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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,

Defendants.

Case No.: 34-2020-00281810-CU-OE-GDS

Honorable Jill H. Talley
Department 23

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Tara Zabehi); Declaration of Proposed Class Representative (Roberto Hernandez); and [Proposed] Order filed concurrently herewith]

Reservation ID:	A-281810-001
Date:	June 13, 2025
Time:	9:00 A.M.
Department:	23

Complaint Filed:	July 15, 2020
FAC Filed:	September 3, 2020
SAC Filed:	December 3, 2020
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on June 13, 2025 at 9:00 A.M. or as soon thereafter as the matter may be heard before the Honorable Jill H. Talley in Department 23 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 parties' Third Amended Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 5**" to the Declaration of Tara Zabehi in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the proposed total settlement amount, means of allocation and distribution of funds, 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;
- 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 Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class 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

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Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, Settlement Administration Costs to Settlement Administrator and PAGA Payment.

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 (Tara Zabehi) 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: March 17, 2025

LAWYERS *for* JUSTICE, PC

By: Tara Zabehi

Tara Zabehi
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Roberto Hernandez ("Plaintiff" or "Class Representative") seeks preliminary approval of the Third Amended 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 $780,000.00.[1] The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members[2]; (2) Enhancement Payment to Plaintiff in the amount of $6,000.00[3]; (3) attorneys' fees in the amount of 35% of the Total Settlement Amount, or $273,000.00, and reimbursement of any actual litigation costs and expenses not to exceed $45,000.00 ("Attorneys' Fees and Costs") to Class Counsel[4]; (4) the Settlement Administration Costs to the Settlement Administrator in the amount estimated to be up to $8,000.00;[5] and (5) the amount of $50,000.00 allocated to resolution of Plaintiff's Private Attorneys General Act ("PAGA") claim, of which 75% will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% will be distributed to 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 PAGA Period and who received at least one paycheck during the PAGA Period ("Aggrieved Employees").[6]

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").[7]

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[1] Settlement Agreement, attached as "**EXHIBIT A**" to Declaration of Tara Zabehi ("Zabehi Decl."), ¶ 6(ll).
[2] *Id.*, ¶ 9.
[3] *Id.*, ¶¶ 9 & 11.
[4] *Id.*, ¶¶ 9 & 10.
[5] *Id.*, ¶¶ 9 & 12.
[6] *Id.*, ¶¶ 9 & 13.
[7] *Id.*, ¶ 6(e). "Class Period" is defined as the period from September 18, 2014 through January 3, 2021. *See id.*, ¶ (g).

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 Class Member and/or Aggrieved Employee worked for Defendant as an hourly-paid or non-exempt employee at a location in California during the Class Period and/or PAGA Period ("Workweeks").[8]

Aggrieved Employees will receive a *pro rata* share of the 25% portion of the PAGA Payment ("Individual PAGA Payment") based on the Aggrieved Employees' Workweeks during the PAGA Period.[9]

The Settlement, upon final approval by the Court and funding of the Total Settlement Amount, will operate to resolve the Released Class Claims of Plaintiff and Settlement Class Members, Released PAGA Claims of Plaintiff, Aggrieved Employees, and the State of California, and the Released FLSA Claims, against the Released Parties.[10]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a supplier of appliance repair parts, including HVAC and plumbing supplies. Plaintiff is a former employee of Defendant.

On September 18, 2018, former Plaintiff Carmen Ramirez commenced a putative class action entitled *Carmen Ramirez v. Mar-Cone Appliance Parts Co.*, Superior Court of California for the County of Fresno, Case No. 18CECG03479 ("*Ramirez* Action") against Defendant.[11]

On November 1, 2018, Carmen Ramirez filed a First Amended Class Action Complaint for Damages in the *Ramirez Action*.[12]

On January 16, 2019, Defendant filed an Answer to former Plaintiff Carmen Ramirez's First Amended Class Action Complaint in the *Ramirez* Action.[13]

On March 4, 2019, former Plaintiff Carmen Ramirez propounded multiple sets of

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[8] Settlement Agreement, ¶¶ 6(t), 6(kk), and 6(mm).
[9] *Id*,. ¶¶ 6(r) and 15.
[10] See *id.* at ¶ 6(cc), for the full scope of the "Released Class Claims;" See *id.* at ¶ 6(dd), for the full scope of the "Released PAGA Claims;" See *id.* at ¶ 6(ee), for the full scope of the "Released FLSA Claims" and *id.* at ¶ 6(ff) for the definition of the "Released Parties.
[11] Zabehi Decl.. ¶ 8.
[12] *Id*,. ¶ 9.
[13] *Id*,. ¶ 10.

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discovery including Requests for Production of Documents (Set One); Special Interrogatories (Sets One and Two); and Form Interrogatories-General (Set One), on Defendant. On June 6, 2019, former plaintiff Carmen Ramirez propounded additional sets of Requests for Production of Documents (Set Two) and Special Interrogatories (Set Three) on Defendant, and noticed the deposition of Defendant's person(s) most knowledgeable. Thereafter, on April 5, 2019, May 10, 2019, August 6, 2019, September 26, 2019, and January 31, 2020 Defendant responded to former plaintiff Carmen Ramirez's discovery requests. On January 25, 2019, Defendant propounded Special Interrogatories (Set One) and Request for Production of Documents (Set One) on former plaintiff Carmen Ramirez, and on February 28, 2019, former plaintiff Carmen Ramirez provided her responses to the discovery requests. Furthermore, Class Counsel prepared for and took the depositions for Defendant's Regional Distribution Manager and Northern California Regional Branch Manager (who was also a Branch Manager in Sacramento until May 2019) over the course of three (3) separate days in August 2019 and December 2019, and prepared for and defended the deposition of former plaintiff Carmen Ramirez in February 2020. Parties also engaged in a Belaire-West privacy notice and opt-out process with a neutral third-party, Simpluris, Inc. (the same third-party proposed as the Settlement Administrator), and after this process was completed, the class contact information was produced to former plaintiff Carmen Ramirez and Class Counsel in October 2019.[14]

On May 7, 2020, Plaintiff Roberto Hernandez ("Plaintiff") provided written notice by certified mail to the LWDA and Defendant of the specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice").[15]

On June 10, 2020, Plaintiff and Defendant Mar-Cone Appliance Parts Co. (collectively with Plaintiff, "the Parties") participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the *Hernandez* Action which they seek approval of in

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[14] Zabehi Decl.. ¶ 11.
[15] *Id*,. ¶ 12.

the above-captioned Action.[16]

On July 15, 2020, Roberto Hernandez commenced a putative class and representative PAGA action entitled *Roberto Hernandez v. Mar-Cone Appliance Parts Co.*, Superior Court of California for the County of Sacramento ("Court"), Case No. 34-2020-00281810 (the "*Hernandez* Action" or "Action") against Defendant.[17]

On September 3, 2020, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., adding former plaintiff Carmen Ramirez as a named plaintiff in the Action.[18]

On December 3, 2020, Plaintiff filed a Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Action, adding Fair Labor Standards Act causes of action ("Operative Complaint").[19]

On February 17, 2022, the Superior Court of California for the County of Fresno dismissed the *Ramirez* Action in its entirety, and dismissed former Plaintiff Carmen Ramirez's individual claims and putative class claims in the *Ramirez* Action without prejudice.[20]

On February 22, 2022, the Court entered an order granting Plaintiff's Request for Dismissal of Carmen Ramirez's Claims, dismissing former Plaintiff Carmen Ramirez's individual claims and putative class claims in the *Hernandez* Action without prejudice.[21]

On November 14, 2022, Plaintiff filed his Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") and supporting documents seeking preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Original Agreement") entered into by the Parties.[22]

On December 8, 2022, the Court issued a tentative ruling wherein the Court denied Plaintiff's Motion for Preliminary Approval without prejudice and raised concerns regarding

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[16] Zabehi Decl.. ¶ 13.
[17] *Id*,. ¶ 14.
[18] *Id*,. ¶ 15.
[19] *Id*,. ¶ 16.
[20] *Id*,. ¶ 17.
[21] *Id*,. ¶ 18.
[22] *Id*,. ¶ 19.

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the Motion for Preliminary Approval, reasoning its denial on Participating Class Members receiving a single check that includes both the Class Action and PAGA Settlement, instead of two separate payments and releases.[23]

On November 7, 2023, Plaintiff filed his Renewed Motion for Preliminary Approval of Class Action Settlement ("Renewed Motion" or "Renewed Motion for Preliminary Approval") and supporting documents seeking preliminary approval of the First Amended Joint Stipulation of Class Action and PAGA Settlement and Release ("Amended Agreement") entered into by the Parties.[24]

On November 30, 2023, the Court issued a tentative ruling wherein the Court raised points of inquiry regarding the Motion for Preliminary of Approval, continued the hearing on Plaintiff's Motion for Preliminary Approval to February 2, 2024, and instructed Plaintiff's Counsel to file supplemental papers addressing the Court's concerns regarding Plaintiff's Renewed Motion for Preliminary Approval.[25]

On January 30, 2024, the Parties jointly stipulated to continue the February 2, 2024 hearing date and Plaintiff's deadline to file supplemental papers in support of their Motion for Preliminary Approval. The Court issued an order approving the stipulation on February 1, 2024 and the February 2, 2024 hearing was continued to March 15, 2024. However, on March 12, 2024, the Court issued a tentative ruling continuing the March 15, 2024 hearing to March 22, 2024.[26]

On March 21, 2024, the Court issued a tentative ruling denying Plaintiff's Motion for Preliminary Approval without prejudice for failure to file supplemental papers by the Court's given deadline of February 2, 2024.[27]

Plaintiff's core allegation is that Defendant has violated the California Labor Code, Industrial Welfare Commission Wage Orders, and Fair Labor Standards Act, by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, inter alia, failing to pay all overtime

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[23] Zabehi Decl.. ¶ 20 & 21.
[24] *Id*,. ¶ 22.
[25] *Id*,. ¶ 23.
[26] *Id*,. ¶ 24.
[27] *Id*,. ¶ 25.

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and minimum wages, 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 contend 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.[28]

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action are appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The Parties have actively litigated the matter since the *Ramirez* Action was commenced on September 18, 2018. On June 10, 2020, the Parties participated in arm's-length and informed negotiations with Mediator Paul Grossman, Esq. ("Mediator"), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Hernandez Action which they seek approval of in the above-captioned Action.[29]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Action.[30] 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 $273,000.00 (i.e., up to 35% of the Total Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed $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 $8,000.00 to the Settlement Administrator ("Settlement Administration Costs"); (3)

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[28] Zabehi Decl. ¶ 45.
[29] *Id*., ¶ 40.
[30] Settlement Agreement, ¶ 6(ll).

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PAGA Payment of $50,000.00 ("PAGA Payment"); and (4) payments in the amount of up to $6,000.00 to Plaintiff ("Enhancement Payment").[31] The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.[32]

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.[33]
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.[34]

The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employees' share of the 25% share of the PAGA Payment, in accordance with the Settlement Agreement and as follows:

The Settlement Administrator will divide the 25% of the PAGA Payment by the Workweeks of all Aggrieved Employees during the PAGA Period to yield the "PAGA Workweek Value," and multiply each Aggrieved Employee's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.[35]

The Parties agree, for purposes of this Settlement, that Individual Settlement Payments be allocated one-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.[36] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). The

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[31] Settlement Agreement, ¶¶ 6(v); see also, ¶¶ 10, 11, 12, & 13.
[32] *Id.*, ¶ 6(ii).
[33] *Id.*, ¶ 14(a).
[34] *Id.*, ¶ 14(b).
[35] *Id.*, ¶ 15.
[36] *Id*,, ¶ 26.

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employer's share of taxes and contributions on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total Settlement Amount. Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.[37] The Settlement Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement Agreement.[38] The Settlement Administrator will also be responsible for forwarding all payroll taxes, contributions, and withholdings to the appropriate government authorities.[39]

Individual Settlement Payment and Individual PAGA Payment checks will be valid and negotiable for one hundred and twenty (120) calendar days from the date the checks are issued, and thereafter, shall be cancelled.[40] All funds associated with such cancelled checks will be transmitted, pursuant to California Code of Civil Procedure Section 384, to Legal Aid at Work.[41]

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing ("Request for Exclusion").[42] 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 sixty (60) calendar days from the initial mailing of the Class Notice ("Response Deadline").[43] The Request for Exclusion must: (a) contain the case name and number of the Action, (b) be signed by the Class Member, (c) contain the full name, address, telephone number, and the last four digits of the Social Security Number of the Class Member requesting exclusion, (d) clearly state that the Class Member does not wish to be included in the Class Settlement, and (e) be returned by fax or mail to the Settlement Administrator at the specified

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[37] Settlement Agreement, ¶ 26.
[38] *Id.*, ¶ 27.
[39] *Ibid.*
[40] *Id.*, ¶ 20.
[41] *Ibid.*
[42] *Id.*, ¶ 21.
[43] *Id.*, ¶¶ 6(hh) & 21.

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address and/or facsimile number, postmarked or faxed on or before the Response Deadline.[44] A Class Member who does not request exclusion from the Class Settlement will be deemed a Settlement Class Member and will be bound by all terms of this Agreement, if the settlement is granted Final Approval by the Court.[45] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[46]

To object to the Class Settlement, Class Members who have not opted out of the Class Settlement (i.e., Settlement Class Members) must submit a timely and complete Notice of Objection to the Settlement Administrator, by fax or mail, on or before the Response Deadline or may present their objection orally at the Final Approval Hearing.[47] A Notice of Objection must include: (a) the case name and number of the Action; (b) the objector's full name, signature, address, and telephone number, (c) a written statement of all grounds for the objection accompanied by any legal support for such objection, and (d) copies of any papers, briefs, or other documents upon which the objection is based.[48]

In order to dispute Workweeks, Class Members and/or Aggrieved Employees must submit a written letter to the Settlement Administrator that: (a) contains the case name and number of the Action, (b) is signed by the Class Member and/or Aggrieved Employee, (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member and/or Aggrieved Employee, (d) clearly states that the Class Member and/or Aggrieved Employee disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her, (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct, and (f) is returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or fax-stamped on or before the Response Deadline.[49]

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[44] Settlement Agreement, ¶ 6(gg).
[45] *Ibid.*
[46] *Id.*, ¶ 21.
[47] *Id.*, ¶ 23.
[48] *Id.*, ¶ 6(w)
[49] *Id.*, ¶ 19.

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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). 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 Plaintiffs 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 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.

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V. 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.[50] Both sides used the pre-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.[51]

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.[52] The

[50] Zabehi Decl., ¶¶ 8-28.
[51] *Id.*., ¶¶ 40-42.
[52] *Id.*, ¶ 41.

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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.[53] Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.[54] 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.[55] 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.[56] 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.[57] Class Counsel also drafted pleadings and Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[58]

As referenced above, 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.[59] 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

[53] Zabehi Decl., ¶ 41
[54] *Ibid.*
[55] *Id.*, ¶ 11.
[56] *Ibid.*
[57] *Id.*, ¶ 41.
[58] *Ibid.*
[59] *Id.*, ¶ 40.

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.[60] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[61] 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.[62] 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.[63]

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.[64] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[65] Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, arbitration agreements, regular rate, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.[66] 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.[67]

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[60] Zabehi Decl., ¶ 40.
[61] *Ibid.*
[62] *Ibid.*
[63] *Ibid.*
[64] *Id.*, ¶ 44.
[65] *Ibid.*
[66] *Id.*, ¶ 42.
[67] *Id.*, ¶ 7(a)-(qq).

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B. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for a Total Settlement Amount of $780,000.00, represents a fair, adequate, and reasonable resolution of the matter.[68] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[69] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[70] Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[71]

Assuming that the Attorneys' Fees and Costs, Enhancement Payment, PAGA 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 $398,000.00.[72] Additionally, 25% of the PAGA Payment (i.e., Individual PAGA Payment), which is $12,500.00 out of $50,000.00, will be distributed to the Aggrieved Employees, for their respective portion of the PAGA Payment. The amount of each Settlement Class Member's Individual Settlement Payment and each Aggrieved Employees' Individual PAGA Payment will be calculated based on his or her Workweeks during the Class Period and PAGA Period, respectively.[73] 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, Aggrieved Employees, and the State of California.[74] Although the recommendations of Class Counsel are not

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[68] Zabehi Decl., ¶¶ 30 & 42.
[69] *Id.*, ¶¶ 40-41.
[70] *Ibid.*
[71] *Id.*, ¶ 40.
[72] *Id.*, ¶¶ 25 & 26.
[73] *Id.*, ¶ 15.
[74] *Id.*, ¶ 51.

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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 significant formal and informal discovery and exchanged thousands of pages of documents, data, and information prior to mediation.[75] 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.[76] As outlined in the Declaration of Tara Zabehi, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[77]

VI. **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.[78] 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 ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiff's claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by

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[75] Zabehi Decl., ¶¶ 40-41
[76] *Id.*, ¶ 49.
[77] *Id.*, ¶¶ 45-49(a)-(j).
[78] Settlement Agreement, ¶ 7-8.

individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the claims. 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 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 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). Defendant has estimated the Class size to be approximately 189 individuals, which is sufficiently numerous.[79] 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.[80]

B. The Class Members Share a Well-Defined Community of Interest.

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

[79] Zabehi Decl., ¶ 36.
[80] *Id.*, ¶ 35.

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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 were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.[81] 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.[82]

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.[83] As a result, 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. 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. Accordingly, the proposed Class shares a community of interest, and the Court should certify the Class for settlement purposes only.

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[81] Zabehi Decl., ¶ 37.
[82] *Ibid.*
[83] *Ibid.*

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VII. 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.[84] 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[85] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[86] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[87] Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[88]

The Settlement establishes a Total Settlement Amount of $780,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount up to 35% of the Total Settlement Amount (i.e., $273,000.00), and reimbursement of actual costs and expenses in an amount up to $45,000.00.[89] The attorneys' fees provided for by the Settlement is 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

[84] Zabehi Decl., ¶ 40.
[85] *Id.*, ¶ 40-41.
[86] *Ibid.*
[87] *Ibid.*
[88] *Id.*, ¶ 7(a)-(qq).
[89] Settlement Agreement, ¶ 10.

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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 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.[90]

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, supra, 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." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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, has been confirmed by the California Supreme Court. *Laffitte*, supra, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[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.*

[90] Settlement Agreement, Exh. A.

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(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.[91] 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.

VIII. THE PROPOSED CLASS 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 Class Notice[92] 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.[93]

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make

[91] Zabehi Decl., ¶ 31.
[92] Settlement Agreement, Exh. A.
[93] *Ibid.*

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an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[94] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[95] The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment is calculated and the number of Workweeks credited to them.[96]

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 ("The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit."). Accordingly, the Court should approve the proposed Class Notice.

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

The Parties have selected Simpluris to administer the Settlement. The Settlement Administrator will mail the Class Notice to each Class Member and Aggrieved Employee by First-Class U.S. Mail.[97] Within forty-five (45) calendar days of receipt of the Class List, the Settlement Administrator will perform an NCOA check or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail the notice to the Class Members setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the Class Settlement.[98] The Settlement Administrator will skip-trace returned mail and re-mail the notice to the new addresses within five (5) calendar days.[99] In the case of a re-mailed Class Notice, the Response

94 Settlement Agreement, Exh. A..
95 *Ibid.*
96 *Ibid.*
97 *Id.*, ¶ 18.
98 *Ibid.*
99 *Id.*, ¶ 18(b).

Deadline shall be extended by 15 calendar days.[100] The Settlement Administrator will receive and process requests for exclusion, objections, and any disputes regarding Workweeks.[101]

With respect to any undeliverable Class 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.[102]

The Settlement Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for this 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 set forth to process the settlement, and as requested by the Parties. [103] The Settlement Administration Costs are currently estimated to be $8,000.00 and will be paid out of the Total Settlement Amount, subject to approval by the Court.[104]

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 Aggrieved Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, Plaintiff seeks 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 and Aggrieved Employees based on Defendant's records.[105]

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 a complete list of all

[100] Settlement Agreement, ¶ 6(hh).
[101] *Id.*, ¶¶ 19, 21 & 23.
[102] *Id.* ¶ 18(b).
[103] *Id.*, ¶¶ 12.
[104] *Id.*, ¶¶ 12 & 6(v).
[105] *Id.*, ¶ 18.

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Class Members and Aggrieved Employees, which will include the following information for each Class Member and Aggrieved Employee: 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").[106]

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 Class Notice in English to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.[107] With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.[108] 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.[109]

Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement Agreement.[110] 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.[111] Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement Administrator will issue payments due under the settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b)

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[106] Settlement Agreement, ¶¶ 6(d) & 17.
[107] *Id.*, ¶ 18.
[108] *Id.*, ¶ 18(b).
[109] *Id.*, ¶ 6(hh).
[110] *Id.*, ¶ 9.
[111] *Id.*, ¶¶ 9 & 26.

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Individual PAGA Payment to Aggrieved Employees, (c) LWDA Payment to the Labor and Workforce Development Agency; (d) Enhancement Payment to Plaintiff; and (e) Attorneys' Fees and Costs to Class Counsel.[112] The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the settlement.[113]

Individual Settlement Payment and Individual PAGA Payment checks will remain valid and negotiable for one hundred and twenty (120) calendar days from the date of their issuance, and thereafter shall be cancelled.[114] All funds associated with such cancelled checks will be transmitted, pursuant to California Code of Civil Procedure Section 384, to Legal Aid at Work.[115]

XI. <u>APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR AN ENHANCEMENT PAYMENT</u>

Plaintiff Roberto Hernandez respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to $6,000.00.[116] It is within the Court's discretion to award payment to a Class Representative for his efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single Class Representatives). The factors that courts may consider in determining whether to make an Enhancement Payment 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.*

The Enhancement Payment is fair and appropriate. 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.[117] Plaintiff actively tried to obtain and provide

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[112] Settlement Agreement, ¶ 9.
[113] *Ibid.*
[114] *Id.*, ¶ 20.
[115] *Ibid.*
[116] *Id.*, ¶ 11.
[117] Zabehi Decl., ¶ 32; Declaration of Roberto Hernandez in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Hernandez Decl."), ¶ 3.

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information that would facilitate the pursuit of the class and PAGA claims.[118] Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for his services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to his individual settlement payment.

XII. 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, PAGA Payment, and Settlement Administration Costs; 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 schedule a Final Approval Hearing to take place in approximately six (6) months.

Dated: March 17, 2025

LAWYERS *for* JUSTICE, PC

By: Tara Zabehi

Tara Zabehi
Attorneys for Plaintiff

[118] Zabehi Decl., ¶ 32; Hernandez Decl., ¶¶ 2-5.