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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

RICARDO RAMIREZ, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

vs.

VICTORY DESIGN, INC. DBA DESIGNING MANUFACTURING INSTALLATION an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

RICARDO RAMIREZ, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

VICTORY DESIGN, INC. DBA DESIGNING MANUFACTURING INSTALLATION an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVDS2019970 (Class Action)
[Consolidated with Case No. CIVSB2100178]

Honorable Joseph T. Ortiz
Department S-17

<u>**CLASS ACTION**</u>

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

[Declaration of Proposed Class Counsel (Helene Mayer); Declaration of Proposed Class Representative (Ricardo Ramirez); and [Proposed] Order filed concurrently herewith]

Date:	September 18, 2024
Time:	1:30 p.m.
Dept:	S-17
Class Action Filed:	September 21, 2020
PAGA Action Filed:	January 8, 2021
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on September 18, 2024 at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Joseph T. Ortiz in Department S-17 of the Superior Court of California for the County of San Bernardino located at 247 West Third Street, San Bernardino, Plaintiff Ricardo Ramirez ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class and representative action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Helene Mayer, 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 ("PAGA Penalties"), Attorneys' Fees and Litigation Costs, Enhancement Payment, and Administration Costs;
- Certifying the Class for settlement purposes;
- Appointing Plaintiff Ricardo Ramirez as Class Representative;
- 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 and PAGA 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

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for Attorneys' Fees and Litigation Costs, Enhancement Payment, Administration Costs, and allocation for the PAGA Penalties.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of the settlement of a putative class action, allows the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Helene Mayer) and the Proposed Class Representative (Ricardo Ramirez) 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: August 19, 2024

LAWYERS *for* JUSTICE, PC

By: Helene Mayer
Helene Mayer
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Ricardo Ramirez ("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 Victory Design, Inc. DBA Designing Manufacturing Installation ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to settle this lawsuit for a Total Settlement Amount of Eight Hundred Thousand Dollars and Zero Cents ($800,000.00).[1] The Total Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members, which will be distributed from the Net Settlement Amount,[2] (2) attorneys' fees in the amount of up to thirty-five percent (35%) of the Total Settlement Amount, or $280,000.00, and reimbursement of any actual litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) (collectively, "Attorneys' Fees and Litigation Costs") to Class Counsel,[3] (3) Administration Costs to Settlement Administrator in the amount not to exceed Fifteen Thousand Dollars and Zero Cents ($15,000.00),[4] (3) Enhancement Payment of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Plaintiff,[5] and (4) the amount of One Hundred Twenty Thousand Dollars and Zero Cents ($120,000.00) allocated to penalties allocated under the California Labor Code Private Attorneys General Act of 2004 ("PAGA

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Helene Mayer ("Mayer Decl."), ¶¶ I.AA. & VIII. Defendant estimates that there are 16,209 workweeks during the period from September 21, 2016 to February 21, 2023. Should the qualifying workweeks increase beyond 10% worked by the Class Members during the Class Period (i.e., more than 1,621 workweeks), Defendant shall have the option to either: (1) increase the Total Settlement Amount on a pro-rata basis equal to the percentage increase in the number of workweeks worked by the Class Members above ten percent (10%), meaning Defendant will increase the Total Settlement Amount by the percentage amount above ten percent (10%) (e.g., if the number of workweeks increases by 11% to 17,992 workweeks, the Total Settlement Amount will increase by one percent (1%)); or (2) to close the Class Period as of the last date before the increase set forth in option (1) would otherwise apply, i.e., the date on which the number of workweeks worked by Class Members since September 21, 2016 reaches 17,830. See *id*., ¶ VIII.B.

[2] *Id*., ¶ I.L.

[3] *Id*., ¶ XIV.

[4] *Id*., ¶ IX.

[5] *Id*., ¶ XV.

Penalties"), of which seventy-five percent (75%) (i.e., $90,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) (i.e., $30,000.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant within the State of California employed at any time during the PAGA Period ("PAGA Members")[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 of Defendant within the State of California employed at any time during the Class Period ("Class Members" or "Class").[7]

Based on information provided by Defendant, the Class is estimated to consist of approximately one hundred fifty-three (153) individuals, and the PAGA Members are estimated to be ninety-three (93) individuals.[8]

Class Members who do not submit a timely and valid Request for Exclusion (i.e., "Settlement Class Members") will receive a *pro rata* payment of the Net Settlement Amount ("Individual Settlement Payment") based on the number of Workweeks in the Class List that Defendant provides to the Settlement Administrator ("Workweeks").[9] The Net Settlement Amount refers to the Total Settlement Amount, less the following amounts subject to approval by the Court: Attorneys' Fees and Litigation Costs to Class Counsel, Administration Costs to the Settlement Administrator, Enhancement Payment to Plaintiff, and PAGA Penalties.[10]

PAGA Members who were employed by Defendant during the PAGA Period will receive a *pro rata* share of twenty-five percent (25%) of the PAGA Penalties (i.e., $30,000) ("Individual PAGA Payments") based on the number of Pay Periods in the Class List that Defendant provides to the Settlement Administrator ("PAGA Pay Periods").[11] The remaining

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[6] Settlement Agreement, ¶ XVII. "PAGA Period" means the period from September 17, 2019 through April 15, 2024, or another date selected pursuant to Paragraph VIII.B of the Settlement Agreement. See *id.*, ¶ I.U.

[7] *Id.*, ¶ I.D. Class Period" means the period from September 21, 2016 through April 15, 2024, or another date selected pursuant to Paragraph VIII.B of the Settlement Agreement. See *id.*, ¶ I.F.

[8] Mayer Decl., ¶ 9.

[9] Settlement Agreement, ¶¶ I.L, I.R, & I.BB.

[10] *Id.*, ¶ I.O.

[11] *Id.*, ¶¶ I.M, I.T, & I.V.

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seventy-five percent (75%) of the PAGA Penalties (i.e., $90,000) shall be paid to the California Labor and Workforce Development Agency ("LWDA")[12].

The Settlement resolves the Released Class Claims of Plaintiff and Settlement Class Members and the Released PAGA Claims of Plaintiff, PAGA Members, and the State of California against the Released Parties.[13]

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement and provisional certification of the Class for settlement purposes, Plaintiff also moves for an order permitting the filing of this memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d).

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides specialty architectural ornamentation and thematic features. Defendant offers design, scanning, structural and ornamental metalwork, modeling, milling, finishing, and installation services. Plaintiff Ricardo Ramirez is a former employee of Defendant.

On September 17, 2020, Plaintiff Ricardo Ramirez sent a letter to the LWDA, pursuant to California Labor Code section 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.*, for Defendant's alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 1-2001, 4-2001, and 16-2001, thereby commencing LWDA Case No. LWDA-CM-806757-20.

On September 21, 2020, Plaintiff filed Case No. CIVDS2019970 in San Bernardino County Superior Court, which is a wage and hour class action against Defendant (the "*Ramirez* Class Action"). In the *Ramirez* Class Action, Plaintiff alleges, *inter alia*, on behalf of himself and all others similarly situated, that Defendant violated California state wage and hour laws and the California Business and Professions Code Section 17200 *et seq*. as a result of

[12] Settlement Agreement, ¶ I.V.

[13] See *id.* at ¶¶ VII.A & VII.B. See *id.* at ¶ I.X, for the full scope of the "Released Class Claims," id. at ¶ I.Y for the full scope of the "Released PAGA Claims", and id. at ¶ I.Z, for the definition of the "Released Parties."

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Defendant's California wage and hour policies and practices. Specifically, Plaintiff alleged that Defendant violated the following provisions of the California Labor Code: (1) California Labor Code sections 510 and 1198 (failure to pay overtime); (2) California Labor Code sections 226.7 and 512(a) (failure to provide compliant meal periods and associated premiums); (3) California Labor Code section 226.7 (failure to provide rest periods and associated premiums); (4) California Labor Code sections 1194, 1197, and 1197.1 (failure to pay minimum wages); (5) California Labor Code sections 201 and 202 (failure to timely pay final wages); (6) California Labor Code section 204 (failure to timely pay wages during employment); (7) California Labor Code section 226(a) (failure to provide accurate wage statements); (8) California Labor Code section 1174(d) (failure to keep requisite payroll records); (9) California Labor Code sections 2800 and 2802 (failure to reimburse necessary business expenses); and (10) California Business & Professions Code sections 17200, *et seq*.

On January 8, 2021, Plaintiff filed Case No. CIVSB2100178 in San Bernardino County Superior Court (the "*Ramirez* PAGA Action"), alleging a single representative cause of action under Private Attorneys General Act, California Labor Code section 2698, *et seq*. ("PAGA") action against Defendant.

In order to effectuate and facilitate the settlement approval process, the Parties have filed a Joint Stipulation To Consolidate Case Numbers CIVDS2019970 And CIVSB2100178 to consolidate the *Ramirez* Class Action and *Ramirez* PAGA Action (together, the "Actions") for purposes of settlement approval and entry of judgment based thereon and to deem the *Ramirez* Class Action, Case No. CIVDS2019970, the lead case for case administration and filing purposes.

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal period and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and

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thereby engaged in unfair business practices under the California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he, the Class Members, and the PAGA Members are entitled to, *inter alia*, unpaid wages, penalties (including, and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated this matter since the *Ramirez* Class Action was commenced on September 21, 2020. The Parties have conducted significant formal and informal discovery and investigation into the claims. Plaintiff propounded multiple sets of formal written discovery requests and noticed the deposition of Defendant's Person Most Knowledgeable designee. The Parties engaged in extensive discussions about the strengths and weaknesses of Plaintiff's claims and Defendant's defenses thereto, to try to resolve the Actions. Ultimately, the Parties reached the proposed Settlement described herein to resolve the Actions in their entirety.

IV. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount in the amount of Eight Hundred Thousand Dollars and Zero Cents ($800,000.00)[14] to resolve the Released Class Claims of Plaintiff and the Class Members who do not opt out of the Settlement (i.e., Settlement Class Members) and Released PAGA Claims of Plaintiff, the State of California, and PAGA Members with respect to the Released Parties.[15] 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 and Litigation Costs, which consists of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement

[14] Settlement Agreement, ¶ I.AA.
[15] *Id*., ¶¶ VII.A & VII.B.

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Amount (i.e., $280,000.00) and reimbursement of actual litigation costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) to Class Counsel; (2) Enhancement Payment of up to Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Plaintiff; (3) PAGA Penalties of One Hundred Twenty Thousand Dollars and Zero Cents ($120,000.00); and (4) Administration Costs, which are currently estimated not to exceed Fifteen Thousand Dollars and Zero Cents ($15,000.00) to the Settlement Administrator.[16] The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.[17]

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

a. The Defendant will calculate the number of Workweeks for Class Member and include this information in the Class List.[18]
b. The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks of all Settlement Class Members ("Class Workweek Point Value").[19]
c. Each Settlement Class Member's individual Workweeks will be multiplied by the Class Workweek Point Value to arrive at their Individual Settlement Payment. Individual Settlement Payments for each Settlement Class Member will be reduced by any required legal deductions for the Employer Taxes and withholdings on the wages portion of the Individual Settlement Payments.[20]

Each PAGA Member will be entitled to a *pro rata* share of twenty-five percent (25%) of the PAGA Penalties (i.e., $30,000.00) ("Employee PAGA Amount") as follows:

a. Defendant will calculate the number of Pay Periods of each PAGA Member and include this information in the Class List.[21]
b. The value of each PAGA Pay Period shall be determined by the Settlement Administrator by dividing the Employee PAGA Amount by the total number of PAGA Pay Periods of all PAGA Members ("PAGA Pay Period Point Value").[22]
c. Each PAGA Group PAGA Pay Periods will be multiplied by the PAGA Pay Period Point Value to arrive at their Individual PAGA Payment.[23]

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[16] Settlement Agreement, ¶¶ I. A., I.I, I.V., & I.A.
[17] *Id.*, ¶ I.Q.
[18] *Id.*, ¶ XII.A.1.
[19] *Id.*, ¶ XII.A.2.
[20] *Id.*, ¶ XII.A.3.
[21] *Id.*, ¶ XII.B.1.
[22] *Id.*, ¶ XII.B.2.
[23] *Id.*, ¶ XII.B.3.

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Each Settlement Class Member's Individual Settlement Payments will be allocated as follows: twenty percent (20%) wages, which will be reported on an IRS Form W-2; and eighty percent (80%) penalties, interest, and non-wage damages which will be reported on an IRS Form 1099.[24] Each PAGA Member's Individuals PAGA Payment will be allocated as one hundred percent (100%) penalties, will be reported on an IRS Form 1099, and will be paid out without reduction for any taxes or withholdings.[25] Settlement Class Members will be issued payment of their Individual Settlement Payments subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.[26] The employer's share of payroll taxes with respect wages portion of the Settlement ("Employer Taxes") will be paid by Defendant separately and in in addition to the Total Settlement Amount.[27]

The payment checks issued to Settlement Class Members and PAGA Members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and thereafter, the checks will be cancelled.[28] The funds remaining and associated with cancelled Individual Settlement Payment and/or Individual PAGA Payment checks will be paid to Legal Aid Association of California, after the Court enters an order approving the Parties' stipulation to amend the judgement, which Parties shall prepare and file in accordance with California Code of Civil Procedure section 384.5, et seq.[29] Legal Aid Association of California is the statewide membership organization of legal services nonprofits, which provide critical legal assistance to low-income Californians and ensure equal access to justice.

Class Members who wish to be excluded from the Class Settlement (i.e., opt out), must notify the Settlement Administrator by submitting a written request for exclusion from the Class Settlement ("Request for Exclusion") that must: (1) contain the case name and number of the Action; (2) contain the Class Member's full name, address, telephone number, and last four

[24] Settlement Agreement, ¶ XVI.C.
[25] *Id.*, ¶ XVI.D.
[26] *Id.*, ¶ XVI.A.
[27] *Id.*, ¶ VIII.A.
[28] *Id.*, ¶ XII.D.3.
[29] *Id.*, ¶ XII.D.3.

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digits of their Social Security number; (3) be signed by the Class Member or their authorized representative; (4) contain a clear statement that the Class Member requests to be excluded from the Class Settlement; and (5) be sent to the Settlement Administrator, postmarked by no later than the Response Deadline.[30] Any Class Member who timely and validly submits a Request for Exclusion will not be entitled to an Individual Settlement Payment, will not be bound by the Class Settlement, and will not have any right to object, appeal, or comment thereon.[31] Notwithstanding the foregoing, any Class Member who does not submit and valid Request for Exclusion to the Settlement Administrator will be deemed bound to the Class Settlement in accordance with Settlement.[32] All PAGA Members shall be bound to the PAGA Settlement regardless of their decision to participate in the Class Settlement.[33]

Only Class Members who do not submit a Request for Exclusion (i.e., Settlement Class Members) may object to the Class Settlement.[34] Settlement Class Members may send a written objection to the Settlement Administrator or appear at the Final Approval Hearing with or without submitting a written objection to the Class Settlement.[35] A written objection must: (1) contain the case name and number of the Action; (2) contain the Settlement Class Member's full name, address, telephone number, signature, and last four digits of their Social Security number; (3) clearly state the grounds for the objection; (4) state whether the Settlement Class Member intends to appear at the Final Approval Hearing; and (5) be mailed to the Settlement Administrator, postmarked no later than the Response Deadline.[36] If a Class Member objects to the Class Settlement, the Class Member will remain a Settlement Class Member and if the Court approves the Settlement, the Settlement Class Member will be bound by the terms of the Class Settlement in the same way and to the same extent as a Settlement Class Member who does not object to the Class Settlement.[37]

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[30] Settlement Agreement, ¶ X.C.1.
[31] *Id.*, ¶ X.C.2.
[32] *Id.*, ¶ X.C.3.
[33] Ibid.
[34] *Id.*, ¶ X.B.
[35] Ibid.
[36] Ibid.
[37] Ibid.

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Class Members and/or PAGA Members who wish to dispute the number of Workweeks credited to them in the Class Period and/or the number of Pay Periods credited to them for the PAGA Period, which will be set forth in the Class Notice, must submit a written Workweeks Dispute, which must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, address, telephone number, signature, and last four digits of their Social Security number; (c) contain a statement setting forth the number of Workweeks during the Class Period and/or Pay Periods during the PAGA Period that they contend is correct and attaches any relevant documentation in support thereof; and (d) be submitted to the Settlement Administrator by mail, postmarked no later than the Response Deadline.[38] Upon timely receipt of any Workweeks Dispute, the Settlement Administrator, in consultation with Class Counsel and counsel for Defendant, will review the pertinent records showing the dates the Class Member worked for Defendant in California and the number of Workweeks and/or Pay Periods worked, which records Defendant agrees to make available to the Settlement Administrator and Class Counsel solely for this limited purpose.[39] After consulting with Class Counsel and counsel for Defendant, the Settlement Administrator shall compute the number of Workweeks to be used in computing the Class Member's *pro rata* share of the Net Settlement Amount and the number of Pay Periods to be used in computing the *pro rata* share of the Employee PAGA Amount.[40] In the event that there is a disparity between the number of Workweeks a Class Member claims they worked during the Class Period and/or number of Pay Periods a PAGA Member claims they worked during PAGA Period and the number of Workweeks and/or Pay Periods indicated by Defendant's records, records will control unless inconsistent with verifiable records provided by the Class Member and/or PAGA Member (or bona fide copies thereof), in which case the records provided by the Class Member and/or PAGA Member will be considered and the Settlement Administrator shall determine which records control.[41] The Settlement Administrator's decision as to the number of Workweeks and/or Pay Periods to be credited to a

[38] Settlement Agreement, ¶¶ I.C & XI.A.
[39] *Id.*, ¶ XI.B.
[40] *Id.*, ¶ XI.C.
[41] Ibid.

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Class Member and/or PAGA Member shall be final and non-appealable.[42] The Settlement Administrator shall send written notice of the decision on any such dispute to the Class Member and/or PAGA Member, to Class Counsel, and counsel for Defendant within ten (10) calendar days of receipt of the Workweeks Dispute.[43]

V. <u>LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS</u>

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). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

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

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[42] Settlement Agreement, ¶ XI.C..
[43] Ibid.

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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.

VI. 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

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

The Parties actively litigated this matter since the *Ramirez* Class Action was commenced on September 21, 2020. 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 case for class certification and trial. [44]

Prior to engaging in mediation, Class Counsel conducted significant investigation into the facts of the case and engaged in extensive formal and informal discovery and review and analysis of a large volume of documents and data produced by Defendant.[45] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a detailed sampling of Plaintiff's and other Class Members' time and pay data, Defendant's Employee Handbook, internal memoranda, new hire checklists, job descriptions, company policy acknowledgments, forms, and procedures and policies, among other information and documents.[46] Class Counsel had the opportunity to conduct interviews to gather facts and to identify potential witnesses.[47] Counsel for the Parties 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.[48] Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[49]

The Parties also engaged in extensive settlement negations participated in a formal, full-day mediation conducted by Hon. Daniel Buckley (Ret.), a well-respected mediator experienced

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[44] Mayer Decl., ¶¶ 11-13.
[45] *Id.*, ¶ 12.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.

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in mediating complex labor and employment matters.[50] In the course of litigation and in connection with mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, 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, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[51] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[52] 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.[53] After conducting investigations, formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[54]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.[55] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[56] 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 PAGA representative actions, class certification, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts

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[50] Mayer Decl., ¶ 10.
[51] *Id.*, ¶ 11.
[52] Ibid.
[53] *Id.*, ¶¶ 11, 16-18.
[54] Ibid.
[55] Ibid.
[56] Ibid.

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discovered.[57] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[58]

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

The Total Settlement Amount of Eight Hundred Thousand Dollars and Zero Cents ($800,000.00) represents a fair, adequate, and reasonable resolution of this case.[59] The Settlement was calculated using the information and data uncovered during the litigation, case investigation, as well as the formal and informal exchange of information.[60] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this case at issue.[61] Moreover, considering all of the facts and circumstances of this case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[62]

Assuming that the Attorneys' Fees and Litigation Costs, Enhancement Payment, PAGA Penalties, and 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 Three Hundred Fifty-Two Thousand Five Hundred Dollars and Zero Cents ($352,500.00).[63] 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 Payment will be calculated based on his or her total number of Workweeks and the Workweeks of all Settlement Class Members and the amount of each PAGA Member's Individual PAGA Payment will be based on his or her total number of PAGA Pay Periods and PAGA Pay Periods of all PAGA Members.[64] There is no reason to doubt the fairness of the proposed plan of allocation

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[57] Mayer Decl., ¶¶ 12-14 & 17-19.
[58] *Id.*, ¶¶ 7-8.
[59] *Id.*, ¶¶ 11-13, & 16-18.
[60] *Id.*, ¶¶ 11-13.
[61] *Id.*, ¶¶ 16-18.
[62] *Id.*, ¶¶ 11, 13, & 21.
[63] *Id.*, ¶ 14.
[64] Settlement Agreement, ¶¶ XII.A.2 & XII.B.2.

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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.[65] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and significant discovery and investigation have been completed. *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 formal and informal discovery, and exchanged a large volume of documents, data, and information in the course of litigation and in connection with mediation and settlement discussions.[66] The discovery and information that Class Counsel obtained from Defendant and through 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 defenses thereto.[67] As outlined in the Declaration of Helene Mayer, Class Counsel performed an extensive analysis of each claim pursuant to *Kullar* prior to entering into the Settlement.[68]

VII. 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.[69] California Code of Civil Procedure Section 382 "authorizes class actions when the question is

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[65] Mayer Decl., ¶¶ 12, 14, & 22.
[66] *Id.*, ¶¶ 11-13 & 18.
[67] *Id.*, ¶ 18.
[68] *Id.*, ¶¶ 11-13 & 16-18.
[69] Settlement Agreement, ¶ IV.A.

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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 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 case. The Class is amenable to class certification for settlement purposes as discussed below.

A. <u>The Class Is Ascertainable and Sufficiently Numerous.</u>

"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). Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid and non-exempt employees in California during the Class Period. As such, the Settlement Class is ascertainable and sufficiently numerous.

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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 Defendants' 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 Actions. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiff contends that all of the putative 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.[70] 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 and after employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business-related expenses.[71]

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[70] Mayer Decl., ¶ 16.
[71] Ibid.

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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.[72] 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.[73]

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 and non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VIII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND LITIGATION COSTS

Class Counsel have litigated the Actions for approximately three (3) years and was actively preparing the matter for class certification and trial.[74] 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 case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant, noticing the deposition of Defendant's Person Most Knowledgeable designee, and reviewing a large volume of documents and data.[75] Class Counsel also interviewed and obtained information from Plaintiff and other sources, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to mediation.[76] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[77]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result.[78]

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[72] Mayer Decl., ¶ 16.
[73] Ibid.
[74] *Id.*, ¶¶ 11-13.
[75] *Id.*, ¶ 12.
[76] Ibid.
[77] *Id.*, ¶ 11.
[78] *Id.*, ¶¶ 6-7.

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The Settlement establishes a Total Settlement Amount of Eight Hundred Thousand Dollars and Zero Cents ($800,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and Litigation Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Total Settlement Amount (i.e., $280,000.00) and an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) for costs and expenses.[79] The Attorneys' Fees and Litigation Costs award provided for by the Settlement is commensurate with (1) the risk that Class Counsel took in bringing and litigating this case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Class Notice provides the Class Members with information about the amount allocated toward attorneys' fees, and that Attorneys' Fees and Litigation Costs will be sought, as provided for by the Settlement.[80]

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

[79] Settlement Agreement, ¶ XIV.
[80] *Id*., Exh. A.

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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 AntitSimpluris Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement amount); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement amount 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 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.[81]

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for attorneys' fees and costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the Attorneys' Fees and Litigation Costs provided

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[81] Mayer Decl., ¶ 19.

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for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

IX. 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[82] describes the Settlement, the deadlines and procedures to object to the Class Settlement, submit a Request for Exclusion from the Class Settlement, submit a Workweeks Dispute, and the date and time set for the Final Approval Hearing.[83]

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 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.[84] The proposed Class Notice recognizes that the Court has not yet granted final approval of the Settlement.[85] The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payment and, if applicable, their share of the Employee PAGA Portion are calculated and the number of Workweeks and PAGA Pay Periods, if applicable, credited to them.[86]

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); *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

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[82] Settlement Agreement, Exh. A.
[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Ibid.

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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.

X. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris ("Settlement Administrator") to administer the Settlement.[87]

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. Mail.[88] Prior to mailing the Class Notice to the Class Members, the Settlement Administrator will use the National Change of Address Database to update or correct the addresses of the Class Member.[89] With respect to Class Notice that are returned as undeliverable within thirty (30) calendar days after the initial mailing, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address within three (3) business days of receipt of the returned mail.[90] If the Settlement Administrator is successful in locating an updated address, it will re-mail the Class Notice to the Class Member as soon as possible. Further, any Class Notices returned with a forwarding address to the Settlement Administrator before the Response Deadline shall be re-mailed to the forwarding address affixed thereto.[91] The Settlement Administrator will receive Workweek Disputes, Requests for Exclusions, and/or written objections.[92]

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes thereon; mail the payment checks to Settlement Class Members and PAGA Members; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Litigation Costs, Enhancement Payment, and PAGA Penalties; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.[93] The Administration Costs are currently

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[87] Settlement Agreement, ¶ I.Q.
[88] *Id.*, ¶ X.A.2.
[89] Ibid.
[90] *Id.*, ¶ X.A.4.
[91] Ibid.
[92] *Id.*, ¶ IX.
[93] Mayer Decl., ¶ 15.

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estimated to be Fifteen Thousand Dollars and Zero Cents ($15,000.00) and will be paid out of the Total Settlement Amount, subject to approval by the Court.[94]

Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris as the Settlement Administrator and direct the mailing of the Class 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.

XI. 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 Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.[95]

Within twenty-one (21) 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 Class Members that will include, to the extent available to Defendant, each Class Member's (1) full name; (2) last known address; (3) last known telephone number; (4) Social Security number; (5) start and end dates of employment, (6) the number of Workweeks worked during the Class Period; and (7) number of Pay Periods during the PAGA Period (collectively, "Class List").[96]

Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First Class U.S. Mail.[97] Any Class Notice returned to the Settlement Administrator as undeliverable within thirty (30) calendar days after the initial mailing, Settlement Administrator will perform a skip trace in an attempt to locate a more current address within three (3) business days of receipt of the returned mail.[98] Any Class Notice returned with a forwarding address to the Settlement Administrator before the Response

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[94] Settlement Agreement, ¶ IX.
[95] *Id.*, ¶ X.A.
[96] *Id.*, ¶ X.A.1.
[97] *Id*, ¶ X.A.2.
[98] *Id.*, ¶ X.A.4.

Deadline shall be re-mailed to the forwarding address affixed thereto.[99] Class Members will have sixty (60) calendar days from the original mailing of the Class Notice to submit Workweeks Disputes, Requests for Exclusion, and/or written objections ("Response Deadline"), or if the Class Notice is re-mailed, the Response Deadline for the Class Member whose Class Notice is re-mailed will be extended an additional fifteen (15) calendar days from the original Response Deadline.[100]

Defendant will deposit the Total Settlement Amount within sixty (60) calendar days after the Effective Date[101] into a qualified settlement account established by the Settlement Administrator.[102] Within ten (10) calendar days after Defendant deposits the funds comprising the Total Settlement Amount into a qualified settlement fund, the Settlement Administrator will distribute the Court-approved Attorney's Fees and Litigation Costs to Class Counsel; Court-approved Administration Costs to the Settlement Administrator; LWDA Payment to the LWDA, Individual Settlement Payments to Settlement Class Members and the Individual PAGA Payments to PAGA Members.[103]

The payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance.[104] Such checks will automatically be cancelled if not cashed or deposited by the Class Member within the 180-day period, and the funds associated with such cancelled checks will be paid to Legal Aid Association of California.[105]

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

Plaintiff Ricardo Ramirez respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the request for Enhancement Payment in an amount up to Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Plaintiff as provided

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[99] Settlement Agreement, ¶ X.A.4.
[100] *Id.*, ¶ X.A.5.
[101] See *id.*, ¶ I.I for the definition of "Effective Date."
[102] *Id.*, ¶ XII.C
[103] *Id.*, ¶ XII.D.1.
[104] *Id.*, ¶ XII.D.3.
[105] Ibid.

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for by the Settlement.[106] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 (approving $50,000 participation award to a single class representative). 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 to Plaintiff is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[107] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would benefit the Class.[108] Accordingly, it is appropriate and just for Plaintiff to receive reasonable Enhancement Payment for his services on behalf of the Class, in addition to his Individual Settlement Payment and Individual PAGA Payment, if applicable.

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[106] Settlement Agreement, ¶ XV.

[107] Mayer Decl., ¶ 20; Declaration of Ricardo Ramirez In Support Of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Ramirez Decl.")., ¶¶ 3-4.

[108] Mayer Decl., ¶ 20; Ramirez Decl, ¶¶ 3,4, & 7.

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XIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; certify the Settlement Class for settlement purposes; preliminarily appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Ricardo Ramirez as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Litigation Costs, Enhancement Payment, PAGA Penalties, and 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; schedule a Final Approval Hearing to take place in approximately five (5) months; and permit the filing of a memorandum that exceeds the page limit.

Dated: August 18, 2024

LAWYERS *for* JUSTICE, PC

By: Helene Mayer
Helene Mayer
Attorneys for Plaintiff

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