

**BOUCHER LLP**  
21600 Oxnard Street, Suite 600  
Woodland Hills, California 91367-4903

1 Raymond P. Boucher, State Bar No. 115364  
*ray@boucher.la*  
2 Shehnaz M. Bhujwala, State Bar No. 223484  
*bhujwala@boucher.la*  
3 Neil M. Larsen, State Bar No. 276490  
*larsen@boucher.la*  
4 **BOUCHER LLP**  
21600 Oxnard Street, Suite 600  
5 Woodland Hills, California 91367-4903  
Tel: (818) 340-5400  
6 Fax: (818) 340-5401

7 Sahag Majarian, II, State Bar No. 146621  
*sahagii@aol.com*  
8 **LAW OFFICES OF SAHAG MAJARIAN II**  
18250 Ventura Boulevard  
9 Tarzana, California 91356  
Tel: (818) 609-0807  
10 Fax: (818) 609-0892

11 *Attorneys for Plaintiffs and the Putative Class*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

14 CLAUDIA GRANCIANO, individually and  
on behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 SOUTHWIND FOODS, LLC, a California  
18 Limited Liability Company; STAFFPOINT,  
LLC, a California Limited Liability Company;  
19 and DOES 1-50, inclusive,

20 Defendants.

Case No. BC538900

CLASS ACTION

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

Date: November 27, 2018  
Time: 10:00 A.M.  
Dept.: 14

Assigned for All Purposes to:  
Hon. Kenneth R. Freeman,  
Dept. 14 (Spring Street)

Action Filed: March 11, 2014  
Trial Date: None  
Five Year Statute: March 11, 2020

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


TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD IN THE ABOVE-CAPTIONED PROCEEDING;

PLEASE TAKE NOTICE that, on November 27, 2018, at 10:00 A.M., or as soon thereafter as the matter may be heard by the Honorable Kenneth R. Freeman in Courtroom 14 of the Los Angeles Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, Named Plaintiffs Claudia Granciano and Ricardo Contreras (“Plaintiffs”), by and through the undersigned counsel, will and hereby do apply for an order of final approval of the proposed class action settlement between Plaintiffs and Defendants Southwind Foods, LLC (“Southwind”), Staffpoint, LLC (“Staffpoint”), Alliance Professional Business Solutions, Inc. (“Alliance”) and Cross-Defendant Ashwin Syal (“Syal”) (collectively, “Defendants”).

This Motion is made pursuant to California Code of Civil Procedure section 382 and California Rule of Court, Rule 3.760 *et seq.* This Motion is based on this Notice of Motion and Motion for Final Approval of Class Action Settlement, the attached Memorandum of Points and Authorities, the Declarations of Raymond P. Boucher of Boucher LLP, Sahag Majarian II of the Law Offices of Sahag Majarian II, Plaintiff Claudia Granciano, Plaintiff Ricardo Contreras, and Settlement Administrator Lindsay Kline of Simpluris, Inc., and other documents filed in support thereof, the pleadings and papers on file in this action, and such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: October 26, 2018

Respectfully Submitted,  
BOUCHER LLP

By:   
RAYMOND P. BOUCHER  
SHEHNAZ M. BHUJWALA  
NEIL M. LARSEN

LAW OFFICES OF SAHAG MAJARIAN II  
SAHAG MAJARIAN, II  
*Attorneys for Plaintiffs and the Putative Class*

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**

**Page**

I. INTRODUCTION.....4

II. BACKGROUND.....5

    A. The Pleadings and This Court’s Jurisdiction.....5

    B. Early Litigation and Discovery Efforts .....6

    C. Plaintiffs and Defendants’ Mediation and Post-Mediation Efforts .....6

    D. Preliminary Approval and Settlement Administration .....7

III. THE SETTLEMENT .....8

    A. Definition of the Proposed Class.....8

    B. Settlement Terms.....8

    C. Release .....10

    D. Class Notice, Requests for Exclusion and Objection Rights .....11

    E. The Class Response to Proposed Settlement Was Excellent. ....12

IV. THE COURT SHOULD GRANT FINAL APPROVAL.....13

    A. The Strength of Plaintiffs’ Case .....14

    B. The Risks, Expense, Complexity, and Duration of Further Litigation.....14

    C. The Risks of Maintaining Class Action Status Throughout Trial =.....15

    D. The Amount Offered in Settlement .....15

    E. Sufficient Discovery and Investigation Was Completed to Support Settlement.....16

    F. Plaintiffs’ Counsel is Experienced and Endorses This Settlement. ....16

    G. There is No Governmental Participant.....16

    H. The Reaction of the Class to the Proposed Settlement is Excellent.....17

V. THE PROVISIONAL CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES SHOULD BE MADE FINAL. ....17

VI. THE COURT-ORDERED NOTICE PLAN MET DUE PROCESS AND WAS FULLY IMPLEMENTED. ....18

VII. CONCLUSION .....18

**TABLE OF AUTHORITIES**

**Page**

**CASES**

*Alberto v. GMRJ Inc.*  
(E.D.Cal. 2008) 252 F.R.D. 652..... 13

*Cartt v. Superior Court*  
(1975) 50 Cal.App.3d 960..... 18

*Churchill Vill. v. Gen. Elec.*,  
(9th Cir. 2004) 361 F.3d 566..... 17, 18

*Fisher Bros. v. Cambridge-Lee Industries, Inc.*,  
(E.D. Pa. 1985) 630 F.Supp. 482 ..... 16

*Hanlon v. Chrysler Corp.*  
(9th Cir. 1998) 150 F.3d 1011 ..... 13

*In re Portal Software, Inc. Securities Litig.*,  
(N.D. Cal. November 26, 2007) 20007 WL 4171201 ..... 15

*Lazarin v. Pro Unlimited, Inc.*,  
(N.D. Cal. July 11, 2013) 2013 WL 3541217 ..... 17

*Wal-Mart Stores, Inc. v. Visa U.S.A.*,  
(2d Cir. 2005) 396 F.3d 96..... 17

**STATUTES**

29 U.S.C. § 216 ..... 8

Bus. & Prof. Code §§ 17200, *et seq.* ..... 5

Cal. Lab. Code § 1194..... 5

Cal. Lab. Code § 201 ..... 5

Cal. Lab. Code § 202..... 5

Cal. Lab. Code § 226..... 5

Cal. Lab. Code § 226.7..... 5

Cal. Lab. Code § 510..... 5

Cal. Lab. Code § 512..... 5

Cal. Lab. Code §§ 2698..... 5

Civil Code § 1781 ..... 18

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

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

Code of Civil Procedure § 382 ..... 13, 17

**OTHER AUTHORITIES**

Manual for Complex Litigation § 21.632 (4th ed. 2004) ..... 13

Moore's Fed. Practice, § 23.85(3) (3d ed. 1997) ..... 14

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This Court should grant this unopposed Motion for Final Approval of the proposed Settlement Agreement between Plaintiffs, on behalf of themselves and all others similarly situated, and Defendants, because the proposed settlement is fair, reasonable, and adequate. See Exhibit \_\_\_ to the Declaration of Raymond P. Boucher (hereinafter “Boucher Decl.”) (Amended Stipulation Regarding Class Action Settlement and Release) (hereinafter “SA”).

The proposed Settlement resolves the claims of Plaintiffs and Class Members, who do not request exclusion, that are asserted in the operative Complaint or that could have been asserted based upon the facts alleged in the operative Complaint. *See* SA ¶ 1.34. In exchange for the release of claims, Defendants have agreed to pay a combined total of Seven Hundred Fifty Thousand Dollars (\$750,000), exclusive of employer-side payroll taxes to be paid separately by Defendant Southwind. Following deductions for the proposed service awards to Plaintiffs, settlement administration costs, payment of civil penalties under the Private Attorneys General Act of 2004 (“PAGA”) to the LWDA, and reasonable attorneys’ fees and litigation expenses awards to Class Counsel, Class Members will receive significant monetary payments to resolve their claims against Defendants without having to file claims. SA ¶ 1.25.

The proposed settlement is the result of extensive arm’s-length negotiations that included the Parties’ participation in private mediation and was reached after sufficient investigation and discovery. Boucher Decl. ¶¶ 4-15; 19-22; 42-44. The proposed settlement is fair, reasonable, and adequate and represents a significant recovery to Class Members in light of the risks of obtaining and maintaining class certification and establishing liability and damages at trial. *Id.* In granting preliminary approval of the Settlement, this Court signaled its agreement and preliminarily found that the Settlement was fair, reasonable, and adequate.

Through the course of distributing the Class Notice, thereby providing the terms of the SA, Class Members themselves have voiced overwhelming support for final approval of the proposed settlement. Indeed, not a single Class Member submitted a request for exclusion or objected to the proposed Settlement. *See* Declaration of Lindsay Kline (“Klein Decl.”) at ¶¶ 14-16.

1 Accordingly, the Court should grant final approval of the proposed settlement and also  
2 approve Plaintiffs’ requests for attorneys’ fees, costs, the class representative service awards, and  
3 the requested payment for settlement administration.

4 **II. BACKGROUND**

5 **A. The Pleadings and This Court’s Jurisdiction**

6 Plaintiff Granciano filed a Class Action Complaint against Staffpoint and Southwind on  
7 March 11, 2014 in the Superior Court of California, County of Los Angeles, alleging claims for  
8 (1) Failure to Pay Wages for All Hours Worked (Lab. Code § 1194); (2) Failure to Timely Pay  
9 Wages Upon Termination or Resignation (Lab. Code §§ 201 and 202); (3) Failure to Furnish  
10 Accurate Wage Statements (Lab. Code § 226(a)); and (4) Unlawful, Deceptive, and/or Unfair  
11 Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*). Staffpoint filed a Notice of Appearance  
12 on August 28, 2014. Boucher Decl., ¶ 5. Southwind filed its Answer on November 4, 2014. *Id.* ¶ 6.

13 Plaintiff Granciano filed a First Amended Complaint (“FAC”) on May 21, 2015, alleging  
14 two more causes of action following discovery; namely, Failure to Pay Overtime Compensation  
15 (Cal. Lab. Code § 510) and Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512),  
16 named Doe Defendant 1 as Alliance, and corrected a typographical error in the proposed class  
17 definition. Southwind filed its Answer to the FAC on June 19, 2015, and also filed a Cross-  
18 Complaint against Staffpoint, Alliance, and Syal for alleged breach of contract, contractual  
19 indemnity, comparative indemnity and contribution, declaratory relief, promissory fraud, and  
20 negligent misrepresentation. Boucher Decl., ¶ 7.

21 On July 8, 2015, Plaintiff Granciano filed a Second Amended Complaint (“SAC”) with  
22 leave of Court, adding Plaintiff Contreras as an additional named Plaintiff who, like Granciano,  
23 seeks relief for alleged violations of California Labor Code section 226(a), but also seeks relief  
24 pursuant to PAGA (Cal. Lab. Code §§ 2698, *et seq.*) on behalf of himself and other aggrieved  
25 employees. Boucher Decl., ¶¶ 8-9. The SAC was filed after Plaintiff Contreras provided timely  
26 notice of his claims to the LWDA on June 3, 2015. *Id.* On August 7, 2015, Southwind answered  
27 the SAC. On August 11, 2015, Staffpoint answered the SAC. On September 17, 2015, Alliance  
28 answered the SAC. On February 8, 2016, the Court overruled Alliance and Syal’s Demurrer to

1 Southwind’s Cross-Complaint. *Id.* ¶ 9.

2 On July 2, 2018, the Court deemed Plaintiffs’ Third Amended Complaint (“TAC”) filed  
3 and that Defendants’ respective Answers to the Second Amended Class Action Complaint will be  
4 deemed their Answer to the TAC. Boucher Decl., Exh. 1.

5 **B. Early Litigation and Discovery Efforts**

6 The parties conducted formal discovery, including propounding and responding to written  
7 discovery, requesting and producing documents, and taking/providing deposition testimony.  
8 Boucher Decl., ¶¶ 12-16; 19-22. The parties have also informally exchanged documents,  
9 information, data, calculations, and analyses relating to the claims and defenses at issue. *Id.* at ¶¶  
10 12-16. As a result, counsel for Plaintiffs and Defendants have investigated the law as applied to  
11 the facts regarding the alleged claims of Class Members, and alleged defenses of Defendants, and  
12 the damages and other monetary relief claimed by Class Members by and through Plaintiffs. *Id.*

13 **C. Plaintiffs and Defendants’ Mediation and Post-Mediation Efforts**

14 In November 2015, the parties agreed to participate in a private, arm’s-length mediation to  
15 explore potential class-wide resolution. Boucher Decl., ¶ 13. Plaintiffs requested and were  
16 provided additional documents and information needed to evaluate the class and representative  
17 claims, including detailed pay and time records for the entire class as well as exemplars of wages  
18 statements. *Id.* ¶ 13-14. An analysis of Defendants’ informal production and formal discovery  
19 responses and production of hundreds of pages of documents enabled Plaintiffs’ counsel to assess  
20 the damages exposure value, relative risks, and merits of the alleged claims. *Id.* ¶¶ 12-15; 19-22;  
21 42-44.

22 On February 25, 2016, the parties participated in a full day mediation before the Honorable  
23 Carl J. West (Ret.), an experienced and well-known class action mediator, and agreed to the terms  
24 of a proposed settlement of claims and cross claims. *Id.* ¶ 15. The session was contentious and  
25 complicated by issues which were unrelated to the merits of the class and representative claims,  
26 namely the financial condition and business status of certain Defendants. *Id.* Plaintiffs’ counsel  
27 requested additional details about certain Defendants’ financial condition, which were provided  
28 before and at mediation, and confirmed the issues exist. *Id.* The mediation was a success and, after



1 a full-day session and extensive negotiations, as well as debate regarding the likelihood of  
2 certification, and the merits of Plaintiffs' claims and Defendant Southwind's cross-claims, the  
3 parties agreed to the settlement terms memorialized in a binding Memorandum of Understanding.  
4 *Id.* ¶. In September 2017, Defendant Alliance advised that it had its corporate status suspended  
5 and could not proceed with the settlement until the issue was resolved. Boucher Decl., ¶ 17. That  
6 issue was resolved in early December 2017, when Alliance's corporate status was reinstated. *Id.*  
7 All signatures to the long-form settlement agreement were obtained as of January 22, 2018. *Id.*

8 As noted above, Plaintiffs requested and were provided with a substantial amount of  
9 documents consisting of Defendants' uniform policies, payroll records, time records, and  
10 information needed to evaluate the class and representative claims. Boucher Decl. ¶¶ 12-15. An  
11 analysis of Defendants' production of documents, consisting of thousands of pages of documents,  
12 enabled Plaintiffs' counsel to assess the damages exposure value, relative risks, and merits of the  
13 alleged claims. Boucher Decl. ¶¶ 12-15; 19-22; 42-44.

#### 14 **D. Preliminary Approval and Settlement Administration**

15 On July 2, 2018, the Court entered an order granting Plaintiffs' motion for preliminary  
16 approval of class action settlement. Boucher Decl., ¶ 18, Exh. 1. In its Preliminary Approval  
17 Order, the Court: (1) conditionally certified the Settlement Class and conditionally certified the  
18 FLSA settlement subclass; (2) appointed Plaintiffs as Class Representatives; (3) appointed  
19 Boucher, LLP and Law Offices of Sahag Majarian II as Class Counsel; (4) appointed Simpluris,  
20 Inc. as the "Settlement Administrator"; and (5) ordered dissemination of the Notice of Class  
21 Action Settlement. Boucher Decl., Ex. 1.

22 On July 31, 2018, Simpluris, Inc. administered the notice plan by U.S. Mail to 869 Class  
23 Members thereby providing them with adequate and sufficient information to obtain monetary  
24 relief, to request exclusion, or to object to the settlement. Kline Decl. ¶¶ 8-9. If a Class Member's  
25 Notice Packet was returned as deliverable and without a forwarding address the Settlement  
26 Administrator performed a skip trace, which resulted in Notice Packets being delivered to 836  
27 total Class Members (96% success rate). *Id.* at ¶ 9. No Class Member submitted a request for  
28 exclusion or objection to the proposed settlement by the deadline to do so, which reflects that the

1 Class strongly supports settlement overall. *Id.* at ¶¶ 14-16.

2 **III. THE SETTLEMENT**

3 **A. Definition of the Proposed Class**

4 The Settlement Class is defined as: All current and former non-exempt employees  
5 employed by Southwind Foods, LLC, Staffpoint, LLC, and/or Alliance Professional Business  
6 Solutions, Inc. who worked in any of Southwind Foods, LLC’s facilities located in California at  
7 any time during the Class Period (March 11, 2010 through May 1, 2016). SA ¶¶ 1.6, 1.8. Plaintiffs  
8 also represent a FLSA “opt-in” subclass pursuant to 29 U.S.C. § 216(b). *Id.* 1.21, 1.34(c), 2.2,  
9 2.21. It is represented that there are 869 Class Members. Kline Decl., ¶¶ 6-16.

10 **B. Settlement Terms**

11 The non-reversionary, common-fund settlement provides that Defendants will collectively  
12 pay a total of \$750,000 (“Gross Settlement Fund” or “GSF”), and Southwind will additionally pay  
13 employer-side payroll taxes, to compensate Plaintiffs and participating Class Members. See SA, ¶¶  
14 1.23, 2.8, 2.20. Specifically, Southwind will directly pay into the GSF \$623,500 and its insurance  
15 company Travelers Casualty and Surety Company will pay an additional \$50,000 on behalf of  
16 Southwind for a total contribution of \$673,500 (exclusive of its payroll tax payment obligations),  
17 Alliance will pay \$50,000, Syal will pay \$25,000, and Staffpoint will pay \$1,500. See SA, ¶ 1.23.  
18 The funds will be deposited into a bank account established by the Settlement Administrator from  
19 which all settlement payments will be made. SA, ¶ 1.44.

20 **Settlement Payments.** A portion of the Settlement Payments will be paid from the Net  
21 Settlement Fund (“NSF”), which is the GSF less the proposed awards for Class Counsel’s  
22 Attorneys’ Fees and Litigation Expenses, Service Awards to Class Representatives, Settlement  
23 Administrator Costs, and the PAGA Penalty payment. SA ¶ 1.25. Another portion of the  
24 Settlement Payments will be made from the twenty-five percent (25%) Class Members’ share of  
25 the PAGA Penalty Payment. *Id.*

26 Class Members did not need to submit a claim form or do anything else to receive a  
27 settlement payment. SA, ¶ 2.4. Class Members will be mailed a settlement check in an amount  
28 equal to their *pro rata* share of the net settlement fund based on the total number of compensable

1 workweeks each Class Member worked during the Class Period in proportion to the total number  
2 of compensable workweeks worked by all Class Members during the Class Period. *Id.* ¶¶ 1.11,  
3 1.29, 2.21-2.22. Settlement checks will be valid for 180 days from date of issuance. SA ¶ 2.21. If a  
4 settlement check remains uncashed after 180 days from issuance, the Settlement Administrator  
5 will distribute the funds to the California Department of Industrial Relations (“DIR”) Unclaimed  
6 Wages Fund together with Class Member information to be held in the employee’s name. *Id.* ¶  
7 2.21(a). For tax purposes, 20% of each Class Member’s settlement payment shall be treated as  
8 wages (and reported on a W-2 Form), 40% shall be treated as penalties, and 40% as interest (both  
9 reported on a 1099-MISC Form). *See* SA, ¶ 2.21. The Settlement Administrator shall deduct  
10 employee-side payroll tax withholdings from the portion of the settlement check allocated to  
11 wages. *Id.* ¶ 2.22. The employers’ portion of payroll taxes will be paid by Southwind separately  
12 and in addition to the Gross Settlement Fund. *Id.*

13 Here, if the Court grants all requested fees, costs, and the service award, the NSF should be  
14 Four Hundred Thirty-Two Thousand Twenty-Five Dollars (\$432,025). Kline Decl., ¶ 11. The NSF  
15 was determined by subtracting Class Counsel’s Fees (\$249,975), Class Counsel’s Costs Payment  
16 (\$26,000), Named Plaintiff Service Awards (\$20,000), the PAGA LWDA Payment (\$7,500) and  
17 the Administration Costs (\$14,500) from the Maximum Settlement Amount (\$750,000). *Id.*

18 **Class Representative Service Enhancement Awards.** Subject to Court approval, in  
19 exchange for Plaintiffs’ full, general release of all claims against Defendants and waiver of  
20 California Civil Code section 1542, and for their respective time and effort in prosecuting this  
21 matter on behalf of the Class, and the risks they took on in bringing suit, Plaintiffs will each be  
22 paid a Class Representative Service Enhancement Award of Ten Thousand Dollars (\$10,000).

23 **Class Counsel Fees and Litigation Expense Awards.** Subject to Court approval, Class  
24 Counsel shall be entitled to receive reasonable attorneys’ fees in an amount not to exceed thirty-  
25 three and one-third percent (33.33%) of the GSF, which amount to Two Hundred Forty-Nine  
26 Thousand Nine Hundred Seventy-Five Dollars (\$249,975), and \$26,000 in litigation costs  
27  
28

1 associated with Class Counsel’s prosecution of the case<sup>1</sup>. Plaintiffs are submitting a detailed  
2 summary of fees and costs in the Motion for Fees, Costs, and Service Awards.

3 **Settlement Administrator Costs.** The Settlement Administrator, Simpluris, Inc., shall be  
4 paid from the GSF for the settlement administration costs, including, but not limited to, the costs  
5 of implementing the Class Notice plan, the creation and maintenance of a settlement website, and  
6 distribution of settlement funds, for Fourteen Thousand Five Hundred Dollars (\$14,500).

7 **PAGA Penalty Payment.** Ten Thousand Dollars (\$10,000) from the GSF shall be  
8 allocated to penalties under PAGA, of which Seven Thousand Five Hundred Dollars (\$7,500)  
9 shall be paid by the Settlement Administrator to the LWDA for enforcement of labor laws and  
10 education of employers. The remaining 25%, or Two Thousand Five Hundred Dollars (\$2,500)  
11 shall be distributed in equal shares to Class Members. SA ¶ 2.25.

12 **C. Release**

13 Upon final approval, Class Members, including Plaintiffs, will release the Released Parties  
14 (Defendants and Cross-Defendants, including Ashwin Syal, and their parents, subsidiaries, agents,  
15 affiliates, directors, officers, and owners) from the Released Claims and Cross-Claims. SA, ¶¶  
16 1.34-1.37.

17 Released Claims are defined to include all claims asserted in the proposed TAC or that  
18 could have been asserted against the Released Defendants based on the facts alleged in the TAC  
19 against Defendants under the California Labor Code, California Wage Orders, UCL, PAGA, and  
20 FLSA, from March 11, 2010 through May 1, 2016 (“Released Claims”). *Id.* ¶ 1.34(a),(b),(d). It  
21 does not include unrelated claims for wrongful termination, unlawful harassment, or Workers’  
22 Compensation. *Id.* ¶ 1.34(d). Additionally, any Class Member who timely endorses or cashes his  
23 or her Individual Settlement Payment check, including either of the Plaintiffs, will thereby be  
24 deemed to have opted into the FLSA collective action, and waived and released any claims such

25 \_\_\_\_\_  
26 <sup>1</sup> As set forth in the Motion for Fees, Costs, and Service Awards, Class Counsel is requesting  
27 reimbursement of \$26,000 in costs, which amount is less than Class Counsel’s total litigation costs  
28 to date. Nearly half of Class Counsel’s costs involved data entry work relating to Defendants’  
records so that the Class List could be augmented and finalized for use with this “no-claims” and  
direct mail notice Settlement. Boucher Decl., ¶ 66.

1 FLSA Settlement Class Members may have.

2 As part of the Settlement, the two Class Representative Plaintiffs have agreed to a broader,  
3 general release of all known and unknown claims and waiver under Civil Code section 1542. SA.,  
4 ¶ 2.11; Declaration of Ricardo Contreras (“Contreras Decl.”), ¶¶ 15-16; Declaration of Claudia  
5 Granciano (“Granciano Decl.”), ¶¶ 15-16. The broad, general release further supports a request for  
6 service payments to them, as the general release was a necessary condition of the settlement.  
7 Southwind additionally agrees to release Cross-Defendants Alliance, Staffpoint, and Syal from the  
8 cross-claims asserted against them in exchange for their contributions toward the Gross Settlement  
9 Fund. *Id.* ¶ 2.12.

10 **D. Class Notice, Requests for Exclusion and Objection Rights**

11 The Court approved of the Notice Packet in its July 2, 2018 Order, which provided  
12 sufficient notice and fully apprised Class Members of the terms of the proposed Settlement.  
13 Boucher Decl., ¶ 24, Exh. 1.

14 The Notice Packets mailed to Class Members contained detailed information about the  
15 claims in the litigation and the terms of the settlement, explained the rights and release of claims  
16 under the settlement, the right to opt-out of the settlement, the right to object to the settlement,  
17 explained the calculation of settlement payments, included estimated individual settlement  
18 payment amounts, informed Class Members of the deadline to request exclusion or object to the  
19 proposed settlement, and informed Class Members of the date, time, and location of the November  
20 27, 2018 final approval hearing. *See* Kline Decl., ¶¶ 5-9; Boucher Decl., ¶¶ 24, Exhibits 1, 2.

21 On July 2, 2018, the Settlement Administrator received the Court-approved Notice from Class  
22 Counsel. Kline Decl. ¶ 5. The Notice advised Class Members of their right to participate, opt out of the  
23 Settlement, object to the Settlement, or do nothing, and the implications of each such action. *Id.* The  
24 Notice Packet also advised Class Members of applicable deadlines and other events, including the date  
25 of the Final Approval Hearing, and how Class Members could obtain additional information. *Id.* The  
26 Notice was pre-printed with the time period each Class Member worked for Defendant at Defendant’s  
27 California locations, the number of compensable workweeks during the proposed Class Period, and  
28 each Class Member’s estimated settlement payment, as well as instructions for disputing the

1 information used to calculate the estimated settlement payment. Boucher Decl., Exh. 3.

2 On July 17, 2018, the Settlement Administrator received the Class Information from  
3 Defendant for 869 Class Members. Kline Decl., ¶ 6. The Settlement Administrator performed a  
4 National Change of Address Database (“NCOA”) search to update the Class Information with  
5 contact information for any individuals who had filed a U.S. Postal Service change of address  
6 request. *Id.* at ¶ 7. The addresses listed with the NCOA were utilized in connection with the  
7 mailing of the Notice Packets. *Id.*

8 On July 31, 2018, the Settlement Administrator mailed copies of the Notice Packet  
9 consisting of the Class Notice, in English with a Spanish translation, to all Class Members by  
10 regular First Class U.S. Mail. *Id.* at ¶¶ 8-9. Skip traces were performed on 152 Notice Packets  
11 returned to the Settlement Administrator to locate better addresses, and as a result of such efforts,  
12 119 Notice Packets were re-mailed to updated addresses. *Id.* at ¶ 9. A total of only 33 Notice  
13 Packets remain undeliverable to date despite the Settlement Administrator’s efforts. *Id.* A total of  
14 836 Class Members were successfully sent Notice Packets representing a 96.20% success rate. *Id.*

15 Further, Class Counsel’s contact information and a toll-free telephone number associated  
16 with the Settlement Administrator was included in the Notice for the purpose of allowing the Class  
17 Members to contact Class Counsel and/or Simpluris and to make inquiries regarding the  
18 Settlement. Kline Decl., ¶ 4. The Settlement Administrator’s toll-free telephone number system is  
19 accessible 24 hours a day, 7 days a week, and will remain in operation throughout the settlement  
20 administration process. *Id.* Callers have the option to speak with a live call center representative  
21 during normal business hours or to leave a message and receive a return call during non-business  
22 hours. *Id.*

23 **E. The Class Response to Proposed Settlement Was Excellent.**

24 As of September 29, 2018, the Settlement Administrator did not receive any requests for  
25 exclusion nor any written objections from Class Members to the proposed settlement. Kline Decl.,  
26 ¶¶ 14-15. Accordingly, 100% of Class Members will participate in the proposed settlement with  
27 an average estimated settlement payment to participating Class Members of \$497.15 and the  
28 highest estimated payment being \$4,290.11. *Id.* at ¶ 12.

1 **IV. THE COURT SHOULD GRANT FINAL APPROVAL**

2 The process for approval of a class action settlement consists of three steps. First, the court  
3 “must make a preliminary determination on the fairness, reasonableness, and adequacy of the  
4 settlement terms and must direct preparation of notice of the certification, proposed settlement,  
5 and date of the final fairness hearing.” *See* Manual for Complex Litigation § 21.632 (4th ed.  
6 2004). Second, the Class is given notice of the litigation and the final fairness hearing so as to  
7 advise them of the settlement and the ability to request exclusion from or object to the settlement.  
8 *Id.* at § 21.633. Lastly, the final fairness hearing allows individuals to be heard in support of, and  
9 in opposition to, the proposed settlement and requires the court’s final determination of whether  
10 the proposed settlement is “fair, reasonable, and adequate.” *Id.* § 21.634.

11 The first two steps are substantially complete. On July 2, 2018, this Court granted  
12 Plaintiffs’ request to conditionally grant certification of the FLSA Subclass, request for  
13 conditional certification of the Settlement Class after determining for settlement purposes only  
14 that the Class met the requirements for certification pursuant to Code of Civil Procedure section  
15 382, and also granted Plaintiffs’ Motion for Preliminary Approval on the basis that the Settlement  
16 terms appeared fair, adequate, and reasonable as to all potential Class Members. Boucher Decl., ¶  
17 18, Exh. 1. On July 31, 2018, the Settlement Administrator provided Class Members notice of the  
18 litigation and the final fairness hearing and provided Class Members the ability to request  
19 exclusion from or to object to the Settlement through the mailing of the Notice Packets. Kline  
20 Decl., ¶¶ 8-9.

21 The Court must also consider several factors when making a final determination of the  
22 fairness, reasonableness, and adequacy of the settlement by balancing several factors, including:  
23 (1) the strengths of Plaintiff’s case; (2) the risks; (3) the expenses; (4) complexity of the matter;  
24 (5) likely duration of further litigation; (6) the risk of maintaining class action status throughout  
25 trial; (7) the settlement amount; (8) the extent of completed discovery; (9) the stage of the  
26 proceedings; (10) counsel’s experience and views of the Settlement; and (11) the reaction of the  
27 Class Members to the Settlement. *See Alberto v. GMRJ Inc.* (E.D.Cal. 2008) 252 F.R.D. 652,  
28 664-65 (quoting *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026); *see also* 5 James

1 Wm. Moore, *et al.*, *Moore's Fed. Practice*, § 23.85(3) (3d ed. 1997) 23.353-4.

2 Plaintiffs submit that a review of these factors should result in final approval of the  
3 settlement herein being granted. Indeed, the Court has evaluated these factors and granted  
4 preliminary approval based on the same. Boucher Decl., ¶ 18, Exhibit 1.

5 **A. The Strength of Plaintiffs' Case**

6 Although Plaintiffs maintain that the merits of his claims against Defendants are strong,  
7 they also recognize that there are significant defenses to certification and liability of these claims.

8 Plaintiffs have provided the Court with a detailed analysis of the strengths and weaknesses  
9 of each class and representative action claim. *See* Boucher Decl., ¶¶ 42-44. The settlement is, thus,  
10 a compromise taking into account both the strengths and weaknesses associated with each claim.

11 Plaintiffs took into serious consideration Defendants' contentions regarding the risks that the class  
12 claims would not be certified on a contested motion, the risks that exist regarding liability and  
13 proof of damages, and the risks associated with Defendants' affirmative defenses. Boucher Decl.,  
14 ¶¶ 19-22; 42-44. Further, Plaintiffs took into consideration the time, delay, and financial  
15 repercussions to Class Members if this litigation continued toward trial and the potential for  
16 appeals that likely stood to follow. *Id.* Although Defendants' defenses present a substantial risk,  
17 Plaintiffs have secured a significant monetary recovery for Class Members that supports final  
18 approval. Boucher Decl., ¶¶ 19-22; 42-44. .

19 **B. The Risks, Expense, Complexity, and Duration of Further Litigation**

20 The risks in a wage and hour class action are often significant and complex. This case is  
21 not certified on a contested motion and Defendants have contested every aspect of this class and  
22 representative action. Plaintiffs have considered the possibility that if a settlement were reached  
23 after additional years of litigation, including possible appeals, the great expenses and attorneys'  
24 fees for ongoing litigation would greatly reduce the amount of funds available to Plaintiffs and  
25 Class Members for settlement. Boucher Decl., ¶¶ 19-22; 42-44. .

26 The expense of further litigation is significant. To date, the Parties have already engaged in  
27 a significant amount of discovery and class-wide data analysis. Plaintiffs, in light of the proposed  
28 settlement, have not filed a contested motion for class certification which requires a significant



1 investment of time and resources to prepare and present to the Court. Moreover, settlement  
2 benefits the Class by staving the significant cost and time associated with potential trial  
3 preparation remained for the Parties as well as the prospect of appeals in the event of a disputed  
4 class certification ruling for Plaintiffs and/or an adverse summary adjudication ruling.

5 Accordingly, the Parties stood to incur considerable additional attorneys' fees and costs  
6 through trial and possibly beyond including appeals. Thus, this settlement avoids the risk of non-  
7 recovery for the Class and additional expenses associated with wage and hour class action  
8 litigation, and weighs in favor of final approval of the proposed settlement. *See In re Portal*  
9 *Software, Inc. Securities Litig.*, (N.D. Cal. November 26, 2007) 20007 WL 4171201 at \*3 (noting  
10 that the "inherent risks of proceeding to summary judgment, trial and appeal also support the  
11 settlement").

12 **C. The Risks of Maintaining Class Action Status Throughout Trial =**

13 Plaintiffs have not filed their motion for class certification in light of the proposed  
14 settlement and efforts to obtain court approval of the proposed settlement. Plaintiffs contend that  
15 they have a reasonable chance of certifying at least some of the claims in this case. However,  
16 Defendants have indicated an intent to file motion for summary judgment and will oppose a  
17 motion for class certification, which both present a substantial risk that class action status might  
18 not be achieved or maintained through trial absent a settlement. Thus, this factor weighs in favor  
19 of finally approving the proposed settlement which would extinguish any such uncertainty and  
20 result in a definite tangible recovery to Class Members in the near future.

21 **D. The Amount Offered in Settlement**

22 As noted in the Court's July 2, 2018 Order, the proposed settlement consists of a Seventy  
23 Hundred Fifty Thousand Dollars (\$750,000) gross settlement amount. Boucher Dec., Exh. 1. The  
24 Court recognized that the proposed recovery was within the ballpark of reasonableness for a class  
25 action settlement. *Id.* Furthermore, in light of the absence of any requests for exclusion, the Class  
26 will be fully participating in the proposed settlement and will result in an average settlement share  
27 of approximately \$497.15. Kline Decl., ¶ 12. Thus, this is a significant monetary recovery for each  
28 Class Member and should weigh heavily in favor of final approval.

1           **E. Sufficient Discovery and Investigation Was Completed to Support Settlement.**

2           The stage of the proceedings and the amount of discovery completed is an important factor  
3 which the Courts consider in determining the fairness, reasonableness, and adequacy of a  
4 settlement. Throughout the course of this litigation, Plaintiffs’ counsel conducted a thorough  
5 investigation of the claims alleged, interviewed Plaintiffs regarding the facts alleged in the  
6 complaint, and conducted legal research regarding application of the applicable California Labor  
7 Code sections. Further, Plaintiffs’ counsel conducted meaningful discovery through the informal  
8 exchange of all relevant policy documents and hundreds of pages of relevant data prior to the start  
9 of the private mediation with Hon. Carl J. West (Ret.) that was held on February 25, 2016, which  
10 was instrumental in achieving the proposed settlement. Accordingly, the litigation reached a stage  
11 where the Parties certainly had a clear view of the strengths and weaknesses of their cases and  
12 Plaintiffs’ counsel was able to act intelligently and effectively in negotiating the settlement.  
13 Boucher Decl., ¶¶ 19-22; 42-44. .

14           **F. Plaintiffs’ Counsel is Experienced and Endorses This Settlement.**

15           Experienced counsel, operating at arm’s length, have weighed all of the foregoing factors  
16 and endorse the proposed settlement. As the courts have explained, the view of the attorneys  
17 actively conducting the litigation, is “entitled to significant weight.” *Fisher Bros. v. Cambridge-*  
18 *Lee Industries, Inc.*, (E.D. Pa. 1985) 630 F.Supp. 482, 488. Plaintiffs’ counsel has experience not  
19 only in class actions but specifically in wage and hour class actions. *See* Boucher Decl., ¶¶ 42-44,  
20 Exhs. 4-5; Majarian Decl., ¶¶ 14-17. Plaintiffs’ counsel are experienced and qualified to evaluate  
21 the class claims and viability of the defenses. *Id.* The recovery for each Class Member is  
22 substantial, given the risks inherent in litigation and the defenses asserted. *Id.* Thus, Plaintiffs’  
23 counsel view the proposed settlement as fair, adequate, reasonable and in the best interests of the  
24 Class. *Id.*

25           **G. There is No Governmental Participant.**

26           There is no direct governmental participant in this case. However, the LWDA will receive  
27 a payment of Seven Thousand Five Hundred Dollars (\$7,500) should the Court grant final  
28 approval. This payment comports with PAGA payments in other class action settlements. *See*

1 *Lazarin v. Pro Unlimited, Inc.*, (N.D. Cal. July 11, 2013) 2013 WL 3541217 at \*2 (approving  
2 payment of \$7,500 to the LWDA from \$1.25 million common fund settlement).

3 **H. The Reaction of the Class to the Proposed Settlement is Excellent.**

4 The deadline to object to or request exclusion from the settlement lapsed on September 29,  
5 2018. As of the deadline, no Class Member had requested exclusion from or objected to the  
6 settlement. Kline Decl., ¶¶ 14-15. The absence of both strongly favors final approval of the  
7 settlement. “If only a small number of objection are received, that fact can be viewed as indicative  
8 of the adequacy of the settlement.” *Wal-Mart Stores, Inc. v. Visa U.S.A.*, (2d Cir. 2005) 396 F.3d  
9 96, 118 ; *see also Churchill Vill. v. Gen. Elec.*, (9th Cir. 2004) 361 F.3d 566, 577 (district court  
10 did not abuse its discretion in approving settlement with 500 opt-outs and 45 objections out of  
11 approximately 90,000 notified class members). Accordingly, 100% of Class Members will  
12 participate in the proposed settlement with an average settlement payment estimated to be  
13 \$497.15. *Id.* at ¶ 12. This imputes a very favorable and positive reaction from Class Members to  
14 the settlement, which likewise bolsters support for a finding of fairness, reasonableness, and  
15 adequacy.

16 **V. THE PROVISIONAL CERTIFICATION OF THE CLASS FOR SETTLEMENT  
17 PURPOSES SHOULD BE MADE FINAL.**

18 Plaintiffs respectfully request that the Court enter an order making final its certification of  
19 the proposed Class for settlement purposes.

20 In the Court’s July 2, 2018 Order, the Court determined that for the purposes of settlement,  
21 the proposed Settlement Class met the requirements of Code of Civil Procedure section 382, and  
22 granted Plaintiffs’ motion for conditional class certification. Boucher. Decl., ¶ 18, Exhibit 1. The  
23 Court also granted conditional certification of the FLSA settlement subclass. *Id.* at ¶ 18. The  
24 circumstances considered by the Court at that time remain the same. Accordingly, for the reasons  
25 set forth in Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and in the  
26 Court’s Preliminary Approval Order, final certification of the proposed class should be ordered for  
27 settlement purposes under section 382.  
28

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

**VI. THE COURT-ORDERED NOTICE PLAN MET DUE PROCESS AND WAS FULLY IMPLEMENTED.**

The Court may fashion an appropriate notice program. *See* Civil Code section 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970-74; Civil Code section 1781. At a minimum, the notice should inform the Class members of the date for the Final Approval Hearing, explain the proposed settlement, and outline procedures for filing a written objection and/or making a personal appearance at the hearing. CRC Rule 3.769(f).

Here, the Court approved the Parties’ negotiated Class Notice attached as Exhibit A to the Settlement Agreement (collectively, “Notice Packet”). *See* Boucher Decl., Exhibit 2. The Notice Packet provided Class Members with sufficient information to make an informed and intelligent decision about the Settlement. *Id.* The Notice Packets were mailed to Class Members via U.S. First Class mail using the addresses maintained by Defendant, with change of address searches, skip traces, and re-mailing implemented. Kline Decl., ¶ 8. Notice Packets were delivered to 836 out of a total of 869 Class Members. *Id.* at ¶¶ 8-9. Notice is satisfactory if it “generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill., supra*, 361 F.3d at 575. The absence of any requests of exclusion or objections to this no claims made settlement also strongly supports a finding that the overwhelming majority of Class Members that received a Notice Packet approved of the settlement and agreed to participate therein.

**VII. CONCLUSION**

For all of the foregoing reasons, Plaintiffs respectfully requests that the Court grant this unopposed motion for final approval of the proposed settlement and enter the requested orders.

**BOUCHER LLP**

21600 Oxnard Street, Suite 600  
Woodland Hills, California 91367-4903

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

DATED: October 26, 2018

Respectfully submitted,

BOUCHER LLP

By: 

RAYMOND P. BOUCHER  
SHEHNAZ M. BHUJWALA  
NEIL M. LARSEN

LAW OFFICES OF SAHAG MAJARIAN II  
SAHAG MAJARIAN, II  
*Attorneys for Plaintiffs and the Putative Class*

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

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 21600 Oxnard Street, Suite 600, Woodland Hills, CA 91367-4903.

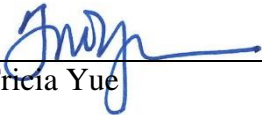
On October 26, 2018, I served true copies of the following document(s) described as **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY ELECTRONIC SERVICE:** Pursuant to Court Order Authorizing Electronic Service, I provided the document(s) listed above electronically on the CASE ANYWHERE Website to the parties on the Service List maintained on the CASE ANYWHERE Website for this case, or on the attached Service List. Case Anywhere is the on-line e-service provider designated in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 26, 2018, at Woodland Hills, California.

  
\_\_\_\_\_  
Tricia Yue