

1 Yosef Peretz (SBN 209288)  
yperetz@peretzlaw.com  
2 Shane Howarter (SBN 311970)  
showarter@peretzlaw.com  
3 PERETZ & ASSOCIATES  
22 Battery Street, Suite 200  
4 San Francisco, CA 94111  
Telephone: 415.732.3777  
5 Facsimile: 415.732.3791

6 Martin M. Horowitz (SBN 79073)  
mhorowitz@h-rlegal.com  
7 Stephanie Rubinoff (SBN 98229)  
srubinoff@h-rlegal.com  
8 HOROWITZ & RUBINOFF  
9 180 Grand Avenue, Suite 1380  
Oakland, CA 94612  
10 Telephone: 510.444.7717

11 Attorneys for Named Plaintiffs IRENE CLINE, LYNN CHO,  
12 DESIREE PACHECO, and ITZEL MARLENE DIAZ

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF ALAMEDA COUNTY**

15 IRENE CLINE, LYNN CHO, DESIREE  
16 PACHECO, and ITZEL MARLENE DIAZ,  
individually, on behalf of all other similarly  
17 situated persons, on behalf of the  
CALIFORNIA LABOR AND WORKFORCE  
18 DEVELOPMENT AGENCY, and on behalf of  
the STATE OF CALIFORNIA,

19 Plaintiffs,

20 v.

21 SI SE PUEDE BEHAVIORAL, INC. a.k.a.  
22 SOCIALLY SIGNIFICANT  
23 PROGRAMMING FOR BEHAVIORS, INC.,  
24 a California corporation; FELICIA LOPEZ, an  
individual; and DOES 1-20,

25 Defendants.  
26  
27  
28

Case No.: RG18911378

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

ASSIGNED FOR ALL PURPOSES TO  
JUDGE WINIFRED Y. SMITH  
DEPARTMENT 21

Date: August 13, 2021  
Time: 10:00 a.m.  
Reservation Nos.: R-2276695

Complaint Filed: July 2, 2018  
Trial Date: None set

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JUL 22 2021

CLERK OF THE SUPERIOR COURT  
By *[Signature]*

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a proposed class action settlement in the  
3 amount of \$170,250.21, inclusive of attorneys’ fees and costs, for all claims and causes of action  
4 brought by Named Plaintiffs IRENE CLINE (“Cline”), LYNN CHO (“Cho”), DESIREE  
5 PACHECO (“Pacheco”), and ITZEL MARLENE DIAZ (“Diaz”) (“Plaintiffs” or “Named  
6 Plaintiffs”) on behalf of themselves and all others similar situated, against Defendants SI SE  
7 PUEDE BEHAVIORAL, INC. a.k.a. SOCIALLY SIGNIFICANT PROGRAMMING FOR  
8 BEHAVIORS, INC. (“SSPBI”), and FELICIA LOPEZ (“Lopez”) (collectively, “Defendants”)  
9 according to a JOINT STIPULATION AND SETTLEMENT AGREEMENT BETWEEN  
10 PLAINTIFFS AND DEFENDANTS that was fully executed on July 22, 2021 (the “Settlement  
11 Agreement”).

12 Plaintiffs submit that the settlement is fair and reasonable, and confers a substantial benefit  
13 upon the class, which includes approximately ninety-four (94) members (including the Named  
14 Plaintiffs). The settlement readily satisfies the standard for preliminary approval as it fairly and  
15 appropriately resolves the claims of the class in a manner that provides substantial financial relief.  
16 The eventual final fairness hearing will provide the Court with another opportunity to review the  
17 Settlement Agreement, with the benefit of class members’ responses, as well as information  
18 regarding the rates of participation compared with objections.

19 Accordingly, pursuant to California Rule of Court 3.769, Plaintiffs respectfully request  
20 that the Court (1) grant preliminary approval of the parties’ class action settlement in this matter,  
21 including but not limited to, the means of allocation and distribution of funds, and the allocations  
22 for penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”);  
23 (2) authorize Plaintiffs and Defendants to provide notice to the class of the settlement in the forms  
24 of the proposed notices submitted herewith; (3) approve Plaintiffs and their counsel Peretz &  
25 Associates as class representatives; and (4) schedule a final approval hearing date.

26 **II. PROCEDURAL BACKGROUND**

27 This putative class action was filed on July 2, 2018. [Declaration of Yosef Peretz (“Peretz  
28 Decl.”), ¶ 4.] Defendants filed a joint answer on September 21, 2018, and the complaint was  
never amended. [*Id.*] Plaintiffs served extensive written discovery requests on Defendants shortly  
thereafter on November 16, 2018. [*Id.*]

The parties then met and conferred and agreed to attend private mediation with Pat

1 Gillette, Esq. of JAMS ADR Services. [Peretz Decl., ¶ 5.] As part of discovery and the agreement  
2 to mediate, Defendants provided Plaintiffs with certain key payroll and timekeeping documents  
3 and further agreed to provide Plaintiffs with the putative class list. [*Id.*]

4 In order to provide Plaintiffs with the class list, including contact information for class  
5 members, the parties stipulated to a form opt-out notice pursuant to *Belaire-West Landscape, Inc.*  
6 *v. Superior Court* (2007) 149 Cal.App.4th 554 (“*Belaire-West*”). [Peretz Decl., ¶ 6.] This  
7 stipulation was approved by the Court on March 21, 2019. [*Id.*] The *Belaire-West* notices were  
8 mailed to putative class members on April 5, 2019 with an opt-out deadline of April 20, 2019.  
9 [*Id.*] Ultimately, nine of the ninety-four (94) members opted out of providing their contact  
10 information to Plaintiff’s counsel, and one (1) notice packet was returned as undeliverable. [*Id.*]

11 The parties then held a full-day session of mediation with Ms. Gillette on September 19,  
12 2019. [Peretz Decl., ¶ 7.] However, the parties were unable to reach a settlement at that time. [*Id.*]  
13 The parties continued to informally discuss settlement throughout the spring and summer of 2020,  
14 while simultaneously exchanging further production of documents. [*Id.*]

15 Around that time, a central topic of discussion and significant obstacle to settlement was  
16 Defendants’ financial condition and limited ability to pay. [Peretz Decl., ¶ 8.] Defendants  
17 provided extensive financial records and information to Plaintiffs’ counsel under a confidentiality  
18 agreement. [*Id.*] These records and information were provided for both SSPBI and for Lopez  
19 personally. [*Id.*] Immediately prior to concluding the settlement with Lopez, her counsel provided  
20 another round of updated financial documents. [*Id.*]

21 On October 13, 2020, SSPBI filed for bankruptcy under Chapter 7 of the United States  
22 Bankruptcy Code as Case #20-41647-CN in the United States Bankruptcy Court for the Northern  
23 District of California, Oakland Division (the “Bankruptcy Case”). [Declaration of Lopez (“Lopez  
24 Decl.”), ¶ 4.] Paul Mansdorf was appointed as the Chapter 7 trustee in the Bankruptcy Case (the  
25 “Trustee”). [*Id.*] On January 14, 2021, Cho, Cline, Pacheco and Diaz each filed individual proofs  
26 of claim in the Bankruptcy Case and on January 15, 2021, Cho also filed a proof of claim on  
27 behalf of the putative class. [Peretz Decl., ¶ 10; Request for Judicial Notice (“RJN”), Exhibit 1  
28 (individual proofs of claim) & Exhibit 2 (proof of claim on behalf of the class).]

29 Plaintiffs subsequently reached a stipulation with the Trustee in the Bankruptcy Case to  
30 receive a distribution on behalf of the putative class. [Peretz Decl., ¶ 11 & RJN, Exhibit 3  
31 (stipulation with Trustee).] The stipulation states that the Trustee is holding approximately

1 \$179,000 on behalf of SSPBI, and provides that Plaintiffs and the putative class will receive the  
2 remainder of the estate after all secured claims and administrative costs have been paid. [*Id.*] At  
3 the time the stipulation was entered, the amount estimated to be disbursed according to the  
4 proposed stipulation was between \$135,000 and \$145,000. [*Id.*] Plaintiffs’ counsel hired  
5 independent bankruptcy counsel to review this stipulation and advise Plaintiffs on how to  
6 maximize recovery from SSPBI’s estate. [Peretz Decl., ¶ 12.] U.S. Bankruptcy Judge Charles  
7 Novack of the Northern District of California approved the stipulation between the Trustee, the  
8 Plaintiffs and the putative class in satisfaction of Plaintiffs’ claims with SSPBI on February 12,  
9 2021. [*Id.*; Lopez Decl., ¶ 5; RJN, Exhibit 4 (Judge Novack’s Order).]

10 On June 24, 2021, the Trustee filed his Final Report with the bankruptcy court which  
11 includes a proposed payment of \$140,250.21 to Plaintiffs and the putative class. [Peretz Decl., ¶  
12 13; RJN, Exhibit 5 (Trustee’s Final Report).] The final hearing in the Bankruptcy Case is currently  
13 set for July 23, 2021, which Plaintiffs anticipate will include a confirmation of the amount of the  
14 proposed payment from SSPBI’s estate. [Peretz Decl., ¶ 13.]

15 After Plaintiffs’ stipulation with the Trustee was approved by the bankruptcy court in  
16 satisfaction of Plaintiffs’ claims against SSPBI, Plaintiffs renewed discussions with Lopez’s  
17 bankruptcy and civil counsel regarding potential settlement of the claims asserted against her  
18 individually. [Peretz Decl., ¶ 14; Lopez Decl., ¶ 7.] Lopez provided additional financial records  
19 to Plaintiffs’ counsel as proof of her limited ability to pay, which were reviewed by Plaintiffs’  
20 counsel and the bankruptcy counsel hired by Plaintiffs. [Peretz Decl., ¶ 14.] On May 12, 2021,  
21 Plaintiffs reached a tentative settlement on behalf of themselves and the putative class with Lopez  
22 to fully resolve all remaining claims in this case in exchange for payment by Lopez in the amount  
23 of \$30,000. [Peretz Decl., ¶ 15.] The proposed Settlement Agreement was fully executed on July  
24 22, 2021. [Peretz Decl., ¶ 15 & Exhibit 1.]

### 25 **III. TERMS OF PROPOSED SETTLEMENT**

26 The details of the proposed class action settlement are contained in the Settlement  
27 Agreement attached as **Exhibit 1** to the Peretz Decl. As set forth below, the terms of the proposed  
28 settlement are fair and reasonable in light of the size of the putative class and litigation risks.

#### 29 **A. The Class and Individual Plaintiffs**

30 The “Class” “Class Members,” “Settlement Class,” or “Settlement Class Members,” are  
31 defined as “all persons employed by any of the Defendants or Released Parties in a Class Position,

1 at any time during the Class Period.”<sup>1</sup>

2 The “Class Period” is defined as “the time period from July 2, 2014 through the date of  
3 the Date of Preliminary Approval.”

4 The “Class Position” is defined as “all persons who worked for Defendants as hourly,  
5 non-exempt tutors, or other similar positions, classified as an hourly non-exempt employee in the  
6 State of California during the Class Period.”

7 “Eligible Class Member” includes all members of the Class who do not opt-out from this  
8 settlement.

9 **B. Settlement Amount and Distribution**

10 The Global Settlement Amount is one hundred seventy thousand two hundred and fifty  
11 dollars and twenty-one cents (\$170,250.21) (hereinafter the “Global Settlement Amount”). The  
12 Global Settlement Amount includes the \$140,250.21 or thereabouts paid from SSPBI’s estate  
13 pursuant to Plaintiffs’ stipulation with the Trustee and the \$30,000 paid by Lopez.<sup>2</sup> Under the  
14 Settlement Agreement, this Global Settlement Amount includes payments to the members of the  
15 Class, attorneys’ fees, the LWDA for PAGA penalties, reasonable litigation expenses, service  
16 fees to each class representative, and costs of administration. The Net Settlement Amount means  
17 the Global Settlement Amount minus (a) Class Administration Costs, (b) Class Counsel Fees and  
18 Costs; (c) the LWDA Fund, and (d) the Named Plaintiff Enhancement.

19 The Eligible Class Member Share shall encompass the Net Settlement Amount that will  
20 be allocated to each Eligible Class Member as follows: first, dividing the Net Settlement Amount  
21 by the total number of Eligible Work Weeks to arrive at the Eligible Work Week Rate, and then  
22 second, by multiplying the resulting Eligible Work Week Rate by the total number of Eligible  
23 Work Weeks for each respective Eligible Class Member. Payment of Eligible Class Member  
24 Shares shall be subject to legally required withholdings, deductions, and contributions. Any  
25 unclaimed funds from the Net Settlement Amount will be sent in a second round of checks to all  
26 Eligible Class Members who cashed their initial check. The second round of payment will take

25 <sup>1</sup> The term “Released Parties”, means Defendant Felicia Lopez and her predecessors, successors,  
26 and assigns, current and former agents, heirs, executors, administrators, principals, officers,  
27 directors, shareholders, employees, founders, members, assigns, insurers, attorneys, and all other  
28 claiming through and by any of them.

<sup>2</sup> Plaintiffs will provide an update to the Court regarding the confirmation or alteration of the  
amount received from SSPBI’s estate following the final hearing in the Bankruptcy Case on July  
23, 2021.



1 the total unclaimed funds and pro-rate the amount to each Eligible Class Member who cashed  
2 their initial check by number of Eligible Work Weeks, in the same method as the first round so  
3 long as the check is no less than \$25. Any unclaimed funds after the second round of payments  
4 shall be paid to mutually agreed upon *cy-pres* organization which supports “projects that will  
5 benefit the class or similarly situated persons, or that promote the law consistent with the  
6 objectives and purposes of the underlying cause of action, to child advocacy programs, or to  
7 nonprofit organizations providing civil legal services to the indigent” pursuant to Code of Civil  
8 Procedure § 384. The unclaimed funds shall not revert back to Lopez or SSPBI’s estate. As to the  
9 Plaintiffs, the amount of their Eligible Class Member Shares is in addition to any Court-approved  
10 Named Plaintiffs Enhancements.

11 The distribution plan apportioning settlement proceeds based on the number of  
12 workweeks per class member is the most suitable for this case, and there is no fair and practicable  
13 alternative based on the available evidence. [Peretz Decl., ¶ 16.] Through informal discovery,  
14 Defendants provided Plaintiffs’ counsel with a class list that included start and end dates for every  
15 putative class member. [*Id.*] Using that list, Plaintiffs could precisely calculate the number of  
16 workweeks during the relevant time period for each class member. [*Id.*] The available evidence  
17 also shows that the violations were consistent across the class membership. [*Id.*] For example,  
18 SSPBI’s policy document explicitly states that tutors will only be paid for time spent with clients,  
19 not for driving time. [Declaration of Irene Cline (“Cline Decl.”), ¶ 3 & Exhibit 1.] By contrast,  
20 there is *no evidence* that tutors were treated differently with respect to taking meal breaks or  
21 missing time. [Peretz Decl., ¶ 16.]

22 **C. Payment to Named Class Representatives**

23 In recognition for their effort in coming forth as Class and PAGA representatives, Named  
24 Plaintiffs Cline, Cho, Pacheco and Diaz shall receive, in addition to their Eligible Class Member  
25 Shares, Four Thousand Dollars and Zero Cents (\$4,000.00) each subject to the Court’s approval.  
26 This amount shall total Sixteen Thousand Dollars and Zero Cents (\$16,000.00).

27 Named Plaintiffs were instrumental in contacting and providing information to their  
28 counsel which led to the initial filing of this action. [Peretz Decl., ¶ 17.] The Named Plaintiffs  
were also diligent in working with counsel throughout the litigation to provide additional  
information regarding the claims and the class, reached out regularly for case updates, and  
assisted counsel in reaching a fair settlement. [*Id.*] Finally, all four named plaintiffs were present

1 and participated in the full day of mediation with Ms. Gillette on September 19, 2019, including  
2 by providing additional factual background and answering questions posed by counsel and Ms.  
3 Gillette. [*Id.*]

4 **D. Attorneys' Fees and Costs**

5 Plaintiffs' Counsel seeks a fee award of no more than thirty-eight percent (38%) of the  
6 Global Settlement Amount in Class Counsel's Fees subject to the Court's approval, in addition to  
7 the actual costs and expenses incurred by Class Counsel related to this Action. This total amount,  
8 approximately \$64,000, is inclusive of attorneys' fees and estimated litigation costs. Class  
9 Counsel Fees and Costs shall be paid to Class Counsel from the Qualified Settlement Fund by the  
10 Class Administrator. Such payment of Class Counsel Fees and Costs shall be deemed to be full  
11 satisfaction of any obligations by Defendants to pay any attorney fees, attorney costs and/or other  
12 fees or costs to Plaintiffs, Class Members, and/or Class Counsel in relation to the Action.

13 **E. Scope of Release**

14 The release in this matter is limited to the "Released Claims", which applies to any and  
15 all facts and claims asserted in the Action or any other claims, demands, obligations, actions,  
16 causes of action, liabilities, debts, promises, agreements, attorneys' fees, losses or expense,  
17 known or unknown, suspected or unsuspected, filed or unfiled, that they may have or had had  
18 arising out of any known or unknown fact, condition or incident occurring prior to the date of the  
19 Settlement, including but not limited to any claims that could have been asserted based on the  
20 facts alleged in the Action, including but not limited to any and all claims for PAGA penalties,  
21 for paid sick leave under California Labor Code § 246, for interference with employee use of paid  
22 sick leave under California Labor Code § 246.5, for failure to provide paid sick leave in violation  
23 of San Francisco Administrative Code, Chapter 12W, 12W.3, 12W.4, 12W.7, for intentional  
24 misrepresentation, for fraud, for fraud by concealment, for violations of California Business &  
25 Professions Code §§ 17200, *et seq.*, for violations of the California Labor Code governing: meal  
26 and rest breaks; unpaid wages, including minimum wages, regular wages, overtime and double  
27 time wages; unpaid reimbursements; wage statement violations and separation pay violations,  
28 including but not limited to violations of Labor Code §§ 200, 201, 202, 203, 204, 218, 218.5,  
218.6, 226, 226.3, 226.7, 246, 246.5, 248.5, 351, 450, 500, 510, 512, 558, 1174, 1174.5, 1194,  
1194.2, 1197, 1197.1, 1198, and 1199, 8 Cal. Code of Regulations § 11050 and IWC Wage Order  
4-2001, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12.

1           Regardless of whether Class Members opt-out of the Class Settlement, this Settlement  
2 shall release all PAGA claims as alleged on behalf of all Class Members. This is a typical term,  
3 because a PAGA release is only effective if it binds all aggrieved employees, including any  
4 potential opt outs. Otherwise, opt outs could file a PAGA action and seek penalties on behalf of  
5 the entire class. Plaintiffs complied with Labor Code § 2699(1)(2) by submitting the proposed  
6 PAGA settlement to the LWDA via the agency’s website on July 22, 2021. [Peretz Decl., ¶ 18  
and Exhibit 2.]

7           **F.       Administration of the Settlement Process**

8           The Class Administrator shall be Simpluris, Inc., a third-party professional class action  
9 claims administrator, jointly selected by the Parties and/or appointed by the Court to perform the  
10 Class Administration Duties. [See Declaration of Eric Springer on behalf of Simpluris, Inc.  
11 (“Simpluris Decl.”), ¶ 6.] The Class Administration Costs encompasses the fees and expenses  
12 reasonably and necessarily incurred by the Class Administrator as a result of performing the Class  
13 Administration Duties. Class Administration Costs shall be paid from the Gross Settlement  
14 Amount. Based on an estimate provided by the Class Administrator based on presently and  
15 reasonably available information, the Parties stipulate that Class Administration Costs shall be up  
16 to \$5,000. Should any actual Class Administration Costs turn out to be less than the projected  
17 amount, the Parties agree that the savings will be allocated to the Net Settlement Amount, to be  
18 distributed to Eligible Class Members in proportion to their respective numbers of Eligible Class  
19 Member Workweeks. Should any actual reasonable and necessary Class Administration Costs be  
20 more than the above estimate amount, the Parties stipulate that the Class Administrator should be  
21 paid such amounts, the Parties will apply to the Court for an adjustment, with any additional Class  
22 Administration Costs to be paid from the Gross Settlement Amount, accompanied by a  
23 corresponding reduction in another or other elements of the Gross Settlement Amount, to be  
24 approved by the Court as part of Final Approval.

25           Defendants’ Counsel will provide Simpluris with the names, addresses and social security  
26 numbers of all Class Members for Simpluris to provide all Class Members with notice. The notice  
27 will provide each Class Member with information regarding the Settlement including the sum to  
28 be paid to each Class Member under the terms of the proposed Settlement, his or her right to  
object and/or opt-out of the settlement. Class Members may also challenge and seek correction  
of the computation of their pro rata share, with all challenges to be determined by the Claims

1 Administrator. The proposed class Notice and Claim Form are attached to the Peretz Decl. as  
2 **Exhibit 3.**

3 Settlement Class members may elect to opt out of the Settlement Class and thus exclude  
4 themselves from the litigation, the Settlement, and the Settlement Class by the claims period  
5 deadline. If a Class member opts out, the funds allocated to them will not be returned to  
6 Defendants. If more than ten percent (10%) of the Class opts out of the settlement, Lopez may  
7 elect to void the Settlement Agreement.

#### 8 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

9 The law favors settlements, particularly in class actions and other complex cases where  
10 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.  
11 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1151;  
12 *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. The purpose of the  
13 preliminary evaluation of class action settlements is to determine only whether the proposed  
14 settlement is within the range of possible approval, and thus whether notice to the class of the  
15 terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *Wershba v.*  
16 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. In passing on class action settlements,  
17 a court has broad powers to determine whether a proposed settlement is fair under the  
18 circumstances of the case. *Id*; see also *Mallick v. Superior Ct.* (1979) 89 Cal. App. 3d 434, 438.  
19 To grant preliminary approval of this Settlement, the Court need find only that the Settlement  
20 falls within the range of possible final approval, also described as “the range of reasonableness.”  
21 *North Cty. Contractor’s Assn., Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal. App. 4th 1085, 1089-  
22 1090 ; *In re Traffic Exec. Ass’n* (2d Cir. 1980) 627 F.2d 631, 633-634. A decision approving a  
23 class action settlement may be reversed only upon a strong showing of clear abuse of discretion.  
24 See *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.

25 For the reasons set forth below, the Court should grant the motion for preliminary approval  
26 of this Settlement.

#### 27 **A. The Settlement Was Negotiated at Arm’s Length**

28 California courts recognize that “a presumption of fairness exists where . . . [a] settlement  
is reached through arm’s-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245. There is no doubt  
that the settlement in this case is the result of non-collusive, arm’s-length and informed  
negotiations. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 53 (finding evidence of arm’s-

1 length bargaining based on mediator’s reputation and knowledge).

2 The settlement was reached after extensive litigation of the case and negotiations that last  
3 nearly two years. The parties engaged in extensive and hotly disputed meet and confer regarding  
4 Plaintiffs’ alleged claims. Plaintiffs conducted significant discovery, including 16 sets of written  
5 discovery which yielded approximately 10,000 pages in document production. [Peretz Decl., ¶  
6 20.] The parties held a full-day mediation session that failed to produce a resolution, but led to a  
7 confidentiality agreement and the production of substantial financial records by Defendants. [*Id.*  
8 at ¶¶ 7-8.] Only after SSPBI filed for bankruptcy and Lopez produced a second round of financial  
9 records was a settlement ultimately reached to resolve all claims. [*Id.* at ¶¶ 8-9.]

10 In reaching the settlement, counsel on both sides relied on their respective substantial  
11 litigation experiences in similar employment class actions and thorough analysis of the legal and  
12 factual issues presented in this case. Information gleaned from investigation and discovery  
13 informed both parties’ assessment of the strengths and weaknesses of the case and the benefits of  
14 the settlement. Plaintiffs’ Counsel’s evaluation of the liability and damages in the case was  
15 premised on an extensive evaluation of, among other things, the number of the putative Class  
16 Members, the alleged amounts of unpaid wages owed, the average hourly rate each class member  
17 actually received for his or her work and the penalties that could be awarded with respect to the  
18 alleged violations of law. [Peretz Decl., ¶ 21 & Exhibit 4 (Plaintiffs’ damages analysis).]  
19 Plaintiffs’ Counsel also performed extensive analysis of recovery limits for both civil and  
20 statutory penalties. [*Id.*]

21 Plaintiffs’ damages model was based upon their review of the nearly 10,000 pages of  
22 documents produced by Defendants and interviews with approximately one-quarter of the  
23 putative class. [Peretz Decl., ¶ 22 & Exhibit 4.] The model places putative Class Members in three  
24 categories based upon the average number of hours worked in a given week, which is largely  
25 determined by the number of clients visited per day. [*Id.*] Plaintiffs’ counsel were then able to  
26 estimate the amounts of average unpaid driving time, unpaid overtime, unpaid meal and rest  
27 breaks, and unreimbursed mileage per week for each Shift Type. [*Id.*] Plaintiffs’ counsel was also  
28 able to estimate penalties for itemized wage statements and waiting time, based on class members’  
paystubs and the start and end dates for each. [*Id.*]

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1 Cal.App.4th 116, 129.

2 Absent settlement and the corresponding stipulation with the bankruptcy Trustee,  
3 Plaintiffs and the Class would receive nothing from SSPBI. [Peretz Decl., ¶ 24.] Plaintiffs’  
4 counsel would still have to litigate various issues against Lopez only regarding the scope of class  
5 discovery, the scope of the class for purposes of certification, liability, not to mention the quantum  
6 of damages as well as the applicability and appropriate amount of penalties. Such litigation would  
7 be costly and time consuming and would likely take many months, if not years, to resolve. By  
8 contrast, the settlement ensures timely and substantial relief to all Class Members.

9 Continuing to litigate would likely result in ever-diminishing assets from which Lopez  
10 could settle. For this reason, it is clearly in the best interest of putative Class Members to settle  
11 their claims now.

12 **C. The Amount Designated for Class Representative Payments is Reasonable**

13 Courts routinely approve incentive awards in order to compensate class representatives  
14 for the services they provide and the risks they incur during class action litigation. *Clark v.*  
15 *American Residential Services LLC* (2009) 175 Cal. App. 4th 785, 806 (approving the rationale  
16 behind awarding participation payments); *Bell v. Farmers Ins. Exchange* (2004) 115 Cal. App.  
17 4th 715, 726 (affirming an order for “service payments” to the five named plaintiffs for their  
18 efforts litigating the case); *In re Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380  
19 (awarding \$10,000 each to two named plaintiffs); *Van Vranken v. Atlantic Richfield Co.* (N.D.  
20 Cal. 1995) 901 F. Supp. 294, 299 (awarding \$50,000 to the named plaintiff).

21 One indicator courts use to assess the reasonableness of the participation payment amount  
22 is the payment amount relative to what the other Class members will receive. In *Clark, supra*,  
23 175 Cal.App.4th at 804, the court reversed for abuse of discretion a participation award of \$25,000  
24 to both named plaintiffs. The court noted that the participation payment awarded to the named  
25 plaintiffs was at least 44 times the average payout to the other Class members. *Id.* at 805. In  
26 contrast, in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399,  
27 412, the court upheld a participation payment of \$5,000 to each named plaintiff, distinguishing  
28 the award from that in *Clark* on the basis that the amount was just twice as much as the payout to  
the other class members.

In the instant case, the class representatives (Named Plaintiffs Cline, Cho, Pacheco and  
Diaz) will receive \$4,000, in addition to the payments they will receive as Class Members. The

1 average payment for non-named Class Members is likely to be approximately \$868, and  
2 potentially much more for those who worked longer than average at SSPBI. [Peretz Decl., ¶ 23.]  
3 As such, the amount that the Named Plaintiffs will receive as class representatives is reasonable.

4 Furthermore, the court in *In re Cellphone Termination Fee Cases* articulated the following  
5 relevant factors to assess the appropriateness of a class representative’s enhancement: “1) the risk  
6 to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and  
7 personal difficulties encountered by the class representative; 3) the amount of time and effort  
8 spent by the class representative; 4) the duration of the litigation, and; 5) the personal benefit (or  
9 lack thereof) enjoyed by the class representative as a result of the litigation.” *Id.*, 186 Cal. App.  
10 4th at 1394-95 (quoting *Van Vracken*, 901 F. Supp. at 299). These factors strongly support the  
11 requested enhancement here. First, the Named Plaintiffs have taken on a substantial risk, as all of  
12 the Named Plaintiffs are at or near minimum-wage employees who have had to work around their  
13 current jobs to provide the labor necessary to take on this Action. [Peretz Decl., ¶ 25.] The Named  
14 Plaintiffs spent many hours preparing for and participating in full-day mediation and providing  
15 information for additional informal settlement discussions. [*Id.*] This Action was filed over three  
16 years ago in July 2018, and Named Plaintiffs were required to maintain their commitment of time  
17 and attention on behalf of the class throughout this lengthy litigation. [*Id.*] Finally, the Named  
18 Plaintiffs have not received any personal benefits from this participation. [*Id.*] In light of the above  
19 factors, the proposed participation payment compares favorably with the amount recovered by  
20 the other class members and is reasonable and fair.

19 **D. The Requested Attorneys’ Fees and Costs are Reasonable**

20 An attorneys’ fees award is justified where the legal action has produced its benefits by  
21 way of a voluntary settlement. *Maria P. v. Riles* (1987) 43 Cal. 3d 1281, 1290-91; *Westside Cmty.*  
22 *for Indep. Living, Inc. v. Obledo* (1983) 33 Cal. 3d 348, 352-53.

23 There are two different methods for calculating attorneys’ fees — the Lodestar/Multiplier  
24 Method and the Common Fund. *Zucker v. Occidental Petroleum Corp.* (C.D. Cal. 1997) 968  
25 F.Supp. 1396, 1400. Plaintiffs submit that an award of *no more than* \$65,000 in attorneys’ fees  
26 — which is equivalent to less than thirty-eight percent (38%) of the Global Settlement Amount  
27 — is justified by both the results in this case, and the time expended by Plaintiffs’ counsel in  
28 obtaining this result.

Here, Plaintiffs’ counsel seek an award of attorneys’ fees and costs under the common



1 fund doctrine, which has been approved by the California Courts and is customarily used in  
2 assessing settlements in wage and hour class actions. *Wershba v. Apple Computer, Inc.* (2001) 91  
3 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26-30 (2000).  
4 California courts have repeatedly permitted the recovery of attorneys' fees awards based upon the  
5 value of the settlement achieved. *Id.* In the instant case, Plaintiffs' counsel seeks to have the Court  
6 approve attorneys' fees in the amount of no more than 38% of the Global Settlement Amount.  
7 Not only does this sum fairly reflect the value of the work done by Plaintiffs' counsel in this case,  
8 it is reasonable in light of the fact that California courts have customarily approved payments of  
9 attorneys' fees amounting to approximately one-third of the common fund, and have frequently  
10 granted fees as high as 40% of the common fund in comparable wage and hour class actions. *Big*  
11 *Lots Overtime Cases* (San Bernardino Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004) (33%  
12 fee recovery); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct., No. 99AS01716, Dec. 26,  
13 2000) (33.3% of \$6,000,000 settlement); *Crandall v. U-Haul* (LASC, Case No. BC178775) (40%  
14 attorneys' fees in an overtime exemption class action); *Bushnell v. Cremar, Inc.* (OCSC Case No.  
15 657778) (attorneys' fees in the amount of 38%); *Elliott v. Clothestime* (OCSC Case No. 01-  
16 CC00333) (40% fee in a wage and hour settled prior to class certification).

17 The work done by Plaintiffs' Counsel in this case is unique and thorough. Plaintiffs'  
18 Counsel was required to advance numerous theories and research various angles in order to apply  
19 causes of action under numerous Labor Code statutes as well as doing numerous hours of outside  
20 research to figure out the extent of Defendants' alleged unpaid wages.

21 Once Plaintiffs' Counsel obtained the putative class list, counsel engaged in extensive  
22 outreach and communications with class members both to gather supplemental evidence and  
23 confirm the experience of Named Plaintiffs. [Peretz Decl., ¶ 26.] On May 6, 2019, Plaintiffs'  
24 Counsel sent a letter to each and every class member providing information about this proposed  
25 class action lawsuit, the basis for Plaintiffs' claims, and inviting the Class Members to contact  
26 Plaintiffs' Counsel. [*Id.*] Many class members subsequently called or wrote to Plaintiffs' counsel  
27 to express their interest in learning more about the lawsuit and sharing their experience at SSPBI.  
28 [*Id.*] Prior to mediation in this matter, Plaintiffs' counsel communicated with approximately one-  
quarter of the entire putative class. [*Id.*] Plaintiffs' counsel had many conversations with class  
members which corroborated the allegations and claims brought by Named Plaintiffs. [*Id.*]

Further, as opposed to any wage and hour case, given that the main theories of liability

1 against Defendants in this case were based on alleged torts as well as the Labor Code, Plaintiffs’  
2 Counsel was looking at a reasonable way to recover fees in addition to any recovery made for the  
3 alleged damages. In that sense, this case was a tort action and thus should be treated as such when  
4 it comes to determining the attorneys’ fees award for Plaintiffs’ Counsel. It is common in any  
5 contingency arrangement for tort recovery to seek for 40% and even 45% of the total recovery at  
6 this stage of the litigation. This case should be of no exception and thus the award of attorneys’  
7 fees is reasonable for that reason.

8 Finally, when it became clear that Defendants’ financial condition would be a significant  
9 issue, Plaintiffs’ counsel acted vigorously to maximize the potential recovery to the Class. [Peretz  
10 Decl., ¶ 27.] Plaintiffs’ counsel requested and reviewed extensive financial documents for both  
11 SSPBI and Lopez individually, including bank statements, 401k statements, brokerage quarterly  
12 statements, and savings plans. [Id.] Once SSPBI filed for bankruptcy, Plaintiffs’ counsel hired  
13 their own independent bankruptcy counsel to perform an asset analysis and advise on potential  
14 avenues to recover from SSPBI’s estate. [Id.] Plaintiffs’ counsel conducted lengthy negotiations  
15 with the Trustee, and with Lopez’s civil and bankruptcy counsel. [Id.] Given the financial  
16 obstacles and bankruptcy filings in this case, a global settlement of approximately \$170,000  
17 represents an excellent outcome on behalf of the class. [Id.]

18 In the instant case, calculating attorneys’ fees on the basis of a percentage of the total  
19 settlement yields *no less than* \$65,000 in fees. Plaintiffs’ Counsel submits that given the  
20 outstanding results obtained by counsel, this Court should approve an award of attorneys’ fees  
21 equivalent to 38% of the total settlement amount.

22 **E. The Proposed Notice is Adequate and Meets All Necessary Requirements**

23 In order to protect the rights of absent class members, the court must provide the best notice  
24 practicable to class members of a potential class action settlement. *Phillips Petroleum Co. v.*  
25 *Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175.  
26 The primary purpose of procedural due process is to provide affected parties with the right to be  
27 heard at a meaningful time and in a meaningful manner. It does not guarantee any particular  
28 procedure but rather requires only notice reasonably calculated to apprise interested parties of the  
pendency of the action affecting their interests and an opportunity to present their objections.  
*Ryan v. California Interscholastic Federation - San Diego Section* (2001) 94 Cal. App. 4th 1048,  
1072. Such notice meets due process standards. *Phillips*, 472 U.S. at 812.

1 Preliminary approval of the settlement will enable notice to go out to Settlement Class  
2 Members in the best practicable manner calculated to ensure that class members are alerted to the  
3 terms of the settlement and allowed to protect their rights under it. The parties' proposed notice  
4 plan is as follows: Simpluris, who is experienced in similar cases, will act as Settlement  
5 Administrator. [Peretz Decl., ¶ 28; Simpluris Decl., ¶¶ 2-6 & Exhibits A-B.] Under an agreement  
6 reached with Simpluris, the total costs of administering the fund, including the cost of providing  
7 Notice to the Class Members will not exceed \$5,000. [Peretz Decl., Exhibit 1 at Section I ¶ 5; *see*  
8 *also* Simpluris Decl., Exhibit C (initial estimate \$4,591 from Simpluris).] Under the terms of the  
9 Settlement Agreement, these costs will be paid out of the Global Settlement Amount.

10 The Claims Process will proceed as follows:

11 a. Within fourteen (14) calendar days after preliminary approval of this Agreement,  
12 Defendants shall provide to the Claims Administrator the name, last-known address, social  
13 security number, and dates of employment for each Class Member (the "Class Data").

14 b. Within ten (10) calendar days after receiving the Class Data, the Claims  
15 Administrator shall send to each Class Member, by email if available or otherwise by first-class  
16 mail, the court-approved Notice, Request for Exclusion Form and appropriate Claim Form  
17 (collectively, the "Notice Packets").

18 c. Within sixty (60) calendar days from the date the Notice Packets are mailed by the  
19 Claims Administrator (the "Claims Period"), Class Members shall return their Claim Forms, any  
20 Objection, and/or Request for Exclusion directly to the Claims Administrator at the address  
21 indicated on the Claim Form.

22 d. In the event a Class Member timely returns a Claim Form that is signed, dated and  
23 completed in full, the Claim Form shall be deemed valid, and any such Class Member becomes a  
24 Settlement Class Member and will receive the appropriate amount of the Gross Settlement  
25 Amount.

26 e. In the event a Class Member timely returns a Claim Form that is not signed, dated  
27 and/or completed in full, the Claims Administrator shall send one, but not more than one,  
28 deficiency notice to that Class Member advising the Class Member to cure the deficiency. Any  
Class Member who receives a deficiency notice must cure the deficiency within fifteen (15)  
calendar days from the date of mailing of the deficiency notice or by the close of the Claims  
Period, whichever is later; the corrected Claim Form must be postmarked no later than the

1 fifteenth (15th) day after the date of mailing of the deficiency notice or it will not be honored, the  
2 Claim Form shall be deemed invalid, and any such Class Member becomes a Settlement Class  
3 Member but will receive no amount of the Gross Settlement Amount.

4 f. In the event a Class Member returns any materials (including a Claim Form and/or  
5 a Request for Exclusion) postmarked after the close of the Claims Period, it will not be honored  
6 and shall be deemed invalid, any such Class Member will become a Settlement Class Member  
7 but will receive no amount of the Gross Settlement Amount.

8 g. In the event a Class Member does not respond by the close of the Claims Period,  
9 their Claim Form shall be deemed invalid, any such Class Member will become a Settlement  
10 Class Member but will receive no amount of the Gross Settlement Amount.

11 h. In the event a Class Member timely returns a Claim Form that is signed, dated and  
12 completed in full — together with a Request for Exclusion — the Claim Form shall be deemed  
13 valid, and the Claims Administrator will contact the Class Member for clarification of the Class  
14 Member's intent.

- 15 • If the Class Member fails to provide clarification during the Claims Period, his or  
16 her request for exclusion will be deemed void as if no request were made at all,  
17 and that Class Member will become a Settlement Class Member and will receive  
18 the appropriate amount of the Gross Settlement Amount.
- 19 • If the Class Member confirms his or her decision to be excluded during the Claims  
20 Period, then that Class Member will be excluded as a Settlement Class Member,  
21 will receive no amount of the Gross Settlement Amount, and will have opted-out  
22 of the Settlement. Any Class Member who opts-out of the Settlement will not be  
23 bound by the Settlement or have any right to object to, appeal, or comment on it.

24 j. If any mailed Notice Packets are returned as undeliverable, then the Class  
25 Administrator shall have forty-five (45) days from receipt of notice that a Notice Packet was  
26 undeliverable to perform one "skip trace" or similar search and to re-mail the same Notice Packet  
27 (or a true and correct copy thereof) to any new addresses disclosed by such search via first-class  
28 regular U.S. Mail indicating on the Notice the date it was re-mailed, and including written notice  
that a Class Member has fifteen (15) days to respond to a re-mailed Notice via either Objection  
or Opt-Out Request.

k. The Claims Administrator shall keep counsel for Plaintiffs and Defendants

1 apprised of all mailings related to this Agreement.

2 1. Within ten (10) days following the conclusion of the Claims Period, the Claims  
3 Administrator shall provide a certified list to counsel for Plaintiffs and Defendants of which  
4 claims were timely filed, which are valid, which are invalid, and:

- 5 • which Class Members have become a Settlement Class Member and will receive  
6 some amount of the Gross Settlement Amount (and identify the amount);
- 7 • which Class Members have become a Settlement Class Member but will receive  
8 no amount of the Gross Settlement Amount; and
- 9 • which Class Members have timely requested exclusion from the Class and will be  
10 excluded as a Settlement Class Member, will receive no amount of the Gross  
11 Settlement Amount, and have opted-out of the Settlement.

12 **F. Class Members Have the Opportunity to Opt Out or Object**

13 The Settlement provides a simple method for Class Members to opt out, by sending the  
14 Administrator a written statement of desire to be excluded from the class action, or to object to  
15 its terms.<sup>3</sup> Class Members who file a timely written objection may appear and be heard at the  
16 Final Settlement Hearing, the date, time and location of which will be specified in the notice.

17 If a Settlement Class Member timely disputes the amount of his or her claim, Plaintiffs'  
18 Counsel shall make a good faith effort to resolve the dispute informally. If no agreement is  
19 reached, the dispute shall be submitted to the Claims Administrator, who shall examine the  
20 records in an attempt to resolve the dispute. The Claims Administrator will make every effort to  
21 resolve any such disputes prior to final approval of this Settlement. In no event, however, will  
22 any such dispute provide any basis whatsoever to delay, or object to, the Settlement or its final  
23 approval.

24 These procedures fully protect the rights of Class Members under the settlement, or to  
25 proceed on their own if they wish outside the settlement. They warrant preliminary approval,  
26 authorizing the parties to proceed to present the settlement terms to the class and for them and  
27 Class Members to present to the Court the Class' response to the settlement terms before the  
28 Court considers whether to grant final approval.

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<sup>3</sup> Class Members who opt out but then change their minds during the notice response period may withdraw their request for exclusion.

1 **V. CONDITIONAL CLASS CERTIFICATION**

2 California Code of Civil Procedure § 382 authorizes class actions “when the question is  
3 one of a common or general interest, of many persons, or when the parties are numerous, and it  
4 is impracticable to bring them all before the court . . . .” Code of Civil Procedure § 382; *Sav-On*  
5 *Drug Stores v. Superior Court* (2004) 34 Cal.4th 319, 326. Class certification is appropriate where  
6 Plaintiffs establish: (1) the presence of an ascertainable class; and (2) a well-defined community  
7 of interest among the class members. *Sav-On*, 34 Cal.4th at 326 (citing *Lockheed Martin Corp. v.*  
8 *Superior Court* (2003) 29 Cal.4th 1096, 1104).

9 As has been made clear by the discussion of the evidence above, (a) this class is  
10 ascertainable and numerous, as the parties already have the class list and contact information for  
11 each class member, and the class consists of approximately 94 persons; (b) there is a well-defined  
12 community of interest among the class members, as they were all subject to the same employment  
13 practices and policies; (c) a class action is superior to other means of resolving this suit, individual  
14 trials for over 50 individuals would be impractical and a waste of judicial resources; and (d) The  
15 Class Representatives and Class Counsel can adequately represent the class.

16 Proposed class counsel — Peretz & Associates — has extensive experience litigating  
17 complex class actions, including wage and hour class cases, and employment and labor actions.  
18 [Peretz Decl., ¶ 29 & Exhibit 5 (class action final approval orders).] In light of this experience,  
19 there is little doubt that class counsel is “qualified, experienced and generally able to conduct the  
20 proposed litigation.” *Miller v. Woods* (1983) 148 Cal.App.3d 862, 874.

21 Plaintiffs are typical of the proposed class members because they are members of the  
22 proposed class, their claims arise from the same course of conduct that gives rise to the proposed  
23 class members’ claims, and their claims are based on the same legal theory as the claims of the  
24 proposed class. [Cline Decl., ¶¶ 2-12; Cho Decl., ¶¶ 2-14; Pacheco Decl., ¶¶ 2-13; Diaz Decl., ¶¶  
25 2-11.] This Settlement of Class Action Claims was stipulated and agreed upon. [Peretz Decl.,  
26 Exhibit 1.] As such, in light of the above, the class should receive conditional certification for the  
27 purposes of settlement.


28 **VI. CONCLUSION**

For the foregoing reasons, Plaintiffs submit that the settlement is fair, adequate and  
reasonable. Plaintiffs’ Counsel believes that the settlement is in the best interests of the Plaintiffs  
and the Class. Under the applicable class and collective action standards, the Parties request that

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the Court grant this unopposed motion and grant conditional class certification; preliminarily approve the Settlement Agreement; name Cline, Cho, Pacheco and Diaz as Class Representatives; name Plaintiffs' counsel Peretz & Associates as class counsel; name Simpluris as Claims Administrator; authorize the mailing (by email and U.S. Mail) of Notice to the Settlement Class; and schedule a final approval hearing date.

Dated: July 22, 2021 PERETZ & ASSOCIATES

By:   
\_\_\_\_\_  
Yosef Peretz  
Shane Howarter  
Attorneys for Named Plaintiffs IRENE CLINE,  
LYNN CHO, DESIREE PACHECO, and ITZEL  
MARLENE DIAZ