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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

RASHON HAYES, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

THE CONTAINER STORE, INC., an unknown business entity; and DOES 1 through 100, inclusive,

Defendant.

Case No. 20CV363825

Honorable Theodore Zayner
Department 19

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date:	January 21, 2026
Time:	1:30 PM
Department:	19
Complaint Filed:	February 10, 2020
FAC Filed:	August 3, 2020
Trial Date:	None Set

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TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 21, 2026 at 1:30 PM, or as soon thereafter as the matter may be heard before the Honorable Theodore Zayner in Department 19 of the Superior Court of the State of California, for the County of Santa Clara, 161 North First Street, San Jose, California 95113, Plaintiff Rashon Hayes ("Plaintiff") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the parties' Settlement Agreement and Release of Class and Representative Action Claims ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 2**" to the Declaration of Elizabeth Parker-Fawley in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Rashon Hayes as Class Representative;
- Appointing Edwin Aiwazian, Arby Aiwazian, and Elizabeth Parker-Fawley of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Court Approved Notice of Class and Representative Action Settlement and Hearing Date for Final Court Approval ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, and directing the mailing thereof in accordance with the Settlement Agreement;
- Approving Simpluris, Inc., as the Settlement Administrator; and
- Scheduling a hearing to consider final approval of the Settlement.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which require approval by the Court of the settlement of a putative class action.

This motion is based upon the following memorandum of points and authorities; the Settlement Agreement; the Declarations of Proposed Class Counsel (Elizabeth Parker-Fawley) and Proposed Class Representative (Rashon Hayes) in support thereof; as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: September 5, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________

Elizabeth Parker-Fawley
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Rashon Hayes ("Plaintiff" or "Class Representative") seeks preliminary approval of the Settlement Agreement and Release of Class and Representative Action Claims ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other allegedly aggrieved employees, on the one hand, and Defendant The Container Store, Inc. ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (together, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of $2,500,000.00.[1]

Plaintiff seeks to provisionally certify the following Settlement Class for settlement purposes: All individuals who are or were employed by Defendant as an hourly-paid or non-exempt employee in California during the Class Period ("Settlement Class" or "Class Members").[2] Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Class Participant") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Amount"), and PAGA Settlement Group Members will receive a *pro rata* share of the portion of 25% of the PAGA Payment. The Settlement, upon final approval by the Court and funding of the Gross Settlement Amount, will operate to resolve the Released Class Claims of Plaintiff and Class Participants and the Released PAGA Claims of the State of California and PAGA Settlement Group Members.[3]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a specialty retail chain selling storage and organizational products, solutions, and in-home services. Plaintiff is a former employee of Defendant.

On February 10, 2020, Plaintiff filed the Class Action Complaint for Damages in the Superior Court for the County of Santa Clara, thereby commencing the above-captioned lawsuit.[4] On February 12, 2020, Plaintiff provided written notice by certified mail to the LWDA and

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[1] Settlement Agreement, attached as Exhibit 2 to Declaration of Elizabeth Parker-Fawley ("Parker-Fawley Decl.").
[2] Settlement Agreement, ¶ 1.1.21; "Class Period" is defined as the time period from February 10, 2016 to June 6, 2024. *See id.*, ¶1.1.9.
[3] *See id.*, at ¶¶ 1.11.1, 1.11.2, 1.11.3.
[4] Parker-Fawley Decl. ¶ 8.

Defendant of the specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice").[5] On August 3, 2020, Plaintiff filed his First Amended Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq*. ("Operative Complaint"), adding a PAGA cause of action.[6]

Plaintiff's core allegations are that Defendant violated California wage and hour law, including but not limited to laws set forth in the California Labor Code, by allegedly engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA Settlement Group Members of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq*. and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he and the Class Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees and costs. Defendant denied these allegations and any entitlement to relief.

On February 21, 2024, the Parties participated in arm's-length and informed negotiations with Mediator Paul Grossman, Esq. ("Mediator"), a respected mediator of complex wage and hour actions. With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.[7]

After, Plaintiff prepared the instant motion to seek preliminary approval of the Settlement, and the Parties met and conferred to finalize the motion documents and proposed Court Approved Notice of Class and Representative Action Settlement and Hearing Date for Final Court Approval ("Class Notice").[8] On December 31, 2024, Defendant filed a Notice of Bankruptcy Petition and Automatic Stay, staying this action pending Defendant's bankruptcy proceedings in the United

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[5] Parker-Fawley Decl., ¶ 9, Exh. 1.
[6] *Id.*, ¶ 10.
[7] *Id.*, ¶¶ 11 & 13.
[8] *Id.*, ¶ 11.

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States Bankruptcy Court for the Southern District of Texas Houston Division.[9] On April 22, 2025, Plaintiff received notice of the Confirmation of Bankruptcy Plan and Lift of Automatic Stay.[10] Subsequently, Defendant provided written confirmation that it intends to proceed with the Settlement Agreement in this matter.[11]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of $2,500,000.00 to resolve the Action.[12] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e., $875,000.00, if the Gross Settlement Amount remains $2,500,000.00) and litigation costs and expenses incurred ("Class Attorneys' Fees and Expenses") to Class Counsel; (2) Administrative Expenses, which are currently estimated not to exceed $21,000.00 to the Settlement Administrator ("Administrative Expenses"); (3) PAGA Payment of $250,000.00 ("PAGA Payment"); and (4) payment in the amount of up to $14,000.00 to Plaintiff ("Incentive Award").[13] The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.[14]

The Parties have agreed that the Settlement Administrator will determine each Class Participant's share of the available Net Settlement Amount ("Individual Settlement Amount"), in accordance with the Settlement Agreement on a *pro rata* per Workweek basis.[15] The Parties have agreed that the Settlement Administrator will determine each PAGA Settlement Group Members' share of the 25% share of the PAGA Payment, in accordance with the Settlement Agreement on a *pro rata* per PAGA Pay Period basis.[16]

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[9] Parker-Fawley Decl., ¶ 11.
[10] *Id.*, ¶ 12.
[11] Ibid.
[12] Settlement Agreement, ¶ 1.1.19.
[13] *Id.*, ¶ 1.5.
[14] *Id.*, ¶ 1.1.20.
[15] *Id.*, ¶ 1.8.1.
[16] *Id.*, ¶ 1.8.2.

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The Parties agree, for purposes of this Settlement, that Individual Settlement Amounts will be allocated 20% to wages subject to withholdings and 80% to penalties and interest.[17] The Settlement Administrator will withhold the employees' share of taxes and withholdings with respect to the wages portion of the Individual Settlement Amounts, and issue checks to Class Participants for their Individual Settlement Payments. Individual PAGA Payments to PAGA Settlement Group Members will be allocated as 100% penalties and will not be subject to withholdings. Defendant will provide the funds for any employer-side taxes related to the Individual Settlement Amounts.[18]

Defendant shall fund the Gross Settlement Amount in two payments: one payment of 50% of the Gross Settlement Amount ($1,250,000.00) and the associated Employer Taxes no later than 30 days after the Effective Date, and a second payment of 50% of the Gross Settlement Amount ($1,250,000.00) and the associated Employer Taxes no later than 365 days after the Court enters the Final Approval Order.[19] The PAGA Payment, 50% of each Class Participant's Individual Settlement Payments, and the Incentive Award will be disbursed after the first payment. The remaining 50% of each Class Participant's Individual Settlement Payments, the Class Attorneys' Fees and Expenses, and Administrative Expenses will be disbursed after the second payment.[20]

Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be canceled.[21] Thereafter, funds from uncashed Individual Settlement Payment and/or Individual PAGA Payment checks shall be transmitted to the *cy pres* recipient, Legal Aid at Work.[22]

Any Class Member may request to be excluded from the Class Settlement by mailing an Opt Out request postmarked on or before the date that is 60 calendar days from the date of the initial mailing of the Class Notice by the Settlement Administrator ("Response Deadline").[23]

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[17] Settlement Agreement, ¶ 1.5.6.
[18] Ibid.
[19] *Id.*, ¶ 1.6.2.
[20] *Id.*, ¶¶ 1.8.3, 1.8.4, 1.8.5, 1.8.6.
[21] *Id.*, ¶ 1.8.7.
[22] Ibid.
[23] *Id.*, ¶¶ 1.1.19, 1.7.4.

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PAGA Settlement Group Members shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[24]

Only Class Members who have not submitted an Opt Out request (i.e., Class Participants) may object to the Class Settlement by submitting a written objection to the Court no later than the Response Deadline.[25] An individual Class Member and/or PAGA Settlement Group Member may dispute the Workweeks or Pay Periods attributed to them by mailing a written letter to the Settlement Administrator and including copies of any supporting evidence they may have.[26]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made at the final approval stage. Cal. R. Ct. 3.769(g).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

The trial court has broad discretion to determine whether a proposed settlement is fair under

[24] Settlement Agreement, ¶ 1.7.4.
[25] *Id.*, ¶ 1.7.5.
[26] *Id.*, ¶ 1.7.3.

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the circumstances of the case. *Dunk*, 48 Cal.App.4th at 1800. To make this fairness determination, courts must consider several relevant factors, including "the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245. Furthermore, courts must give "proper deference to the private consensual decision of the parties." *Hanlon*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

The Parties have actively litigated the Action since it commenced on February 10, 2020. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.[27]

Class Counsel conducted significant formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data from Plaintiff, Defendant, and other sources.[28] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, Plaintiff's time and pay data, time and pay data for a sampling of approximately 25% of other Class Members, company policy acknowledgments, forms,

[27] Parker-Fawley Decl., ¶ 24.
[28] Ibid.

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procedures and policies (including, but not limited to, Employee Handbook, California Employment Law Guide, Attendance Policy, Paid Time Off Policy, Timekeeping Policy, Predictive Scheduling Policy, Schedule Deviations Process, Attestation Guide, Attestation Premium Process, Travel Expense Policy, Travel and Expense Reimbursement Process, Code of Business Conduct and Ethics, Mutual Agreement to Arbitrate, Change in Status/Exit Form, Workplace Training Forms, and Job Descriptions) among other information and documents.[29] Class Counsel had the opportunity to interview Plaintiff and others to gather facts and to identify potential witnesses, and counsel for Defendant conducted a deposition of Plaintiff. In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[30]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation, conducted by Paul Grossman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[31] Prior to and during the mediation and settlement discussions, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, including the risks of proceeding with class certification and/or representative adjudication; the law relating to off-the-clock theory, regular rate, meal and rest periods, PAGA representative claims, and wage-and-hour enforcement; the evidence produced and analyzed; and the possibility of appeals.[32] During all settlement discussions, the Parties conducted their negotiations at arm’s length in an adversarial position.[33] Arriving at a settlement that was acceptable to both Parties was not easy. Both sides felt strongly about their ability to prevail at certification and at trial.[34] After conducting investigations, informal discovery, extensive settlement negotiations, and with the aid of the mediator’s evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff’s principal claims, as well as the costs and risks to both sides that would attend further litigation.[35]

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[29] Parker-Fawley Decl., ¶ 24.
[30] *Id.*, ¶¶ 2-6.
[31] *Id.*, ¶ 16.
[32] Ibid.
[33] Ibid.
[34] Ibid.
[35] Ibid.

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B. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[36] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information.[37] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue. Moreover, considering all of the facts and circumstances of the case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[38]

Assuming that the Class Attorneys' Fees and Expenses, Incentive Award, PAGA Payment, and Administrative Expenses are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be $1,309,640.19.[39] Additionally, 25% of the PAGA Payment (i.e., Individual PAGA Payment), which is $62,500.00 out of $250,000.00, will be distributed to the PAGA Settlement Group Members. The entire Net Settlement Amount will be fully paid out to the Class Participants, in accordance with the Settlement Agreement.

The amount of each Class Participant's Individual Settlement Payment and each PAGA Settlement Group Members' Individual PAGA Payment will be calculated based on his or her Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.[40] "An allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. Here, the allocation is reasonably related to the number of Workweeks and/or PAGA Pay Periods actually worked for Defendant during the relevant period and should be approved.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA Settlement Group Members, and the State of California.[41] Although the recommendations of Class

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[36] Parker-Fawley Decl., ¶ 34.
[37] *Id.*, ¶ 32.
[38] Ibid.
[39] *Id.*, ¶ 19.
[40] Settlement Agreement, ¶¶ 1.8.1, 1.8.2.
[41] Parker-Fawley Decl., ¶ 34.

Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. **The Settlement Is of Significant Value.**

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[42] The information that Class Counsel obtained from Plaintiff, Defendant, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.[43] As outlined in the Declaration of Elizabeth Parker-Fawley, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement and determined that this Settlement provided significant value for the claims at issue in light of that analysis and the risks involved in this litigation.[44]

V. **CERTIFICATION OF THE CLASS IS APPROPRIATE**

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[45] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the Plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

A. **The Class Is Ascertainable and Sufficiently Numerous.**

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed Plaintiffs by

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[42] Parker-Fawley Decl., ¶ 17.
[43] *Id.*, ¶ 32.
[44] *Id.*, ¶¶ 32(a)–(j).
[45] Settlement Agreement, ¶ 1.1.21.

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describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; s*ee also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 2,456 individuals, which is sufficiently numerous.[46] Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid or non-exempt employees of Defendant in California during the Class Period. As such, the Class is ascertainable.

B. <u>The Class Members Share a Well-Defined Community of Interest.</u>

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) Class Representative with claims or defenses typical of the class; and (3) Class Representative who can adequately represent the class." *Sav-On, supra*, 34 Cal.4th at 326. "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*." *Capitol People First v. Dep't of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the Defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated Plaintiff renders class certification appropriate." *Id.* (citing *Sav-On*, 34 Cal.4th at 333).

Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through informal discovery and exchange of information in the case, Plaintiff contends that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.[47] As a result, Plaintiff alleges that all of the Class Members were uniformly not paid all

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[46] Parker-Fawley Decl. ¶ 14.
[47] *Id.*, ¶ 21.

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compensation due to them from Defendant during the time period at issue. Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked in California during the Class Period.

As a member of the Class who was subject to these same alleged policies, practices, and procedures, Plaintiff's claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.[48] Importantly, Plaintiff has retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff and the Class.[49]Accordingly, the proposed Settlement Class shares a community of interest, and the Court should certify the Settlement Class for settlement purposes only.

VI. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES & COSTS

Class Counsel has litigated the matter for over four years and was actively preparing the matter for class certification and trial.[50] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff and other percipient witnesses, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to the mediation.[51] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[52] Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[53]

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[48] Declaration of Rashon Hayes in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Hayes Decl."), ¶ 4.
[49] Parker-Fawley Decl., ¶¶ 2-6.
[50] *Id.*, ¶ 16.
[51] *Id.*, ¶ 16.
[52] Ibid.
[53] *Id.*, ¶¶ 2-6.

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The Settlement establishes a Gross Settlement Amount of $2,500,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount up to 35% of the Gross Settlement Amount (*i.e.*, $875,000.00), and reimbursement of actual costs and expenses.[54] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members that an award of the Class Attorneys' Fees and Expenses will be sought and the amount allocated toward the Class Attorneys' Fees and Expenses by the Settlement.[55]

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 citing *Lealao*, 82 Cal.App.4th at 48-49. In *Lealao*, the court held that, when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao*, 82 Cal.App.4th at 50.

The California Supreme Court has confirmed the propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others. *Laffitte*, 1 Cal.5th 480 at 486 & 506. The Court has taken the position that

[54] Settlement Agreement, ¶ 1.5.8.
[55] Settlement Agreement, Exh. A.

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while "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id.* (internal quotation marks omitted).

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[56] Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's Motion for Final Approval of the Settlement and application for the Class Attorneys' Fees and Expenses at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement are well within the range of reasonableness for preliminary approval.

VII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory authority and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980)

[56] Parker-Fawley Decl., ¶ 25.

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623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177). "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004).

The proposed Class Notice describes the Settlement; the deadlines and procedures to submit a notice of objection to the Class Settlement, request for exclusion from the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods; and the date and time set for the Final Approval Hearing.[57] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[58] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[59] The proposed Class Notice also apprises the Class Members and PAGA Settlement Group Members of, *inter alia*, how their Individual Settlement Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[60] The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39.

Thus, the proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960. Accordingly, the Court should approve the proposed Class Notice.

VIII. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris, Inc. as the Settlement Administrator. The Settlement Administrator will determine the number of Workweeks worked by each Class Member during the Class Period and number of Pay Periods worked by each PAGA Settlement Group Member during the PAGA Period, perform an NCOA check, and will mail the Class Notice to each Class Member and PAGA Settlement Group Members.[61] The Settlement Administrator will skip-trace returned

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[57] Settlement Agreement, Exh. A.
[58] Ibid.
[59] Ibid.
[60] Ibid.
[61] Settlement Agreement, ¶ 1.7.1, 1.7.2.

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Class Notices and re-mail the Class Notice to the new address.[62] In the case of a re-mailed Class Notice, the Response Deadline will be extended an additional five calendar days.[63] The Administrator will receive and process requests for exclusion, notices of objection, or disputes regarding Workweeks.[64] In addition, the Settlement Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.[65] The Settlement Administration Costs are currently estimated to be $21,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[66] Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc., as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members and PAGA Settlement Group Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

IX. CLASS REPRESENTATIVE INCENTIVE AWARD

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Incentive Award in an amount up to $14.000.00.[67] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make an Incentive Award include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id.*

[62] Settlement Agreement, ¶ 1.7.4
[63] Ibid.
[64] *Id.*, ¶¶ 1.7.1.
[65] Ibid.
[66] *Id.*, ¶ 1.1.2.
[67] *Id.*, ¶ 1.5.2.

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The Incentive Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents, providing the facts and evidence necessary to attempt to prove the allegations, and participating in formal discovery.[68] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[69] Accordingly, it is appropriate and just for Plaintiff to receive an Incentive Award for his services on behalf of the Settlement Class, PAGA Settlement Group Members, and the State of California, in addition to his individual settlement payments.

X. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; appoint Lawyers *for* Justice, PC as Class Counsel; appoint Plaintiff Rashon Hayes as Class Representative; appoint Simpluris, Inc., as Settlement Administrator; preliminarily approve the allocations for Class Attorneys' Fees and Expenses, Incentive Award, PAGA Payment, and Administration Expenses; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and to schedule a Final Approval Hearing to take place in approximately 6 months.

Dated: September 5, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________________

Elizabeth Parker-Fawley
Attorneys for Plaintiff

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[68] Parker-Fawley Decl., ¶ 26; Hayes Decl., ¶ 3-5.

[69] Parker-Fawley Decl., ¶ 26, 15; Hayes Decl., ¶¶ 3-7.

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