Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Yasmin Hosseini (SBN 326399)
LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ROBERTO HERNANDEZ, 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, v. MAR-CONE APPLIANCE PARTS CO., an unknown business entity; and DOES 1 through 100, inclusive, Defendant.	Case No.: 34-2020-00281810-CU-OE-GDS Honorable Jill H. Talley Department 27 **<u>CLASS ACTION</u>** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [Declaration of Proposed Class Counsel (Yasmin Hosseini); Declaration of Proposed Class Representative (Roberto Hernandez); and [Proposed] Order filed concurrently herewith] Date: December 1, 2023 Time: 9:00 a.m. Department: 27 Complaint Filed: September 18, 2018 FAC Filed: September 3, 2020 SAC Filed: December 3, 2020 Trial Date: None Set

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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

PLEASE TAKE NOTICE that on December 1, 2023 at 9:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Jill H. Talley in Department 27 of the Superior Court of California for the County of Sacramento, located at 720 9th Street, Sacramento, California 95814, Plaintiff Roberto Hernandez ("Plaintiff" or "Class Representative") 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 Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Yasmin Hosseini, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Roberto Hernandez as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Class Notice ("Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to Settlement Administrator.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of

Court, which provide for approval by the Court of the settlement of a putative class action and allows the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

Pursuant to Local Rule 1.06(A), the Court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If a party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If the parties do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Yasmin Hosseini) and Proposed Class Representative (Roberto Hernandez) in support thereof, 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: November 6, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________________
Yasmin Hosseini
Attorneys for Plaintiff

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

TABLE OF CONTENTS

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Roberto Hernandez ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Mar-Cone Appliance Parts Co. ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to a settlement for a Total Settlement Amount of seven hundred and four thousand dollars and no cents ($704,000.00).[1]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose: All current and former hourly-paid or non-exempt employees who worked for Defendant at Defendant's locations in California at any time during the Class Period and who received at least one paycheck during the Class Period from Defendant ("Class" or "Class Members").[2] The Class is estimated to consist of approximately one hundred and seventy-seven (177) individuals.[3] Class Members who do not submit a timely and valid request to be excluded from the Settlement ("Settlement Class Members") will receive a share of the Net Settlement Amount ("Individual Settlement Share") on a *pro rata* basis based upon the number of weeks each Settlement Class Member was employed by Defendant in California in an hourly-paid or non-exempt position during the period from September 18, 2014 through preliminary approval ("Workweeks").[4] The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Claims of Plaintiff and Settlement Class Members, against the Released Parties.[5]

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[1] Settlement Agreement, attached as "**EXHIBIT A**" to Declaration of Yasmin Hosseini ("Hosseini Decl."), ¶ 6.ff.; Per the Settlement Agreement, the Total Settlement Amount is $600,000, however, if the total number of Workweeks for the period of September 18, 2014 to June 10, 2020 exceeds 12,000 by more than ten percent (i.e., exceeds 13,200), the Total Settlement Amount will be increased *pro rata*; as of this date, the actual total Workweeks for the period of September 18, 2014 to June 10, 2020 is estimated to be 14,081 and as a result, the Total Settlement Amount is estimated to be approximately $704,000. *See id.*, ¶¶ 6.ff. & 36.

[2] Settlement Agreement, ¶ 6.d. "Class Period" is defined as the period from September 18, 2014 through the date of preliminary approval. *See id.*, ¶ 6.f.

[3] Hosseini Decl., ¶ 20; *see also,* Settlement Agreement ¶ 36.

[4] Settlement Agreement, ¶¶ 6.ee., 14, and 6.gg.

[5] See *id.* at ¶ 6.x, for the full scope of the "Released Claims," and *id.* at ¶ 6.z. for the definition of the "Released Parties."

II. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Settlement (i.e., Settlement Class Members) with respect to the Released Parties.[6] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed two hundred forty-six thousand four hundred dollars and no cents ($246,400.00) (i.e., up to 35% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed forty five thousand dollars and no cents ($45,000.00) to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) settlement administration costs, which are currently estimated not to exceed eight thousand dollars and no cents ($8,000.00) to the Settlement Administrator ("Settlement Administration Costs"); (3) payment to the LWDA of its 75% share of the PAGA Payment (i.e., $37,500.00 out of $50,000.00) ("LWDA Payment"); and (4) payments in the amount of up to six thousand dollars and no cents ($6,000.00) to Plaintiff ("Enhancement Payment").[7] The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement and as follows:

a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.[8]
b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.[9]

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: one-

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[6] Settlement Agreement, ¶ 6.ee.
[7] *Id.*, ¶¶ 6.s. and 6.ff.; see also, ¶¶ 10, 12, 13, and 11; see n.1, *supra*.
[8] *Id.*, ¶ 14.a.
[9] *Id.*, ¶ 14.b.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

third (1/3) as wages (the "wage portion"), which will be reported on an IRS Form W-2; and the remaining two-thirds (2/3) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.[10] Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").[11] Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares separately and in addition to the Total Settlement Amount.[12] The Individual Settlement Payment checks issued to Settlement Class Members will be negotiable for one hundred twenty (120) calendar days from the date of issuance.[13] Individual Settlement Payment checks that are not negotiated within the 120-day period will be cancelled.[14] The funds from associated with such cancelled checks will be transmitted by the Settlement Administrator to the Legal Aid at Work.[15]

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing ("Request for Exclusion").[16] To be timely, the Class Member must mail or fax a written request for exclusion to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days from the initial mailing of the Class Notice ("Response Deadline").[17] Class Members who submit a valid and timely Request for Exclusion will not be bound by the terms of the Settlement and Final Approval Order and Judgment.[18]

Only Class Members who do not exclude themselves from the Settlement (i.e., Settlement Class Members) have standing to object to the Settlement.[19] Settlement Class Members who wish to object to the Settlement must submit their objection in writing (a "Notice of Objection") to the

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[10] Settlement Agreement, ¶ 25.
[11] Ibid.
[12] *Id.*, ¶¶ 6.ff. and 25
[13] *Id.*, ¶ 19.
[14] Ibid.
[15] Ibid.
[16] *Id.*, ¶ 20
[17] *Id.*, ¶ 6.bb.
[18] *Id.*
[19] *Id.*, ¶ 22.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

Settlement Administrator on or before the Response Deadline.[20] Class Members who wish to dispute the number of Workweeks credited to them in their Notice may do so by submitting a written letter to the Settlement Administrator on or before the Response Deadline.[21]

III. **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). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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 only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. 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*

[20] Ibid.
[21] Settlement Agreement, ¶ 18.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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.

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. 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*, *supra*, 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*, *supra*, 91 Cal.App.4th at 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, *supra*, 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, supra,* 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

The Parties actively litigated the matter since September 18, 2018.[22] Both sides used the pre-

[22] Hosseini Decl., ¶¶ 8-18, 22.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.[23] Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant.[24] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's and other Class Members' employment records, a detailed sampling of Class Members' time and pay data, company policy acknowledgements (e.g., the Handbook Acknowledgement Form), internal memoranda, Defendant's operations and employment practices, policies, and procedures (including but not limited to Defendant's Policies and Procedures Manual for Employees, Employment Practices and Procedures, Complaint Resolution Procedure, Hours and Pay Practices, Drug and Alcohol Free Workplace Policy, Operations Policies, and Leave of Absence Policies), among other information and documents.[25] Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.[26] Class Counsel propounded multiple sets of formal written discovery requests on Defendant (and reviewed Defendant's responses and supplemental responses to said discovery requests) and noticed the depositions of Defendant's Person Most Knowledgeable designees.[27] Class Counsel also worked with former plaintiff Carmen Ramirez to provide responses to multiple sets of discovery requests that were propounded by Defendant, prepared for and took the deposition of Defendant's Person Most Knowledgeable witnesses, and prepared for and defended the deposition of former plaintiff Carmen Ramirez.[28] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.[29] Class Counsel also drafted pleadings and Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among

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[23] Hosseini Decl., ¶¶ 22-24.
[24] *Id.*, ¶ 23.
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

other tasks.[30]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation on June 10, 2020, 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 cases and various aspects of the matter, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, federal and state wage-and-hour law and enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[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. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[34] After conducting investigations, significant formal and informal discovery and exchange of information, 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]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.[36] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[37]

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[30] Hosseini Decl., ¶ 23.
[31] *Id.*, ¶ 22.
[32] Ibid.
[33] Ibid.
[34] *Id.*, ¶¶ 22, 27-29.
[35] Ibid.
[36] Ibid.
[37] *Id.*, ¶¶ 6-7.

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

The Settlement, which provides for a Total Settlement Amount of Seven Hundred and Four Thousand dollars ($704,000.00), represents a fair, adequate, and reasonable resolution of the matter.[38] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[39] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[40] Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[41]

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment, and Settlement Administration Costs 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 Two Hundred Eighty Six Thousand Dollars ($286,000.00).[42] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks.[43] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n 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.

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 and State of California.[44] Accordingly, the Court should grant preliminary approval of the Settlement.

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[38] Hosseini Decl., ¶¶ 22, 24, 25 & 32; see n.1, *supra*.
[39] *Id.*, ¶¶ 22-24.
[40] *Id.*, ¶¶ 27-29.
[41] *Id.*, ¶¶ 22, 24, & 32.
[42] *Id.*, ¶ 25.
[43] Settlement Agreement, ¶ 14.
[44] Hosseini Decl., ¶¶ 22, 24, & 32.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.[45] The documents and information that Class Counsel obtained from Defendant, Plaintiff, 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.[46] As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[47]

V. CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[48] 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.* The Class is amenable to class certification for settlement purposes as discussed below.

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 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*

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[45] Hosseini Decl., ¶¶ 22-24 & 29.
[46] *Id.*, ¶ 29.
[47] *Id.*, ¶¶ 22-24 & 27-29.
[48] Settlement Agreement, ¶ 7.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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.

This matter involves a class of approximately one hundred seventy-seven (177) individuals.[49] This class is sufficiently numerous. *See 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). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding its hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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*, *supra*, 34 Cal.4th at 333).

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." *Capitol People*, *supra*, 155 Cal.App.4th at 690 (emphasis added) (citing *Sav-On*, *supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the "reasonableness" of the defendant's labor policies as applied to the potential class. *Ghazaryan*, *supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in the cases, Plaintiff contends that Class Members

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[49] Hosseini Decl., ¶ 20.

were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.[50] Plaintiff's claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, 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 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[51] Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.[52] As a result of the alleged conduct, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.[53] Accordingly, the Court should certify the Class for settlement purposes only.

VI. <u>APPOINTMENT OF CLASS COUNSEL</u>

Class Counsel has litigated the matter for over three years, and was actively preparing the matter for class certification and trial.[54] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the cases and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant (and reviewing Defendant's responses and supplemental responses thereto), working with former plaintiff Carmen Ramirez to respond to multiple sets of discovery requests propounded on her, noticing and taking the depositions of Defendant's Person Most Knowledgeable designees, and preparing for and defending the deposition of former plaintiff Carmen Ramirez. Class Counsel reviewed thousands of pages of documents and data[55] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred

[50] Hosseini Decl., ¶ 27.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] *Id.*, ¶¶ 22-24.
[55] *Id.*, ¶ 23.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[56] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[57] Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[58]

The proposed Notice provides Class Members with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[59] Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained in the Action.[60] Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing the motion for final approval of the Settlement and application for the Attorneys' Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VII. THE PROPOSED NOTICE IS ADEQUATE.

California statutory 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) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177). The proposed Notice[61] describes the Settlement, the deadlines and procedures to submit an objection to the Settlement, mail a request for exclusion from the Settlement, and/or mail a dispute regarding Workweeks, and the date and time set for the Final Approval Hearing.[62]

The proposed Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at §

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[56] Hosseini Decl., ¶ 23.
[57] *Id.*, ¶ 22.
[58] *Id.*, ¶¶ 6-7.
[59] *Id.*, Exh. A.
[60] *Id.*, ¶ 30.
[61] Settlement Agreement, Exh. A.
[62] Ibid.

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

8.39. "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 Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[63] The proposed Notice recognizes that the Court has not yet granted final approval of the settlement.[64] The proposed Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks credited to them.[65] Accordingly, the Court should approve the proposed Notice.

VIII. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement. The Settlement Administrator will mail the Notice to each Class Member by First-Class U.S. Mail.[66] Any undeliverable Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address.[67] With respect to any undeliverable Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting a skip-trace, and re-mail the Notice to the Class Member within five (5) calendar days.[68] The Settlement Administrator will receive and process requests for exclusion, objections, and any disputes regarding Workweeks.[69]

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[70] The Settlement Administration Costs are currently estimated to

[63] Settlement Agreement, Exh. A.
[64] Ibid.
[65] Ibid.
[66] *Id.*, ¶ 17.a.
[67] *Id.*, ¶ 17.b.
[68] Ibid.
[69] *Id.*, ¶¶ 6.aa, 6.t. and 18.
[70] *Id.*, ¶¶ 6.aa, 6.t. and 18; Hosseini Decl., ¶ 26.

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410 West Arden Avenue, Suite 203
Glendale, California 91203

be Eight Thousand Dollars ($8,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.[71]

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Notice to the Class Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

IX. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.[72]

Within thirty (30) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with the following information for each Class Member: full name, last known mailing address, Social Security Number, dates worked for Defendant as an hourly-paid or non-exempt employee during the Class Period, the number of shifts worked during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks (collectively, "Class Data and List").[73]

Within forty-five (45) calendar days of receipt of the Class Data and List, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available for information to update and correct for any known or identifiable address changes, and will mail the Notice to the Class Members via First-Class U.S. Mail.[74] If a Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Notice to the forwarding address.[75] If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including

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[71] Settlement Agreement, ¶¶ 12. and 6.ff.
[72] *Id.*, ¶ 6.e.
[73] *Id.*, ¶ 6.c.
[74] *Id.*, ¶ 17.a.
[75] *Id.*, ¶ 17.b.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

but not limited to conducting a skip-trace, and re-mail the Notice to the Class Member within five (5) calendar days.[76] Class Members will have until the Response Deadline, or extended Response Deadline if (applicable), to submit a Request for Exclusion, dispute regarding Workweeks, and/or Notice of Objection.[77]

Defendant will make a one-time deposit of the Total Settlement Amount, together with an amount sufficient to pay Employer Taxes, into a settlement account to be established by the Settlement Administrator, within forty-five (45) calendar days after the Effective Date.[78] Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Settlement Class Members; (2) LWDA Payment to the Labor and Workforce Development Agency; (3) the Court-approved Enhancement Payment to Plaintiff; (4) the Court-approved Attorneys' Fees and Costs to Class Counsel; and (5) the Court-approved Settlement Administration Costs to itself.[79]

The Individual Settlement Payment checks will remain negotiable for one hundred and twenty (120) calendar days from the date of their issuance.[80] Checks that are not negotiated within the 120-day period will be cancelled.[81] The funds associated with such cancelled checks will be tendered by the Settlement Administrator to the Legal Aid at Work.[82]

X. APPOINTMENT OF CLASS REPRESENTATIVE

Plaintiff Roberto Hernandez respectfully requests that the Court appoint him as the Class Representative. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records, providing the facts and evidence necessary to attempt to prove the allegations.[83] Plaintiff actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.[84]

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[76] Settlement Agreement, ¶¶ 17.b.
[77] *Id.*, ¶¶ 6.aa, 6.t. and 18.
[78] *Id.*, ¶ 9.
[79] Ibid.
[80] *Id.*, ¶ 19.
[81] Ibid.
[82] *Id.*, ¶ 19.
[83] Hosseini Decl., ¶ 31; Declaration of Roberto Hernandez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Hernandez Decl."), ¶ 4.
[84] Hosseini Decl., ¶ 31; Hernandez Decl., ¶¶ 3-6.

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410 West Arden Avenue, Suite 203
Glendale, California 91203

XI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Roberto Hernandez as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, LWDA Payment, and Settlement Administration Costs; approve the proposed 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 schedule a Final Approval Hearing to take place in approximately six (6) months.

Dated: November 6, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________________
Yasmin Hosseini
Attorneys for Plaintiff

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203