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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

ADRIANA HAYTER, LARINE SHIELDS, and TAYLOR EVANS; individually, and on behalf of all other similarly situated persons; and ROES 1-100,

Plaintiffs,

v.

EWALD & WASSERMAN RESEARCH CONSULTANTS, LLC, a California limited liability corporation; KATRIN EWALD, an individual; LISA WASSERMAN, an individual; and DOES 1-20,

Defendants.

Case No. CGC-19-577753

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CLASS CERTIFICATION

Date: June 16, 2021
Time: 11:00 a.m.
Dept.: 304
Judge: Hon. Anne-Christine Massullo

Plaintiffs ADRIANA HAYTER, LARINE SHIELDS, and TAYLOR EVANS (collectively, "Named Plaintiffs"), on behalf of themselves and other similarly situated individuals, and ROES 1-100 (collectively, "Plaintiffs") hereby submit the following supplemental brief and evidence in support of preliminary class action settlement approval

pursuant to the Court's tentative ruling dated May 3, 2021. The headers below track the headers in the tentative ruling, as requested by the Court.

Pursuant to the Court's tentative ruling, the parties amended the class action settlement and notice to the class. The amended class action settlement is attached to the Declaration of Yosef Peretz ("Peretz Decl.") as Exhibit 1. To aid the Court's review, a version which tracks the changes from the original to the amended settlement agreement is attached to the Peretz Decl. as Exhibit 2. The amended notice is attached to the Peretz Decl. as Exhibit 3, and a tracked changes version is attached as Exhibit 4.

I. Class Certification

A. Commonality and Predominance

California "has a public policy which encourages the use of the class action device." *Sav-On Drug Stores v. Superior Court* (2004) 34 Cal.4th 319, 340, *quoting Richmond v. Dart Industries Inc.* (1981) 29 Cal.3d 462, 473. Class actions are appropriate when people are exposed to "group injuries for which individually they are in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive. If each is left to assert his rights alone if and when he can, there will at best be a random and fragmentary enforcement, if there is any at all." *Vasquez v. Super. Ct.* (1971) 4 Cal.3d 800, 807.

Controversies involving employment disputes, breach of contract and wage and hour practices are amenable to class adjudication. *Sav-On, supra* 34 Cal.4th 319 (affirming certification of overtime claims); *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715 (certifying claims for overtime compensation); *Aguilar v. Cintas Corp.* (2006) 144 Cal.App.4th 121 (certifying claims for unpaid vacation time and breach of contract). Indeed, a trial court's obligation to be flexible and innovative to preserve efficiency and other benefits of class actions is particularly appropriate in wage and hour class actions, given the Labor Code's "clear public policy" regarding the enforcement of wage and hour laws. *Sav-On, supra,* 34 Cal.4th at 340.

When reviewing whether Plaintiffs' theories of recovery are amenable to class treatment, "[r]eviewing courts consistently look to the allegations of the complaint and the declarations of attorneys representing the plaintiff class to resolve this question." *Sav-On, supra* 34 Cal.4th at 327, *quoting Richmond*, 29 Cal.3d at 478. Here, common questions of law and fact predominate in light of Defendants' employment policies and wrongdoing.

Defendant EWALD & WASSERMAN RESEARCH CONSULTANTS, LLC ("E&W"), along with owners and partners Defendants KATRIN EWALD ("Ewald") and LISA WASSERMAN ("Wasserman") (collectively, "Defendants"), are a social science survey research organization that employs telephone interviewers to collect information and data. These telephone interviewers are the putative class members, and were subject to the same employment practices and policies as a group.

First, Plaintiffs contend that as part of Defendants' effort to reduce labor costs, Defendants implemented a practice of generally scheduling its telephone interviewers on shifts of no more than 6 hours. [Declaration of Adriana Hayter ("Hayter Decl."), ¶ 3.] E&W's written policy provides that if an employee works a 4 or 5 hour shift, that employee is entitled to one paid 10-minute rest break; and if an employee works more than 5 hours, that employee is entitled to one paid 10-minute rest break and one 30-minute meal break. [*See* Peretz Decl., at Exhibit 5 (E&W policy document).] Employees are told that they do not need to clock-out of E&W's timekeeping system when taking a 10-minute rest break, *but they do need to clock-out when taking the optional 30-minute meal break*. [*Id.*] The limited number of time records produced by Defendants for the Named Plaintiffs indicate many days in which they reported over 5 hours of work without taking a meal break. [Peretz Decl., ¶ 6.] These records alone serve as undisputable proof for the 1-hour wage-penalties for all of those days. [*Id.*]

An employer in California must provide employees with the opportunity to take an off-duty meal period of not less than 30 minutes for a workday of more than five hours, with a second meal period required if the workday exceeds ten hours, subject to knowing and voluntary waiver in some circumstances. Labor Code § 512. A lawful meal period means that the employer relieves its employees of all duty, "relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted . . . break, and does not impede or discourage them from doing so." *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1040.

Here, Plaintiffs contend that Defendants have a policy and practice of not providing meal or rest periods to their employees. [Hayter Decl., ¶ 4.] E&W's policy states that if an employee worked a 4 or 5 hour shift, that employee was entitled to one paid 10-minute rest break; and if an employee worked more than 5 hours, that employee would be entitled to one paid 10-minute rest break and one 30-minute meal break. [Peretz Decl., Exhibit 5.] In practice, Defendants routinely forced Plaintiffs to work through their meal and rest breaks. [*See* Hayter Decl., ¶¶ 5-7,

Declaration of Larine Shields ("Shields Decl."), ¶¶ 5-7 and Declaration of Taylor Evans ("Evans Decl."),¶¶ 5-7.]

Plaintiffs are entitled to one additional hour of pay at their regular rate of compensation for each workday that a meal or rest period was not provided. Labor Code § 226.7. Plaintiffs contend that to date, Defendants have not compensated their employees for unprovided meal or rest periods. [Hayter Decl., ¶ 14, Shields Decl., ¶ 9 and Evans Decl., ¶ 11.]

Plaintiffs contend that E&W also implemented a practice of illegally altering employees' timekeeping records without their authorization, consent or knowledge. [Hayter Decl., ¶¶ 15-21, Shields Decl., ¶¶ 10-16, Evans Decl., ¶¶ 12-19.] It is also Plaintiffs' contention that E&W manipulates its timekeeping records to reflect that its employees worked less time than they actually did, taking away several hours of work from each employee in each pay period. [*Id.*] Even the limited time records produced by Defendants before mediation show a massive number of post-hoc changes highlighted in red. [Peretz Decl., ¶ 7.] Over one three-week period, Hayter's time records show that the "in" and "out" time was edited *every single day*. [*Id.*]

Labor Code § 204(a) provides that all wages earned by any employee are due and payable twice during each calendar month. Labor Code § 204(d) provides that the requirement that all wages be paid semimonthly is satisfied if wages are paid not more than seven calendar days following the close of the payroll period. IWC Wage Order 4-2001 provides that wages must be paid for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

As a result of E&W policy and practice, Plaintiffs allege that they were not compensated for all of the time spent working for E&W. Plaintiffs were working and subject to E&W's control during the entirety of their shifts, and therefore E&W was obligated to pay them for this time. Despite this, Plaintiffs allege that E&W engaged in a practice of "shorting" and manipulating Plaintiffs' timekeeping records in order to pay them less wages than they had actually earned.

Plaintiffs further allege that Defendants have not paid Plaintiffs for all hours worked, in violation of Labor Code § 204 and IWC Wage Order 4-2001. Pursuant to Labor Code § 218.6, Plaintiffs are entitled to recover in a civil action the unpaid balance of the full amount of compensation, plus interest at a rate of 10 percent per year. Plaintiffs are also entitled to an award of reasonable attorneys' fees under Labor Code §§ 218.5, 226(e)(1), 1194, 2699(g)(1), 2802(c),

and/or Code of Civil Procedure ("CCP") § 1021.5.

Finally, it is Plaintiff's contention that E&W also maintains a policy and practice of denying paid sick leave to its employees. [Hayter Decl., ¶¶ 11-13, Shields Decl., ¶¶ 8-9, Evans Decl., ¶ 9.] Labor Code § 246 and San Francisco Administrative Code, Chapter 12W, require employers to provide paid sick leave to their employees. Labor Code § 246.5 further prohibits employers from denying an employee the right to use accrued sick days. Defendants' policy provides that each employee may accrue up to three sick days per year. However, Plaintiffs take the position that Defendants maintain a practice of denying paid sick leave to their employees. Plaintiffs were continually denied requests to take paid sick leave while working at E&W. [Hayter Decl., ¶¶ 11-13, Shields Decl., ¶¶ 8-9, Evans Decl., ¶ 9.] For example, when Hayter tried to call in sick, Ewald or another employee of the company would tell Hayter that she needed to have a doctor's note if she wanted to "call out." [Hayter Decl., ¶ 12.] Shields was told by Ewald that E&W provided zero sick time. [Shields Decl., ¶ 8.] As a result, Plaintiffs were forced to either take days off while sick and not be paid for that time off or come to work while sick. Pursuant to Labor Code § 248.5(e), Plaintiffs are entitled to restitution for all compensation unlawfully withheld from employees as a result of Defendants' denial of paid sick leave.

Based on the aforementioned, Plaintiffs maintain all class members have been similarly harmed by Defendants' policies and practices set forth above, common issues easily predominate over individual issues such that class treatment of these claims are appropriate here. *Vasquez*, 4 Cal.3d at 807.

B. Typicality and Adequacy

1. Class Representatives

A plaintiff's claims are typical of the claims of the class if they arise from the same event or course of conduct that gives rise to the claims of other class members and are based on the same legal theory. *J.P. Morgan & Co. Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212; *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 663-64. A class representative's claim most often is considered "typical" as long as he or she is a member of the proposed class. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 45-46. As the *Classen* court explained, it is sufficient that the proposed named plaintiff is similarly situated to class members so that he or she will have the motive to litigate on behalf of all class members. *Id.* at 45. Courts have found that the typicality requirement is met in employment cases such as this one where all of the class

members are subjected to the same unlawful conduct by their employer and where the class representatives have the same rights as the class members. *Aguilar, supra,* 144 Cal.App.4th at 137.

Named Plaintiffs' claims in the present action are typical of the claims of the class because: (1) they all arise out of the same rights under Defendants' policies and practices, (2) they are based on the same facts because Defendants failed to pay class members for all time worked. [Hayter Decl., ¶¶ 27-31, Shields Decl., ¶¶ 18-22, Evans Decl., ¶¶ 20-24.] Plaintiffs' claims are also based on the same legal theory as the claims of the proposed class as set forth above. Plaintiffs have suffered typical injuries to the class members because the Plaintiffs — like all of the proposed class members — are owed wages, penalties and interest that were not paid. [*Id.*]

In sum, Plaintiffs are typical of the proposed class members because they are members of the proposed class, their claims arise from the same course of conduct that gives rise to the proposed class members' claims, and their claims are based on the same legal theory as the claims of the proposed class. [*Id.*]

2. Class Counsel

Furthermore, the adequacy-of-representation requirement is met here because Plaintiffs are represented by counsel qualified to conduct this litigation, and Plaintiffs' interests are not antagonistic to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 450. Proposed class counsel — Peretz & Associates — has extensive experience litigating complex class actions, including wage and hour class cases, and employment and labor actions. [Peretz Decl., ¶ 8 & Exhibit 6 (class action final approval orders).] In light of this experience, there is little doubt that class counsel is "qualified, experienced and generally able to conduct the proposed litigation." *Miller v. Woods* (1983) 148 Cal.App.3d 862, 874.

II. Fairness

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Court must satisfy itself that the consideration being received for the release of class members' claims is reasonable. Importantly, in making that determination, the Court "should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that the settlement agreements represent an arm's length transaction entered without self-dealing or other potential misconduct." *Kullar*, 168 Cal.App.4th at 129. Here, the proposed settlement was reached at the end of a full-day judicial mediation with Judge Mary E.

Wiss of this Court. [Peretz Decl., ¶ 9.] Judge Wiss's finding that the settlement was in the best interests of all parties should be given even further additional weight that the consideration is fair and free of self-dealing. [*Id.*]

Plaintiffs' counsel performed a substantial damages analysis based on the documents produced by Defendants. [Peretz Decl., ¶ 10 and Exhibit 7 (damages analysis).] Plaintiffs summarize that analysis below. However, the amount of consideration in the settlement was ultimately determined by Defendants' financial condition and limited ability to pay. [Peretz Decl., ¶ 11.] E&W is a small business, and like many businesses, suffered substantial financial setbacks due to the ongoing COVID-19 pandemic. [*Id.*] Defendants' ability to pay has been a significant obstacle and topic of discussion throughout the litigation of this case. [*Id.*] In fact, Plaintiffs' counsel were informed that the individual defendants Ewald and Wasserman arranged to take out loans in order to fund the class settlement. [*Id.*] This is the primary factor for the Court to consider with respect to "the risks of [this] particular litigation." *Kullar*, 168 Cal.App.4th at 129.

Through tough negotiations that lasted many months, Plaintiffs pushed Defendants to provide as much monetary relief as possible to the putative class — even to the point of taking out loans to fund the recovery. [Peretz Decl., ¶ 12.] Taking Plaintiffs' damages analysis at its most optimistic, the class's wage lost with interest amount to $408,276. [Peretz Decl., Exhibit 7.] Under these circumstances, a $144,000 gross settlement is reasonable.

On average, Class Members will receive approximately $1,300, which will vary by length of employment, while also avoiding the risks, time, and expense of litigation in this case. [Peretz Decl., ¶ 13.] The Class consists of approximately 56 Class employees. [*Id.*] All of these employees are wage earning employees who will receive upfront cash payments. [*Id.*] This is significant for employees who work low wage positions. [*Id.*] Settling this action at this time would allow the Class to recoup a significant amount of the allegedly unpaid wages from Defendants while also ensuring that Defendants still have some assets left through which to settle this action. [Peretz Decl., ¶ 14.] By contrast, continuing to litigate would likely result in ever-diminishing assets from which Defendants could settle. [*Id.*] For this reason, it is clearly in the best interest of putative class members to settle their claims now. [*Id.*]

Under the most optimistic assumptions, Plaintiffs' counsel estimated Defendants' total possible liability at $631,996, with another $30,075 in PAGA penalties. [Peretz Decl., ¶ 15 &

Exhibit 7.] The core allegation of this lawsuit is Defendants' manipulation of their employees' time cards, and denial of meal and rest breaks. To date, Defendants have only produced time records for the Named Plaintiffs. [Peretz Decl., ¶ 16.] These time records show a large number of post-hoc changes marked in red, but they do not include the original time stamp or indicate the amount of time for each change. [*Id.*]

Even taking these time records at face value, they confirm Plaintiffs' allegations that Defendants routinely denied their employees meal periods for shifts lasting longer than five hours. [Peretz Decl., ¶ 17.] Plaintiffs performed an analysis on the entire time records for each Named Plaintiff, identifying the total number of days' works, total number of days worked more than five hours, and the total number of breaks that were 30 minutes or longer. [*Id.*] This analysis reveals that Named Plaintiffs worked five or more hours on approximately 60% of their shifts. [*Id.*] For each five-hour shift performed by Named Plaintiffs, ***only about 12% include a corresponding meal break***. [*Id.*] This number is clearly conservative, as Hayter and other Named Plaintiffs were able to identify specific post-hoc changes indicating a meal break *when none was taken*. [*Id.*]

Applying these ratios across the class, Plaintiffs were able to calculate the number of missed meal periods for each class member using the data provided by Defendants. [Peretz Decl., ¶ 18.] The number of missed meal periods is then multiplied by that class members' hourly pay rate to obtain damages for missed meal periods. [*See* Peretz Decl., Exhibit 7; Labor Code § 226.7.]

Plaintiffs used the same methodology to calculate damages for missed rest periods. [Peretz Decl., ¶ 19.] If class members worked over five hours, they would be entitled to a rest period as well. [*Id.*] California law permits Plaintiffs to recover up to two hours of premium wages for missed meal and rest periods per workday. *See, e.g.*, *United Parcel Service Wage & Hour Cases* (2011) 196 Cal.App.4th 57, 65-70. Again, this calculation is conservative, because it is based upon shifts of five or more hours, while employees are actually entitled to rest periods for shifts of four hours, or a significant part thereof. [*Id.*]

Finally, Defendants' policy permits its employees to accrue up to 72 hours of paid sick leave, which was denied to Plaintiffs. [Peretz Decl., ¶ 20.] Thus, Plaintiffs simply multiplied each class members' pay rate by 72 hours to calculate this portion of damages. [*See* Peretz Decl., Exhibit 7.]

These three sources of damages amount to a combined total of $326,621 before interest. [*Id.*] Assuming a rate of 10% accruing annually each year of the four-year class period, and spreading the total damages evenly in each year, it was calculated that $81,655 in interest are owed. [*Id.*] Thus, the total number of wage damages, with interest, is **$408,276.** [*Id.*]

Plaintiffs' counsel is able to calculate the penalties for itemized wage statements precisely for the 56 class members, based on start and end dates for each. [Peretz Decl., ¶ X & Exhibit 7.] Out of those 56 class members, 6 employees worked 40 or more pay periods within the class period, thereby reaching the $4,000 maximum penalty under Labor Code § 226(e) (6 x $4,000 = $24,000). [*See* Peretz Decl., Exhibit 7.] For the remaining 50 employees, Plaintiffs' counsel calculated $50 for each initial pay period (50 x $50 =$2,500) and $100 for each subsequent pay period worked within the class period (366 pay periods based on documents x $100). [*Id.*] Plaintiffs' counsel then added these three amounts and divide by the 53 class members on whom this data is based to derive an average amount of $1,126.79 per class member. [*Id.*] Multiplied by the entire 56 class members, this comes to a total of $63,100 before interest. [*Id.*] Calculating interest in the same method as for damages comes to $15,755, for a final total of **$78,875** due to Plaintiffs for itemized wage statement penalties. [*Id.*]

Waiting time penalties are derived from a daily wage rate, for a maximum of 30 days after employment. Each of the 46 former employees in the class reached this 30-day maximum based upon Defendants' data. [Peretz Decl., ¶ 22 & Exhibit 7.] Plaintiffs' counsel estimated the amount of unpaid damages per day by dividing the total pre-interest damages amount by the total number of class days, which is $23.83. [*Id.*] In addition, Plaintiffs calculated the daily wages by assuming an average 5-hour workday and multiplying by the average pay rate of $16.23 (16.23 * 5 = 81.15). [*Id.*] This is added to the unpaid damages per day and multiplied by 30 days for the maximum penalty, for a total of $3,149 per former employee. [*Id.*] Multiplied for the 46 former employees in the class, the total figure for waiting time penalties of **$144,845**. [*Id.*]

Total Potential Liability	
Wage Damages with Interest	$ 408,276
Penalties for Itemized Wage Statements	$ 78,875
Penalties for Waiting Time	$ 144,845
Total Damages	**$ 631,996**

The addition of PAGA claims does not significantly increase Defendants' possible liability. Under PAGA, Labor Code § 2699(f) provides in relevant part, "For all provisions of this

code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: … (2) If at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation." The PAGA penalties can be calculated with fair precision because Defendants provided documentation showing that the total number of class weeks is 1958. [Peretz Decl., ¶ 23.] The putative class was paid every two weeks, so the total number of class pay periods is 979 (1958/2). [*Id.*] Based on the Named Plaintiffs' time records, Plaintiffs believe that 25% of class pay periods have PAGA violations. Thus, the total number of pay period violations is 244.75 (979/4). The initial pay period violations are 56 (number of class members) * $200 = $11,200. [*Id.*] The subsequent pay period violations is 923 (number of subsequent pay period violations [(244.75-56) * $100 = 18,875. [*Id.*] Adding these amounts together, the total potential amount for PAGA violations is **$30,075**. [*Id.*]

Given Defendants' financial condition and reduced ability to pay, the parties agreed to maximize the recovery to the class and reduce the amount paid as PAGA penalties to $3,000. Any increase in the PAGA allocation would necessarily reduce the amount received by each class member. While Plaintiffs believe that the amounts received by class members will be highly beneficial, particularly to low-income wage earners during a historic pandemic, the allocation of damages and PAGA penalties was made in order to maximize the recovery despite Defendants' inability to pay. [Peretz Decl., ¶ 24.]

III. Distribution

The distribution plan apportioning settlement proceeds based on the number of workweeks per class member is the most suitable for this case, and there is no fair and practicable alternative based on the available evidence. [Peretz Decl., ¶ 25.] Through informal discovery, Defendants provided Plaintiffs' counsel with a class list that included start and end dates for every putative class member. [*Id.*] Using that list, Plaintiffs could precisely calculate the number of workweeks during the relevant time period for each class member. [*Id.*] The available evidence also shows that the violations were consistent across the class membership. [*Id.*] For example, the Named Plaintiffs testified that telephone interviewers were subject to the same practices in terms of inability to take meal breaks and alteration of time cards. [Hayter Decl., ¶¶ 2-6 & 27-31, Shields Decl., ¶¶ 3 & 18-22, Evans Decl., ¶¶ 2-6 & 20-24.] Hayter testified that she observed

her co-workers rarely were permitted to take a full, uninterrupted 30-minute meal break. [Hayter Decl., ¶ 5.] Shields testified that she frequently heard other employees discussing pay discrepancies and missing time on their timekeeping records. [Shields Decl., ¶ 10.] By contrast, there is *no evidence* that telephone interviewers were treated differently with respect to taking meal breaks or missing time on their time cards. [Peretz Decl., ¶ 26.]

The parties have amended the agreement to address the issue of unclaimed funds. As suggested by the Court, there will be a second round of checks to class members who cashed their first check. The second checks will take the unclaimed funds and pro-rate it based on workweeks in the same manner as with the initial checks, provided that the check is worth no less than $25. Any remaining funds after the second round will be distributed to a cy pres beneficiary pursuant to Code of Civil Procedure § 384(b).

IV. Release

The parties have amended the agreement to clarify the following points about the release:

- The release is intended to release only claims that could have been asserted based on the facts alleged in this action.
- The temporal scope of the release runs from the start of the Class Period until the Effective Date, which is essentially upon final approval of the settlement by the Court, including any appeals.

A PAGA release is only effective if it binds all aggrieved employees, including any potential opt outs. Otherwise, opt outs could file a PAGA action and seek penalties on behalf of the entire class. However, the parties have increased the PAGA allocation to $3,000 total and $750 to class members. This equates to over $13 per class member ($750/56 class members), which Plaintiffs believe is fair given the claims at issue in this case. In particular, because the PAGA claims do not add much independent value once all of the claims are exhausted.

V. Notice

A. LWDA

Plaintiffs complied with Labor Code § 2699(l)(2) by submitting the proposed PAGA settlement to the LWDA via the agency's website on June 8, 2021. [Peretz Decl., ¶ 27 and Exhibit 8.]

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B. Class Notice

1. Process

Plaintiffs anticipate that the proposed notice plan will be as effective as possible under the circumstances, as it includes multiple steps and methods of contacting putative class members. [Peretz Decl., ¶ 28.] First, Defendants will provide Simpluris, Inc. ("Simpluris"), an experienced claims administrator, with the class data including name, social security number, and multiple methods of contact including: last-known physical address and email address. [*Id.*] Both methods of contact are already known to be available for the entire putative class, because it was previously provided by Defendants through informal discovery. [*Id.*] Simpluris will send out the approved notice using both email and physical address for all class members. [*Id.*] Before the initial mailing, Simpluris will also run a National Change of Address database search to update mailing addresses where needed. [*Id.*] In the event that a class member fails to return a claim form or returns an incomplete form, Simpluris will contact the class member again to provide the information. [*Id.*]

Plaintiffs amended the notice to clarify the response deadline as requested in the Court's tentative ruling. In addition, the amended agreement (1) extends the time for class members to respond to the notice to 60 days, (2) permits signatures by authorized representatives, and (3) ensures that timely responses are not rejected due to technical deficiencies. Plaintiffs' counsel will host a settlement page on their firm's website. [Peretz Decl., ¶ 29.]

2. Substance

Plaintiffs have submitted a revised notice for the Court's approval which makes the changes requested in the tentative ruling. The parties do not plan to translate the notice into languages other than English. Defendants have indicated that all putative class members are proficient in English, which is a requirement for their position as telephone interviewers. [Peretz Decl., ¶ 30.]

VI. Miscellaneous

A. Taxes

The parties decided to allocate the settlement payments as 1/3 W-2 wages, 1/3 interest and 1/3 penalties based on counsel's reasonable assessment of the types of claims at issue in this case. [Peretz Decl., ¶ 31.] The claims seek various relief, including wages, penalties and interest, so the parties believe it is fair to allocate the fund evenly across these three groups. [*Id.*] In

Plaintiffs' counsel's experience, this type of allocation is common in wage and hour class action litigation. [*Id.*]

B. Employee Benefits

Class members do not receive vacations, holiday pay or retirement plans. It was included in the settlement agreement simply for clarity that the settlement payments should not be deemed as pensionable earnings.

C. Claims Administrator

Plaintiffs have filed a declaration from Simpluris demonstrating that it is an adequate administrator.

D. Attorneys' Fees and Costs

The parties have clarified the agreement to indicate that Plaintiffs' counsel will seek no more than $52,000 total in attorneys' fees and costs. [Peretz Decl., ¶ 32.] Class Counsel's costs are approximately $6,000 and will continue to increase, so the portion of the Gross Settlement Amount apportioned to attorneys' fees would be approximately 30%. [*Id.*]

E. Prevailing Party Attorneys' Fees

The "Enforcement" provision applies only to "Parties" which is defined as Named Plaintiffs and Defendants only. Therefore, Defendants could not use this provision to seek prevailing party attorney fees against a class member who filed a lawsuit based on released claims. The amended agreement adds further language to clarify this provision.

F. Cross-Referencing

The amended agreement seeks to clean up the cross-referencing issues raised by the Court's tentative ruling.

G. Proposed Order

Plaintiffs will email a Word version of the Proposed Order to the complex department.

Dated: June 9, 2021

PERETZ & ASSOCIATES

By: _____
Yosef Peretz
Shane Howarter
Attorneys for Named Plaintiffs
ADRIANA HAYTER, LARINE SHIELDS, and
TAYLOR EVANS