegations are that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and Allegedly Aggrieved Employees, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq*. and conduct that gives rise to civil penalties recoverable under PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties, and attorneys' fees.

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

On February 5, 2022, the Parties participated in a formal, full-day mediation conducted by Steven J. Rottman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator and his evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On June 8, 2022, Plaintiffs Eddie Castillo and Juan Carlos Menendez Funes submitted a Petition for Coordination and Motion for Stay to the Judicial Council of the State of California, seeking to coordinate the Action.

On September 12, 2022, the request for coordination was granted and the Action was deemed coordinated as RCSH Wage and Hour Cases, Judicial Council Coordination Proceeding No. 5243.

On July 26, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On August 17, 2023, the Court held a hearing on Plaintiffs' Motion for Preliminary Approval wherein the Court stated it would issue a Case Management Order ("CMO"), set a deadline for Plaintiffs to refile the Motion for Preliminary Approval, and continued the hearing on Plaintiffs' Motion for Preliminary Approval. On August 18, 2023, the Court issued the CMO.

On September 18, 2023, the Court granted the Parties' Joint Stipulation to Continue Hearing on Motion for Preliminary Approval and Related Deadlines.

On September 27, 2023, the Court granted the Parties' Joint Stipulation to Continue Hearing on Motion for Preliminary Approval and Related Deadlines.

On October 9, 2023, Plaintiffs filed a Renewed Motion for Preliminary Approval of Class Action Settlement and supporting documents, in accordance with the Court's CMO.

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On December 7, 2023, the Court entered an Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Notice Packet, and the proposed administration procedures and associated deadlines.

On January 4, 2024, the Parties executed the Joint Stipulation to Extend Deadline for Defendants to Provide Class Data, and on January 9, 2024 the Court entered an Order extending Defendants' deadline to provide the Class Data to the Administrator to January 26, 2024.

On February 21, 2024, the Parties executed the Joint Stipulation to Modify Settlement and Continue Motion for Final Approval Hearing, and on March 13, 2024 the Court entered an Order approving clarification of the Workweeks definition and language within the Class Notice, Objection Form, and Request for Exclusion Form (collectively, "Notice Packet"), setting a new deadline for the mailing of the Notice Packet, setting a new Response Deadline, and re-scheduled the hearing on the Motion for Final Approval from April 26, 2024 at 8:30 a.m. to May 21, 2024 at 8:30 a.m.

On April 29, 2024, the Parties executed the Joint Stipulation to Continue Hearing on Final Approval, and on April 30, 2024 the Court entered an Order re-scheduling the hearing on the Motion for Final Approval from May 21, 2024 to July 11, 2024 at 8:30 a.m.

Plaintiffs now move for final approval of the Settlement.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement Amount of $6,000,000.00.[3] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount of up to $2,400,000.00 (i.e., up to 40% of the Gross Settlement Amount) ("Fee Award") and reimbursement of litigation costs and expenses in an amount of up to $75,000.00 to Class Counsel ("Class Counsel Litigation Expenses Payment"); (2) administration expenses payment in the amount of $23,995.00 to the Administrator, Simpluris,

[3] Settlement Agreement, ¶ 1.22.

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Inc. ("Administration Expenses Payment"); (3) the amount of $750,000.00 for PAGA penalties in settlement of the Released PAGA Claims ("PAGA Penalties"); and (4) Class Representative Service Payments in the amount of up to $25,00.00 each to Plaintiffs, for a total of up to $150,000.00 ("Class Representative Service Payments").[4] The Net Settlement Amount, which is estimated to be at least approximately $2,601,005.00, will be distributed to Participating Class Members in accordance with the Settlement Agreement.[5]

The Administrator will calculate each Participating Class Member's share of the available Net Settlement Amount ("Individual Class Share") by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by the individual total number of Workweeks worked by each Participating Class Member during the Class Period.[6]

The Administrator will calculate each Allegedly Aggrieved Employee's share of the available 25% share of the PAGA Penalties by dividing the amount of the Allegedly Aggrieved Employees' 25% share of the PAGA Penalties (i.e., $187,500) by the total number of the PAGA Pay Periods worked by all Allegedly Aggrieved Employees and multiplying the result by the total PAGA Pay Periods worked by each Allegedly Aggrieved Employee ("Individual PAGA Payment").[7]

Class Members had forty-five (45) calendar days after the initial mailing of the Notice Packet to opt out of the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks to which they were credited ("Response Deadline").[8] The Response

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[4] Settlement Agreement, ¶¶ 4.2.1, 4.2.2, 4.2.4 and 4.2.6.
[5] The dollar amount of the Net Settlement Amount stated herein and in Paragraph 16 of the soon to be filed Declaration of Jennifer Beliveau Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") assumes that Class Counsel will be awarded attorneys' fees in the amount of $2,400,000 and reimbursement of litigation costs and expenses in the amount of $75,000.00, which are the maximum amounts allocated under the Settlement. As such, to the extent Class Counsel seek and/or are awarded attorneys' fees and/or reimbursement of litigation costs and expenses in amounts less than the maximum allocation under the Settlement, the actual Net Settlement Amount available for distribution to Participating Class Members will be higher. As of the date of this filing, the Parties still await a signed version of the Administrator's declaration, which will be filed upon receipt.
[6] Settlement Agreement, ¶ 4.2.5.
[7] *Id.*, ¶ 4.2.6.1.
[8] *Id.*, ¶ 1.46.

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Deadline was May 17, 2024.[9] ***As of the date of this Motion, the Administrator has received fifteen (15) written requests for exclusion from the Class Settlement ("Request for Exclusion") and eight (8) written objections to the Class Settlement ("Objection") from Class Members (for the reasons discussed in Section V.E., infra, the Objections should be overruled).***[10]

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 ("Non-Wage Portion"), which will be reported on an IRS Form 1099.[11] 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").[12] The employer's share of taxes and contributions on the Wage Portion of Individual Class Shares will be paid by Defendants separately and in addition to the Gross Settlement Amount.[13] Each Individual PAGA Payment will be reported on an IRS Form-1099 by the Administrator.[14]

The Individual Class Payment check issued to Participating Class Members and each Individual PAGA Payment check issued to Allegedly Aggrieved Employees will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and thereafter, shall be canceled.[15] After the 180-day check-cashing deadline, the Administrator shall transmit the funds represented by such remaining checks to Inland Counties Legal Services, Inc., in accordance with California Code of Civil Procedure section 384.[16] Participating Class Members whose Individual Class Payment checks are canceled shall, nevertheless, be bound by the Class Settlement.[17] The PAGA Settlement shall have claim preclusive impact as to PAGA claims that

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[9] Simpluris Decl., ¶ 11.
[10] *Id*., ¶¶ 12 & 13.
[11] Settlement Agreement, ¶ 4.2.5.1.
[12] *Id*., ¶ 1.2.3.
[13] Ibid.
[14] Ibid.
[15] *Id*., ¶ 5.4.1.
[16] Ibid.
[17] Ibid.

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could be brought by Allegedly Aggrieved Employees, regardless of whether or not their Individual PAGA Payment checks are canceled.[18]

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's December 7, 2023 Preliminary Approval Order, the Court's January 9, 2024 Order on the Parties' Joint Stipulation to Extend Deadline for Defendants to Provide Class Data, and the Court's March 13, 2024 Order on the Parties' Joint Stipulation to Modify Settlement and Continue Motion for Final Approval Hearing.

On January 10, 2024, Simpluris received the Court-approved text for the Court-approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (i.e., Class Notice), Objection Form, and Request for Exclusion Form (together, "Notice Packet").[19]

On January 26, 2024, Simpluris received a mailing list from Defendants' counsel that contained each Class Member's full name, last-known mailing address, last-known telephone number, Social Security Number, number of Workweeks during the Class Period, and number of Workweeks during the period from February 26, 2014 through December 24, 2021 (collectively, "Class Data").[20] The Class Data contained information for five thousand seven hundred and eighty-five (5,785) individuals identified as Class Members.[21] Of the five thousand seven hundred and eighty-five (5,785) individuals, two hundred and seventy-two (272) were combined as they were determined to be duplicative, leaving five thousand five hundred and thirteen (5,513) individuals.[22] Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data and List with any updated addresses located.[23]

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[18] Ibid.
[19] Simpluris Decl., ¶ 5.
[20] *Id.*, ¶ 6.
[21] Ibid.
[22] Ibid.
[23] *Id.*, ¶ 7.

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On March 27, 2024, Simpluris received the Court-approved revised Notice Packet.[24]

On April 2, 2024, Simpluris mailed the Notice Packet, in English and Spanish, via First Class mail to five thousand five hundred and thirteen (5,513) individuals identified as Class Members in the Class Data.[25]

As of the date of this Motion, eight hundred and sixty-eight (868) Notice Packets were returned as undeliverable with forwarding addresses, and Simpluris promptly re-mailed the Notice Packets to the forwarding addresses.[26] Eighty-one (81) Notice Packets were returned as undeliverable without forwarding addresses.[27] Simpluris performed a skip-trace search on the eighty-one (81) Notice Packets that were returned to Simpluris without forwarding addresses, located an updated address for three (3) Class Members, and promptly re-mailed the Notice Packets to the three (3) Class Members for whom updated addresses were located.[28] Ultimately, seventy-eight (78) Notice Packets remain undeliverable because an updated address was not located through skip-tracing.[29]

As of the date of this Motion, the Administrator has received eight (8) Objections Forms (for the reasons discussed in Section V.E., *infra*, these Objections should be overruled) and fifteen (15) Requests for Exclusion from Class Members.[30]

To date, there are five thousand four hundred and ninety-eight (5,498) Class Members who did not submit a timely and valid Request for Exclusion from the Class Settlement, and are therefore, deemed to be Participating Class Members.[31] Pursuant to the terms of the Settlement, the Net Settlement Amount will be distributed to Participating Class Members in accordance with the terms of the Settlement.[32] The highest Individual Class Share is currently estimated to be at least $ 3,483.91 and the average Individual Class Share is currently estimated to be at least

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[24] *Id*.
[25] Simpluris Decl., ¶ 8.
[26] *Id*., ¶ 9.
[27] *Id*.
[28] *Id*.
[29] Ibid.
[30] *Id*., ¶¶ 12 & 13.
[31] *Id*., ¶ 15.
[32] *Id*., ¶ 16; see also, n.7, *supra*.

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$ 472.22.[33]

As of the date of this Motion the number of Allegedly Aggrieved Employees is yet to be determined as the PAGA Period end date is the date of the Final Approval Order.[34]

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether the settlement is fair and reasonable, courts consider relevant factors such as:

> the strength of plaintiffs' 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 views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 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 v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk*, *supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, *supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(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." *Dunk*, *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any

[33] Simpluris Decl., ¶ 17. The average and highest Individual Class Payments referenced herein in the Simpluris Declaration assumes that Class Counsel will be awarded attorneys' fees in the amount of $2,400,000 and reimbursement of litigation costs and expenses in the amount of $75,000.00, which are the maximum amounts allocated under the Settlement. As such, to the extent Class Counsel seek and/or are awarded attorneys' fees and/or reimbursement of litigation costs and expenses in amounts less than the maximum allocation under the Settlement, the actual Net Settlement Amount available for distribution to Participating Class Members will be higher, and the actual average and highest Individual Class Payments will be higher that the amounts references herein and in the Simpluris Declaration. See n.5, *supra*.

[34] *Id.*, ¶ 18.

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ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba*, *supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id*.

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

Class Counsel conducted formal and informal discovery and investigation into the facts of the cases, to assess the veracity, strength, and scope of the claims, and was actively preparing the matter for class certification and trial, prior to reaching the Settlement.[35]

The Parties conducted significant formal and informal discovery and investigation into the facts of the cases, and also formally and informally exchanged, reviewed, and analyzed a large volume of information, documents, and data obtained from Plaintiffs, Defendants, and other sources, throughout the course of the litigation and in connection with mediation and settlement negotiations.[36] Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with mediation and settlement negotiations, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of information, documents, and data in the course of litigation and in connection with mediation and settlement negotiations, as well as

[35] Declaration of Joanna Ghosh ("Ghosh Decl."), ¶ 6.
[36] Ibid.

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mediation and settlement negotiations.[37] Class Counsel had the opportunity to interview and obtain information from Plaintiffs and other Class Members.[38] Class Counsel also drafted pleadings, motion-related papers, and the mediation brief, and prepared for and attended court proceedings, the mediation, and settlement negotiations, among other tasks.[39]

After conducting significant formal and informal discovery and investigation into the facts of the cases, the Parties attended a formal, full-day mediation conducted by Steven J Rottman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[40] In the course of mediation and settlement negotiations, the Parties exchanged information, documents, and data, and discussed all aspects of the cases, including the risks and delays of further litigation, the risks and expenses to the Parties of proceeding with class certification and trial, the law relating to class certification, off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[41] 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 to avoid class certification and representative adjudication and prevail on the merits, while Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[42] After conducting significant formal and informal discovery and investigations, 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.[43]

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, trial and/or appeals.

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[37] Ghosh Decl., ¶ 8.
[38] Ibid.
[39] Ibid.
[40] *Id.*, ¶ 8.
[41] *Id.*
[42] Ibid
[43] Ibid

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Class Counsel had the opportunity to interview and obtain information from their respective witnesses.[44] Class Counsel also reviewed and analyzed a large volume of information, documents, and data obtained from Defendants, Plaintiffs, and other sources, and performed significant research into the applicable law, which is evolving as it relates to class certification, off-the-clock theory, meal and rest periods, representative PAGA claims and penalties, wage-and-hour enforcement, Plaintiffs' claims and damages, and Defendants' defenses, as well as facts discovered.[45] The Settlement was reached based on a large volume of facts, evidence, and investigation.[46]

B. The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.

The Settlement, which provides for a Gross Settlement Amount of $6,000,000.00, represents a fair, adequate, and reasonable resolution of the cases, given the risks inherent in litigating class and representative claims through class certification proceedings, trial, and/or appeals.[47] The Settlement was calculated using the information and data uncovered during thorough and extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation and ongoing settlement negotiations.[48] Had the cases not settled, Defendants would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendants contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to class certification and representative adjudication. Defendants would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide adjudication. On the other hand, Defendants also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide basis.

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[44] Ghosh Decl., ¶ 6.
[45] *Id.*, ¶ 7.
[46] *Id.*, ¶¶ 6 & 8.
[47] *Id.*, ¶¶ 8 & 22.
[48] *Id.*, ¶¶ 5-8.

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It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If the matters had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims are unsuitable for class treatment, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the cases, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, depositions of Defendants' Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. More discovery would have certainly followed, which would have cost the Parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Class here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

It would be grossly inefficient for such a large class of current and former employees to bring individual actions to recover from Defendants for the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that could be obtained by a Class Member would not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members, Allegedly Aggrieved Employees, and the State of California.

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

The Settlement, which provides for a Gross Settlement Amount of $6,000,000.00, represents a fair, reasonable, and adequate resolution of the cases. The Settlement was calculated using information and data uncovered through extensive case investigation, informal and formal discovery, and the exchange of information in the context of preparing for mediation

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and conducting ongoing settlement negotiations. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the cases, the Gross Settlement Amount represents a significant recovery.

As discussed above, the Net Settlement Amount to be distributed to Participating Class Members is currently estimated to be at least $2,601,005.00 and the PAGA Penalties are $750,000.00 (of which the State of California is slated to receive $562,500.00 and the Allegedly Aggrieved Employees are slated to receive $187,500.00).[49] As discussed in Section III, *supra*, each Participating Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her, and each Allegedly Aggrieved Employee will be paid a *pro rata* share of the 25% of the PAGA Penalties, based on the PAGA Pay Periods during the PAGA Period credited to him or her. To date, there are five thousand four hundred and ninety-eight (5,498) Participating Class Members, representing 99.73% of the Class.[50] The highest Individual Class Share is currently estimated to be at least $3,483.91 and the average Individual Class Share is currently estimated to be at least $472.22.[51] These are significant recoveries, particularly in light of the risks of litigation.

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. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.[52] 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, have experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class*

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[49] Simpluris Decl., ¶ 16.
[50] *Id.*, ¶ 15.
[51] *Id.*, ¶ 17.
[52] Ghosh Decl., ¶ 22.

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Actions (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. <u>The Objections to the Settlement Should Be Overruled.</u>

The Settlement has been well received by the Class. Although eight (8) Class Members submitted Objection Forms, for the reasons discussed herein, these Objections do not raise any reasons for this Court to decline granting final approval of the Settlement and all of these Objections should be overruled.

Despite the submission of several Objection Forms, no Class Members have raised any objections regarding the Gross Settlement Amount or requested Fee Award, Class Counsel Litigation Expenses Payment, Administration Expenses Payment, or the allocation for PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba*, *supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, *supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

Importantly, the Administrator considers all eight (8) of the Objection Forms that it has received to be invalid or incomplete because seven (7) of them do not provide any explanation and one (1) of them only references "W2s" and provides copies of W2s. It is likely that the Objection Forms were submitted in error by Class Members who mistook the Objection Form for a claim form. Deficiency letters have been mailed to all individuals who submitted incomplete Objection Forms, with the last set of letters being mailed on June 14, 2024, extending the Response Deadline to June 28, 2024. To date, no responses have been received to the deficiency letters that would cure the invalid and incomplete nature of the submissions. A supplemental declaration will be provided after June 28, 2024 to confirm the final details relating to deficiency letters mailed to Class Members who submitted Objection Forms and responses (if any) to those deficiency letters.[53]

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[53] Simpluris Decl., ¶ 13.

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VI. THE ADMINISTRATION EXPENSES PAYMENT IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are $23,995.00.[54] The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Notice Packet to the Class Members in both English and Spanish; performing skip-trace searches on Notice Packet returned as undeliverable; re-mailing the Notice Packets to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Objections, and disputes regarding Workweeks; handling inquiries from Class Members and Allegedly Aggrieved Employees regarding the Settlement; calculating Individual Class Shares, Individual Class Payments, and Individual PAGA Payments, and preparing the associated tax forms; and transmitting payments, among other things.[55]

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of $23,995.00.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and all payments allocated and provided for by the Settlement Agreement, including and not limited to the Individual Class Payments to Participating Class Members, Individual PAGA Payments to Allegedly Aggrieved Employees, Administration Expenses Payment to the Administrator, and the LWDA Payment to the State of California, in their entirety, as sought herein.

Dated: June 17, 2024

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By: ______________________________
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Attorneys for Plaintiffs Eddie Castillo and Juan Carlos Menendez Funes and the Class

[54] Simpluris Decl., ¶ 19.
[55] *Id.*, ¶ 3.

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