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Superior Court of California
County of Los Angeles

JUN 26 2018

Sherri R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

CARLOS TORRES, Individually, and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

JJ MOTORCARS, INC. D/B/A ROAD
BEAR RV, a California Corporation;
TOURISM HOLDINGS USA, INC., a
Delaware Corporation; and DOES 1
THROUGH 100, Inclusive,

Defendants.

Case No.: BC655446

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: June 26, 2018

Time: 9:00 a.m.

Dept.: 17

I. BACKGROUND

On March 27, 2017, Plaintiff, on behalf of himself and putative class members, filed a
Complaint alleging five causes of action: Failure to Pay For All Hours Worked (Labor Code §§
1194 and 1197); Failure to Pay Overtime Compensation (Labor Code § 510); Failure to Provide

1 Meal Periods (Labor Code §§ 226.7 and 512); Failure to Furnish Complete and Accurate Wage
2 Statements (Labor Code § 226(a)); and Unfair Business Practices (Bus. & Prof. Code §§ 17200,
3 et seq.). On June 2, 2017, Plaintiff filed a First Amended Complaint ("FAC") seeking civil
4 penalties pursuant to the PAGA on behalf of Defendants' aggrieved employees.

5 On December 14, 2017, the Parties participated in a private mediation with Hon Carl J.
6 West (Ret.). The mediation was a success and the parties agreed to the settlement terms
7 memorialized in a Memorandum of Understanding.

8 Now before the Court is Plaintiff's motion for preliminary approval of the settlement.

9 **II. DISCUSSION**

10 **A. SETTLEMENT CLASS DEFINITION**

11 The Amended Stipulation for Settlement filed June 11, 2018 defines "Class Members" as
12 "all persons employed by Defendants in the Nonexempt Subclass and the Exempt Subclass." (§15)

- 13 • "Exempt Subclass" means all current and former exempt employees employed in
14 the position of Shop Manager, Rental Agent Manager, Rental Manager, Branch
15 Manager or similar management position by Defendants in California during the
16 Class Period. (§16)
- 17 • "Non-exempt Subclass" means all current and former non-exempt employees
18 employed by Defendants in California during the Class Period. (§23)
- 19 • Class Members shall not include any person who previously settled or released
20 the claims covered by this Settlement, any person who previously was paid or
21 received awards through civil or administrative actions for the claims covered by
22 this Settlement, and/or any persons who gave Defendants a general release for any
23 and all claims related to his or her employment with Defendants. (Ibid.)
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1 “Class Period” is from March 27, 2013 through the date of preliminary approval. (¶7)

2 //

3 **B. TERMS OF SETTLEMENT AGREEMENT**

4 The essential terms are as follows:

- 5 • The Maximum Settlement Amount is **\$475,000**, non-reversionary. (¶¶21, 52.a)
- 6 • The Class Member Payout Fund (**\$276,382.50**) is the Maximum Settlement Amount less:
 - 7 ○ Up to \$158,317.50 (33-1/3%) for attorney fees (¶52.c);
 - 8 ○ Up to \$11,000 for litigation costs (Ibid.);
 - 9 ○ Up to \$5,000 for a service awards (¶52.b);
 - 10 ○ Estimated \$5,550 for claims administration costs (¶52.e); and
 - 11 ○ \$18,750 for PAGA penalties (75% of \$25,000) payable to the LWDA. (¶52.d)
- 12 • There is no claims process. (¶52.a)
- 13 • Calculation of Individual Settlement Payments: Each Participating Class Member's
- 14 Individual Settlement Amount shall be calculated solely by the Settlement Administrator
- 15 based upon a value for each week worked by a Participating Class Members during the
- 16 Class Period ("Workweek Value"). Workweek Value shall be calculated by the
- 17 Settlement Administrator by dividing the Net Settlement Amount by the Total
- 18 Workweeks during the Class Period (to be provided by Defendants as part of Class
- 19 Information). The Settlement Administrator shall multiply the Workweek Value by the
- 20 number of Compensable Workweeks for each Participating Class Member to reach each
- 21 Class Members' Individual Settlement Amount. To the extent any Class Member validly
- 22 requests exclusion, the portion of the Net Settlement Fund that would have been paid to
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1 the excluded Class Members(s) shall be distributed on a pro rata basis among all
2 Participating Class Members as part of their Individual Settlement Payment. (§52.a.i)

- 3 • Equitable Relief: Without admitting or conceding any liability or damages whatsoever,
4 Defendants agree to the following injunctive relief: (1) provide training to managers
5 regarding wage and hour compliance issues, (2) issue proper wage statements, (3)
6 establish a policy for payment of a one hour meal and rest period payment for missed
7 meal and rest breaks, and (4) calculate the correct regular rate for payment of overtime.
8 Defendants further acknowledge that they have implemented an electronic time punch
9 system since the inception of this Class Action. (§56)
- 10 • Defendants are responsible for paying the Employer's Share of Payroll Taxes separately
11 from and in addition to the Maximum Settlement Amount, and shall submit such amounts
12 to the Settlement Administrator. (§15)
- 13 • The response deadline for class members to submit requests for exclusions or objections
14 is 45 calendar days from the date of initial mailing of the notice packet. (§35)
 - 15 ○ If more than 15% of class members opt-out, Defendants have the right to revoke
16 the settlement. (§51.j.)
 - 17 ○ In the case of a re-mailed Notice Packet, this deadline shall be extended an
18 additional fifteen (15) calendar days after the re-mailing of the Notice Packet or
19 the Response Deadline, whichever is later. (§35.)
- 20 • For tax purposes, payments will be allocated 20% as wages, 40% as interest and 40%
21 penalties. (§52.a.iii.)
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- Checks must be cashed within 180 days of issuance. (¶2.18) Amounts not cashed will be tendered to the California Department Industrial Relations Unclaimed Wages Fund.

(¶52.a.iv.)

- The settlement administrator is Simpluris, Inc. (¶38)
- A copy of the proposed settlement was provided to the LWDA. (Supplemental Declaration of Raymond Boucher ISO Motion for Preliminary Approval, ¶8 and Exhibit 7 thereto.)
- All class members who do not opt out will release certain claims against Defendants. (See further discussion below)

C. SETTLEMENT STANDARDS AND PROCEDURE

California Rules of Court, rule 3.769(a) provides: “A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.” “Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.” (See Cal. Rules of Court, rule 3.769(c).)

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”) [Court needs to “scrutinize the proposed

1 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
2 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
3 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”]

4 [internal quotation marks omitted].)

5 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
6 However “a presumption of fairness exists where: (1) the settlement is reached through arm's-
7 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
8 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
9 objectors is small.” (*Wershba* at 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
10 1794, 1802 (“*Dunk*”).) Notwithstanding an initial presumption of fairness, “the court should
11 not give rubber-stamp approval.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
12 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent class members, the court must
13 independently and objectively analyze the evidence and circumstances before it in order to
14 determine whether the settlement is in the best interests of those whose claims will be
15 extinguished.” (*Ibid.*) In that determination, the court should consider factors such as “the
16 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
17 the risk of maintaining class action status through trial, the amount offered in settlement, the
18 extent of discovery completed and stage of the proceedings, the experience and views of
19 counsel, the presence of a governmental participant, and the reaction of the class members to the
20 proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not exclusive and the court is free to
21 engage in a balancing and weighing of factors depending on the circumstances of each case.”
22 (*Wershba, supra* at 245.)
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1 “A settlement need not obtain 100 percent of the damages sought in order to be fair and
2 reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if ‘the
3 relief afforded by the proposed settlement is substantially narrower than it would be if the suits
4 were to be successfully litigated,’ this is no bar to a class settlement because ‘the public interest
5 may indeed be served by a voluntary settlement in which each side gives ground in the interest
6 of avoiding litigation.’” (*Id.* at 250.)

7 **D. ANALYSIS OF SETTLEMENT AGREEMENT**

8 **1. Does a presumption of fairness exist?**

- 9 a. Was the settlement reached through arm’s-length bargaining? Yes. On December
10 14, 2017, Plaintiff and Defendants participated in a private, all-day mediation
11 before Hon. Carl J. West (Ret.) in Los Angeles, California. Pursuant to the
12 mediation the parties were able to reach agreement concerning the proposed
13 terms for this settlement. (Declaration of Raymond Boucher, ¶11.)
- 14 b. Were investigation and discovery sufficient to allow counsel and the court to act
15 intelligently? Yes. It is represented that in advance of the mediation, the Parties
16 agreed to an informal exchange of discovery including Defendants' production of
17 all relevant written wage and hour policies and procedures necessary to evaluate
18 Defendants' employment practices, as well as Class Member payroll and time
19 records, necessary for Plaintiff's ability to thoroughly analyze the potential scope
20 of liability and damages regarding the alleged claims. (*Id.* at ¶9.)
- 21 c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced
22 in class action litigation. (*Id.* at ¶¶24-25.)
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1 d. What percentage of the class has objected? This cannot be determined until the
2 fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before
3 Trial (The Rutter Group 2014) ¶ 14:139.18 [“Should the court receive objections
4 to the proposed settlement, it will consider and either sustain or overrule them at
5 the fairness hearing.”].)

6 CONCLUSION: The settlement is entitled to a presumption of fairness.

7 **2. Is the settlement fair, adequate, and reasonable?**

8 a. Strength of Plaintiff’s case. “The most important factor is the strength of the case
9 for plaintiffs on the merits, balanced against the amount offered in settlement.”
10 (*Kullar, supra* at 130.)

11 Plaintiff’s exposure analysis is as follows:

<u>Claims</u>	<u>Maximum</u>	<u>Reasonable</u>
12 Failure to Pay Minimum & Overtime Wages	\$630,011	\$403,207
13 Failure to Provide Meal Periods	\$244,679	\$137,631
14 Failure to Furnish Accurate Itemized Wage Statements	\$244,000	\$137,250
15 PAGA	\$1,704,950	<i>de minimus</i>
16 Total	\$2,823,640	\$678,088

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19 The \$475,000 gross settlement figure represents approximately 70% of the
20 reasonable recovery of damages class members could recover through a class
21 action lawsuit which is within the ballpark of reasonableness for a class action
22 settlement. (Boucher Decl., ¶¶21-22.)

23 b. Risk, expense, complexity and likely duration of further litigation. Given the
24 nature of the class claims, the case is likely to be expensive and lengthy to try.
25

1 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong
2 the litigation as well as any recovery by the class members.

- 3 c. Risk of maintaining class action status through trial. Even if a class is certified,
4 there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.*
5 (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that
6 trial courts should retain some flexibility in conducting class actions, which
7 means, under suitable circumstances, entertaining successive motions on
8 certification if the court subsequently discovers that the propriety of a class action
9 is not appropriate.”].)
- 10 d. Amount offered in settlement. As indicated above, Defendants have agreed to
11 settle for \$475,000. Assuming the Court approves all of the maximum requested
12 deductions, approximately \$276,382.50 will be available for automatic
13 distribution to participating class members. Assuming full participation, the
14 average settlement share will be approximately \$2,002.77. [$\$276,382.50 \text{ Net} \div$
15 $138 \text{ class members} = \$2,002.77$.]
- 16 e. Extent of discovery completed and stage of the proceedings. As discussed above,
17 at the time of the settlement, Class Counsel had conducted extensive discovery.
- 18 f. Experience and views of counsel. The settlement was negotiated and endorsed
19 by Class Counsel who, as indicated above, are experienced in class action
20 litigation, including wage and hour cases. Based upon their investigation and
21 analysis, the attorneys representing Plaintiff and the class are of the opinion that
22 this settlement is fair, reasonable, and adequate. (Boucher Decl., ¶35.)
- 23 g. Presence of a governmental participant. This factor is not applicable here.
24
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1 h. Reaction of the class members to the proposed settlement. The class members'
2 reactions will not be known until they receive notice and are afforded an
3 opportunity to opt out or object. This factor becomes relevant during the fairness
4 hearing.

5 CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and
6 reasonable."

7 **3. Scope of release**

8 Upon the Effective Date, Plaintiff and all Participating Class Members will be deemed to
9 have fully, finally and forever released, settled, compromised, relinquished, and discharged any
10 and all Released Claims against the Released Parties which arose during the Class Period.

11 (¶50.a.)

12 "Released Claims" with respect to the Participating Class Members (including Plaintiff)
13 means any and all claims arising during the Class Period for damages or any other remedies,
14 including but not limited to any and all claims challenging the validity or enforceability of class
15 action release agreements, claims for liquidated damages, restitution, disgorgement, conversion,
16 unjust enrichment, penalties, interest, and attorneys' fees and costs, contingent or accrued,
17 against the Released Parties, under state, federal, and local law arising out of the allegations
18 made in the Class Action or that could have been pled, or were pled, based on the factual
19 allegations in the Complaint, and any amendments thereto, including but not limited to failure to
20 pay for all hours worked including minimum wage payments, failure to pay wages during
21 employment, failure to pay overtime, failure to provide required meal and rest periods or pay
22 one hour's wages in lieu thereof, derivative claims for failure to provide accurate itemized wage
23 statements, as well as claims based upon alleged violations of Labor Code Sections 201, 202,
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1 204, 223, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1198, 1199, Business
2 and Professions Code section 17200, and the PAGA. For the sake of clarity, the Parties agree
3 that the Released Claims include only those claims that meet the definition of Released Claims.
4 As such, for example, Released Claims do not include claims for wrongful termination,
5 unlawful discrimination or harassment, or Worker's Compensation." (§32)

6 Plaintiff will provide a general release as well as a CC§1542 waiver. (§50.b)

7 As discussed at oral argument the releases appear to be proper, except as to the release
8 of "federal" claims. The class release is appropriately tethered to the pleading and limited to the
9 relevant time period. The Fair Labor Standards Act requires a party to "opt-in" when a claim is
10 made under that Act. See 29 U.S.C. § 216(b). Although there is a Fifth Circuit opinion
11 determining that an "opt-out" settlement that waives federal claims may be given preclusive
12 effect, see *Richardson v. Wells Fargo Bank N.A.* (5th Cir. 2016) 839 F. 3d 442, there are
13 contrary federal lower court opinions. See e.g. *Donatti v. Charter Communs., L.L.C.* (W.D.Mo.
14 Oct. 22, 2012, No. 11-4166-CV-C-MJW) 2012 U.S.Dist.LEXIS 151233. At oral argument it
15 was agreed that the release would be amended to delete the phrase "under state, federal, and
16 local law" from the definition of "released Claims" in the Settlement Agreement and Notice.
17

18 Plaintiff's release of federal claims appears proper under Plaintiff's broader release is
19 acceptable as he was represented by counsel when these terms were negotiated.

20 **4. May conditional class certification be granted?**

21 a. Standards

22 A detailed analysis of the elements required for class certification is not required, but it
23 is advisable to review each element when a class is being conditionally certified. (*Amchem*
24 *Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627.) The trial court can appropriately
25

1 utilize a different standard to determine the propriety of a settlement class as opposed to a
2 litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement
3 cases. (*Dunk, supra* at 1807, fn. 19.) Finally, the Court is under no “ironclad requirement” to
4 conduct an evidentiary hearing to consider whether the prerequisites for class certification have
5 been satisfied. (*Wershba, supra* at 240.)

6 b. Analysis

- 7 i. Numerosity. There are approximately 138 class members. (Boucher
8 Decl., ¶18.) Thus, numerosity has been established. (*Rose v. City of*
9 *Hayward* (1981) 126 Cal.App.3d 926, 934 [stating that “[n]o set number
10 is required as a matter of law for the maintenance of a class action” and
11 citing examples wherein classes of as little as 10 [*Bowles v. Superior*
12 *Court* (1955) 44 Cal.2d 574] and 28 [*Hebbard v. Colgrove* (1972) 28
13 Cal.App.3d 1017] were upheld].)
- 14 ii. Ascertainability. The class is defined above. The class definition is
15 “precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.*
16 (2010) 189 Cal.App.4th 905, 919.) Class members are identifiable from
17 Defendant’s records. (¶51.a.)
- 18 iii. Community of interest. “The community of interest requirement involves
19 three factors: ‘(1) predominant common questions of law or fact; (2) class
20 representatives with claims or defenses typical of the class; and (3) class
21 representatives who can adequately represent the class.’” (*Linder v.*
22 *Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) As a result of Defendants'
23 alleged uniform policies, Plaintiff alleges there are common questions of
24 law and fact as to the Class which predominate over questions affecting
25 only individual Class Members including, without limitation, to: (1)

1 Whether Defendants failed to provide Plaintiff and Class Members all
2 wages owed for time worked, including minimum wage payments; (2)
3 Whether Defendants failed to pay overtime wages to Class Members; (3)
4 Whether Defendants failed to provide meal periods or premium pay in
5 lieu thereof; (4) Whether Defendants failed to provide accurate, itemized
6 wage statements to Class Members; (5) Whether Defendants failed
7 wrongfully misclassified the Exempt Subclass; (6) Whether Defendants
8 violated Business & Professions Code section 17200; (7) Whether
9 Defendants' conduct constitutes unfair competition within the meaning of
10 Business and Professions Code, section 17200, et seq.; (8) Whether
11 Defendants are liable to Class Members for compensatory damages; (9)
12 Whether Defendants are liable to Class Members for injunctive relief;
13 (10) Whether Defendants are liable to Class Members for restitution; (11)
14 Whether Defendants are liable for reasonable attorneys' fees and costs of
15 suit. (Boucher Decl., ¶19.)

- 16 iv. Adequacy of class counsel. As indicated above, Class Counsel have
17 experience in class action litigation.
- 18 v. Superiority. Given the relatively small size of the individual claims, a
19 class action appears to be superior to separate actions by the class
20 members.

21 CONCLUSION: The class may be conditionally certified since the prerequisites of class
22 certification have been satisfied.

23 **5. Is the notice proper?**

- 24 a. Method of class notice.
- 25

1 Notice will be by direct mail. No later than 15 calendar days after the court grants
2 preliminary approval of the settlement, Defendant will provide a list containing Class Member
3 information to the Settlement Administrator. (§51.a.) Within 10 days after receiving the class
4 list, the Settlement Administrator shall mail the Notice Packet via First-Class mail to each class
5 member in English with a Spanish translation. (§51.c.) Before mailing the Notice Packet to
6 Class Members, the Settlement Administrator will check the Class Information against
7 addresses on file with the U.S. Postal Service's National Change of Address List, and update
8 accordingly. (§51.b.)

9 If mailed Notice Packets are returned as undeliverable, then the Settlement
10 Administrator shall promptly perform one data search and skip trace for each returned Notice
11 Packet. Following each search that results in a corrected address, the Settlement Administrator
12 shall promptly re-send the Notice Packet to the Class Member via First Class postage-prepaid
13 United States mail. (§51.d.)

14 b. Content of class notice.

15 The proposed class notice is attached to the Supplemental Declaration of Raymond
16 Boucher ISO Motion for Preliminary Approval as Exhibit 5. The notice appears to be acceptable
17 except as to its definition of "Released Claims," as discussed above. It includes information
18 such as: a summary of the litigation; the nature of the settlement; the terms of the settlement
19 agreement; the maximum deductions to be made from the gross settlement amount (i.e., attorney
20 fees and costs, the enhancement award, and claims administration costs); the procedures and
21 deadlines for participating in (do nothing), opting out of, or objecting to, the settlement; the
22 consequences of participating in, opting out of, or objecting to, the settlement; and the date,
23 time, and place of the final approval hearing.

24 Regarding taxes, the Notice states: "Please note that the Settlement payment will be
25 allocated as follows: 20% to alleged "wages," for which an IRS Form W2 will be issued; 40% to

1 alleged "interest," for which an IRS Form 1099 INT will be issued; and 40% to alleged
2 "penalties," for which an IRS Form 1099 MISC will be issued. Class Members should consult
3 their tax advisors concerning the tax consequences of the payments they receive under the
4 Settlement." (Proposed Notice, pg. 22)

5 Cost of class notice.

6 As indicated above, settlement administration costs are estimated not to exceed \$5,500.
7 (Section 3.06.d.) Prior to the time of the final fairness hearing, the settlement administrator must
8 submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize
9 the settlement for approval by the Court.

10 **6. Attorney fees and costs**

11 California Rule of Court, rule 3.769(b) states: "Any agreement, express or implied, that
12 has been entered into with respect to the payment of attorney fees or the submission of an
13 application for the approval of attorney fees must be set forth in full in any application for
14 approval of the dismissal or settlement of an action that has been certified as a class action."

15 Ultimately, the award of attorney fees is made by the court at the fairness hearing, using
16 the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22
17 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615,
18 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) In common fund cases, the
19 court may use the percentage method. (*Laffitte v. Robert Half International, Inc.* (2016) 1
20 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, "the court ha[s] an
21 independent right and responsibility to review the attorney fee provision of the settlement
22 agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles*
23 *Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

24 The question of class counsel's entitlement to \$158,317.50 in attorney fees will be
25 addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees.

1 Class counsel must provide the court with billing information so that it can properly apply the
2 lodestar method, and must indicate what multiplier (if applicable) is being sought.

3 Class counsel should also be prepared to justify the costs sought by detailing how they
4 were incurred.

5 **7. Enhancement Award to Class Representatives**

6 The Settlement Agreement provides for an enhancement award of up to \$5,000 to the
7 class representative. Plaintiff may submit evidence in support of an enhancement award at the
8 time of final approval if he so chooses to. Trial courts should not sanction enhancement awards
9 of thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
10 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
11 quantification of time and effort expended on the litigation, and in the form of reasoned
12 explanation of financial or other risks incurred by the named plaintiffs, is required in order for
13 the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to
14 participate in the suit’” (*Clark v. American Residential Services LLC* (2009) 175
15 Cal.App.4th 785, 806 [italics and ellipsis in original].)

16 The Court will decide the issue of enhancement awards at the time of final approval.

17 **III. CONCLUSION AND ORDER**

18 Contingent upon Paragraph 32 of the Stipulation and Notice being modified to delete
19 the term “under state, federal, and local law;” and the parties providing a fully-executed, signed
20 copy of the settlement agreement, the Court hereby:

21 (1) Grants preliminary approval of the settlement as fair, adequate, and reasonable;

22 (2) Grants conditional class certification;

23 (3) Appoints Carlos Torres as Class Representative;

24 (4) Appoints Boucher LLP as Class Counsel;

25 (5) Appoints Simpluris, Inc. as Settlement Administrator;

1 (6) Approves the proposed notice plan;

2 (7) Approves the proposed schedule of settlement proceedings; and

3 (8) Finds good cause under Cal. Code of Civ. Pro. § 384 for payment of residual funds
4 to the California Department Industrial Relations Unclaimed Wages Fund as it best
5 serves the class by providing the best opportunity for class members to recover the
6 wages alleged to be due to them.

7 (9) Approves a schedule as follows:

- 8 • Preliminary approval hearing: June 26, 2018
- 9 • Deadline for Defendant to provide class list to settlement administrator: July 11, 2018
10 (15 days after preliminary approval)
- 11 • Deadline for settlement administrator to mail notices: July 23, 2018 (12 days of after the
12 claims administrator receives the class information as the date to do so otherwise fall on
13 a Saturday)
- 14 • Deadline for class members to opt out: September 6, 2018 (45 days after mailing of
15 notices)
- 16 • Deadline for class members to object: September 6, 2018 (45 days after mailing of
17 notices)
- 18 • Deadline for class counsel to file motion for final approval: October 5, 2018 (16 court
19 days prior to final fairness hearing)
- 20 • Final fairness hearing: October 30, 2018 at 9:00 a.m.

21
22
23 Dated: 6/26/18



MAREN E. NELSON

Judge of the Superior Court