Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Vartan Madoyan (SBN 279015)
LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

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

Plaintiff,

vs.

RYDER TRUCK RENTAL, INC., a Florida corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV22972

Honorable Stuart M. Rice
Department SSC-1

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/PAGA Counsel (Vartan Madoyan); Declaration of Proposed Class Representative (Amit Singh); and [Proposed] Order filed concurrently herewith]

Date:	March 24, 2025
Time:	10:30 a.m.
Department:	SSC-1
Complaint Filed:	June 17, 2021
FAC Filed:	May 12, 2022
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on March 24, 2025 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Stuart M. Rice in Department SSC-1 of the Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse, 312 Spring Street, Los Angeles, California 90012, Plaintiff Amit Singh ("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 Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT A**" to the Declaration of Vartan Madoyan, 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, Class/PAGA Counsel attorneys' fees and costs, Class Representative Enhancement Award to Plaintiff, and settlement administration fees to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes only;
- Preliminarily appointing Amit Singh as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class/PAGA Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement ("Class Notice"), attached as "**EXHIBIT 1**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement ("[Proposed] Order") and Opt Out Form attached as "**EXHIBIT 2**" to the [Proposed] Order;
- Directing the mailing of the Class Notice and Opt Out Form to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

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

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

- 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 Class/PAGA Counsel attorneys' fees and costs, Class Representative Enhancement Award to Plaintiff, and settlement administration fees to the Settlement Administrator.

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 and allows the Court to preliminarily certify a class for settlement purposes only, 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 Declaration of Proposed Class/PAGA Counsel (Vartan Madoyan) and Proposed Class Representative (Amit Singh), 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: January 3, 2025

LAWYERS *for* JUSTICE, PC

By: Vartan S. Madoyan
Vartan Madoyan
Attorneys for Plaintiff

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Amit Singh ("Plaintiff" or "Class Representative") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("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 Ryder Truck Rental, Inc. ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of Three Million Three Hundred Fifty Thousand Dollars and Zero Cents ($3,350,000.00).[1] The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Class Representative Enhancement Award of Fifteen Thousand Dollars and Zero Cents ($15,000.00) to Plaintiff[3]; (3) the Class/PAGA Counsel attorneys' fees and costs, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or $1,172,500.00, and reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00)[4]; (4) the settlement administration fees to the Settlement Administrator in the amount not to exceed Sixteen Thousand Dollars and Zero Cents ($16,000.00);[5] and (5) the PAGA Fund of Four Hundred Thousand Dollars and Zero Cents ($400,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which seventy-five percent (75%) (i.e., $300,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) (i.e., $100,000.00) will be distributed to all individuals who were employed by Defendant in an hourly-paid or non-exempt position at any time during the PAGA Period in the

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[1] Settlement Agreement, attached as "**EXHIBIT A**" to Declaration of Vartan Madoyan ("Madoyan Decl."), ¶ I.1.A.
[2] *Id.*, ¶ II.18, IV.H.67.
[3] *Id.*, ¶ I.1.D, II.7.
[4] *Id.*, ¶ I.1.F.
[5] *Id.*, ¶ I.1.C.

State of California ("PAGA Employees") on a *pro rata* basis, based on Qualifying PAGA Pay Periods during the PAGA Period.[6]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes only, which Defendant does not oppose:

> All current and former hourly-paid or non-exempt employees of Defendant who were employed in California at any time during the Class Period. ("Class" or "Class Member(s)").[7]

The Class is estimated to consist of approximately one thousand four hundred and sixty-six (1,466) individuals.[8]

Class Members who do not submit a valid and timely Opt Out ("Participating Class Member") will receive a share of the Net Class Settlement Amount ("Individual Settlement Payment") on a *pro rata* basis based on the total number of weeks that each Participating Class Member worked for Defendant in California during the Class Period ("Qualifying Pay Periods").[9]

All PAGA Employees will receive a share of the 25% portion of the PAGA Fund (i.e., $100,000.00) on a *pro rata* basis ("PAGA Payment Share") based on the total number of weeks that each PAGA Employee worked for Defendant in California during the PAGA Period ("Qualifying PAGA Pay Period").[10]

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Class Released Claims of Plaintiff and Participating Class Members and the PAGA Released Claims of Plaintiff, the State of California, and PAGA Employees, against the Released Parties.[11]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides transportation, supply chain, and fleet solutions to customers across North America. Plaintiff Amit Singh is a former employee of Defendant.

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[6] Settlement Agreement, ¶¶ I.1.E and II.24, 26-27. "PAGA Period" means April 13, 2020 through October 13, 2023. *See id*., ¶ II.28.
[7] *Id*., ¶¶ I.1.B, II.2. "Class Period" is defined as June 17, 2017 through October 13, 2023. *See id*., ¶ II.5.
[8] Madoyan Decl., ¶ 8.
[9] Settlement Agreement, ¶¶ II.16, II.18, II.30, and II.35.
[10] *Id*., ¶¶ II.23, II.27, and II.34.
[11] *Id*., ¶¶ V.82-86.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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On June 17, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On April 13, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code that were alleged to be violated (the "PAGA Letter"), thereby initiating LWDA Case No. LWDA-CM-829173-21.

On May 12, 2022, Plaintiff filed his First Amended Class Action Complaint for Damages and for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* ("First Amended Complaint"), adding his claim under PAGA previously brought in a separate action styled *Amit Singh v. Ryder Truck Rental, Inc.*, Los Angeles Superior Court No. 21TRCV00445. On June 12, 2022, Defendant filed an Answer to Plaintiff's First Amended Complaint.

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 and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he, the Class Members, and the PAGA Employees 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 Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

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410 West Arden Avenue, Suite 203
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On March 9, 2023, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Requests for Admission, (Set One); Special Interrogatories, (Sets One & Two); and Form Interrogatories - General, (Set One), on Defendant and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. On March 20, 2023, Plaintiff also propounded Demands for Site Inspection of Defendant's three site locations. On April 11, 2023, Defendant responded to Plaintiff's discovery requests. On April 14, 2023, Defendant objected to the deposition of Defendant's person most knowledgeable and demands for site inspections. On July 7, 2023, Plaintiff propounded his second notice of the deposition of Defendant's person most knowledgeable.

On March 9, 2023, Defendant propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Form Interrogatories - General, (Set One); and Form Interrogatories – Employment Law, (Set One) on Plaintiff and noticed the deposition of Plaintiff. On March 20, 2023, Defendant amended the notice of deposition of Plaintiff and Plaintiff objected to such notice on April 7, 2023. On April 11, 2023, Plaintiff responded to Defendant's discovery requests. Plaintiff supplemented those responses on June 2, 2023 and June 6, 2023 and produced documents on July 3, 2023. On June 12, 2023, Plaintiff was deposed.

The Parties have actively litigated the Action since it was commenced on June 17, 2021. On March 7, 2023, Plaintiff and Defendant engaged in mediation before Mr. Antonio Piazza, Esq., an experienced mediator in this area of law. The mediation was unsuccessful. After litigating the case for several months, the Parties scheduled and attended a second private mediation with Paul Grossman, Esq., an experienced mediator in this area of law, on July 14, 2023. With the aid of both mediators' evaluations, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of Three Million Three Hundred Fifty Thousand Dollars and Zero Cents ($3,350,000.00) to resolve the Class Released Claims of Plaintiff and the Class Members who does not submit a valid and

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timely Opt Out (i.e., Participating Class Members) and the PAGA Released Claims of Plaintiff, the State of California, and PAGA Employees, with respect to the Released Parties.[12] Subject to approval by the Court, the Net Class Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount, or $1,172,500.00, and reimbursement of costs and expenses in an amount not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00) to Class/PAGA Counsel; (2) settlement administration fees, which are currently estimated not to exceed Sixteen Thousand Dollars and Zero Cents ($16,000.00) to the Settlement Administrator; (3) PAGA Fund of Four Hundred Thousand Dollars and Zero Cents ($400,000.00), of which seventy-five percent (75%) (i.e., $300,000.00 out of $400,000) will be distributed to the LWDA, and twenty-five percent (25%) (i.e., $100,000.00 out of $400,000.00) will be distributed to the PAGA Employees on a *pro rata* basis; and (4) payment in the amount of up to Fifteen Thousand Dollars and Zero Cents ($15,000.00) to Plaintiff Amit Singh ("Class Representative Enhancement Award").[13] The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's share of the available Net Class Settlement Amount ("Individual Settlement Payment"), in accordance with the Settlement Agreement and as follows: the Individual Settlement Payment to each Participating Class Member shall be determined based on the number of Qualifying Pay Periods applicable to that Participating Class Member.[14] The Net Class Settlement Amount shall be divided by the total number of Qualifying Pay Periods for all Participating Class Members.[15] The result of this division shall yield a Settlement Payment Rate.[16] The gross amount of each Participating Class Member's Individual Settlement

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[12] Settlement Agreement, ¶¶ V.82-86.
[13] Settlement Agreement, ¶¶ I.1.A, I.1.C-F.
[14] *Id.*, ¶ IV.H.67.
[15] Ibid.
[16] Ibid.

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Payment shall be calculated by multiplying the number of Qualifying Pay Periods applicable to that Participating Class Member by the Settlement Payment Rate.[17]

The Settlement Administrator will calculate each PAGA Employee's *pro rata* share of the 25% portion of the PAGA Fund (i.e., PAGA Payment Share), in accordance with the Settlement Agreement.[18] The PAGA Payment Share to each PAGA Employee shall be determined based on the number of Qualifying PAGA Pay Periods applicable to each PAGA Employee.[19] The Net PAGA Settlement Amount shall be divided by the total number of Qualifying PAGA Pay Periods for all PAGA Employees.[20] The result of this division shall yield a PAGA Payment Rate.[21] The gross amount of each PAGA Employee's PAGA Payment Share shall be calculated by multiplying the number of Qualifying PAGA Pay Periods applicable to that PAGA Employee by the PAGA Payment Rate.[22]

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: thirty percent (30%) as wages, which will be reported on an IRS Form W-2; and the remaining seventy percent (70%) as interest and penalties, which will be reported on an IRS Form 1099.[23] Participating Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment.[24] PAGA Payment Shares 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.[25] The Settlement Administrator will have the option to pay the Individual Settlement Payment and PAGA Payment Share by way of a single check. Defendant will pay the employer's share of payroll

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[17] Ibid.
[18] Settlement Agreement, ¶ II.26.
[19] *Id.*, ¶ IV.H.68.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] *Id.*, ¶¶ I.A and IV.M.79.
[24] *Id.*, ¶ IV.M.79.
[25] Ibid.

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taxes and contributions with respect to the wage portion of Individual Settlement Payments in addition to the Gross Settlement Amount.[26]

Each Individual Settlement Payment checks and PAGA Payment Shares will be valid for one hundred eighty (180) calendar days from the date of mailing.[27] The Settlement Administrator will cancel all checks after the void date.[28] The Settlement Administrator shall transmit the entire amount of the uncashed Individual Settlement Payment and PAGA Payment Share checks to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member or PAGA Employee.[29]

Class Members who wish to be excluded from the Class Settlement must send the Settlement Administrator the Opt Out Form[30]. To be timely, the Class Member must mail the Opt Out Form to the Settlement Administrator, postmarked on or before the date that is forty-five (45) calendar days after the Settlement Administrator mails the Class Notice to Class Members and PAGA Employees ("Response Deadline").[31] A request to be excluded from the Settlement must be done using the Opt Out Form.[32] Class Members who submit a valid and timely Opt Out Form are Non-Participating Class Members and will not be bound by the terms of the Class Settlement and Final Approval Order and Judgment.[33] PAGA Employees shall be bound to the release of the PAGA Released Claims upon approval of the Settlement by the Court at the Final Fairness and Approval Hearing, irrespective of whether they exercise their option to opt out of the Class Settlement, and no PAGA Employee has the right to object to the terms of the Settlement in his or her capacity as a PAGA Employee.[34] .

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Participating Class Members) may object to the Class Settlement.[35] Participating Class

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[26] *Id.*, ¶ I.1.A.
[27] Settlement Agreement, ¶ IV.H.72.
[28] Ibid.
[29] Ibid.
[30] *Id.*, ¶¶ II.22 and IV.C.57.
[31] *Id.*, ¶ II.37.
[32] *Id.*, ¶¶ II.22 and IV.C.57.
[32] *Id.*, Exh. 2.
[33] *Id.*, ¶ IV.C.57.
[34] *Id.*, ¶ IV.B.56.
[35] *Id.*, ¶ IV.F.62.

LAWYERS *for* JUSTICE, PC
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Members who wish to object to the Class Settlement may send written objections to the Settlement Administrator by mail.[36] In addition to submitting a written objection or as an alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.[37] A Participating Class Member who elects to send a written objection to the Settlement Administrator must do so not later than the Response Deadline.[38] The Objection must: (1) state the Class Member's full name, address, and the last four digits of his or her Social Security Number (for identification purposes only); (2) state the grounds for the objection; (3) be signed by the Class Member or his or her or its lawful representative; and (4) be postmarked on or before the Response Deadline and returned to the Settlement Administrator.[39]

Class Members and PAGA Employees who wish to dispute the number of Qualifying Pay Periods and/or Qualifying PAGA Pay Periods (if any) credited to them in their Class Notice may do so by mailing a written letter to the Settlement Administrator via mail on or before the Response Deadline ("Proof of Work").[40] The letter must (1) state the Class Member or PAGA Employee's full name, address, and the last four digits of his or her Social Security Number (for identification purposes only); (2) state, in writing, the reasons why he or she believes an additional amount is owed and include any documentation supporting that claim; (3) be signed by the Class Member or PAGA Employee or his/her legal representative; and (4) be mailed to the Settlement Administrator and postmarked no later than the Response Deadline..[41]

IV. <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

[36] Ibid.
[37] Settlement Agreement, ¶ IV.F.62.
[38] Ibid.
[39] Ibid.
[40] *Id.*, ¶ IV.J.76.
[41] *Id.*, ¶ IV.B.56.

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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 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.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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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 Action since it was commenced on June 17, 2021.[42]

Prior to engaging in mediation, Class/PAGA Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of information, documents,

[42] Madoyan Decl., ¶ 10

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and data obtained from Plaintiff, Defendant, and other sources.[43] The volume of data and documents that Class/PAGA Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff and other Class Members, a detailed sampling of Class Members' time and pay data, earning statements, Defendant's Employee Handbook, company policy acknowledgements (including, but not limited to, Meal and Rest Break Policy Acknowledgement, Union Regulated Employee Acknowledgement, and Non-Exempt Employee Overtime Pay Acknowledgement), internal memoranda, job descriptions, operations and employment policies, performance evaluations, practices, and procedures documents (including, but not limited to, Time Records Policy, Overtime Policy, Working Hours and Pay Policy, Meal and Rest Breaks Policy, Uniform Policy, Mobile Phone Use Policy, Expense Reporting, Open Door Policy, Workplace Conduct, Discipline Policy), Union agreements, among other information and documents.[44] Class/PAGA Counsel interviewed Plaintiff and conducted investigations to gather facts and to identify potential witnesses.[45] Class/PAGA Counsel propounded multiple sets of formal written discovery requests on Defendant, noticed the depositions of Defendant's Person Most Knowledgeable designees (along with accompanying requests for production of documents), defended the deposition of Plaintiff, and reviewed Defendant's objections to the deposition notices and accompanying requests for production of documents.[46] 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 in the course of litigation and in connection with mediation and settlement negotiations.[47] Class/PAGA Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[48]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Antonio Piazza, Esq., a well-respected mediator experienced

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[43] *Id.*, ¶ 11.
[44] Madoyan Decl., ¶ 11.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.

in mediating complex labor and employment matters, on March 7, 2023.[49] The mediation was unsuccessful. After litigating the case for several months, the Parties scheduled and attended a second private mediation with Paul Grossman, Esq., an experienced mediator in this area of law, on July 14, 2023.[50] In the course of litigation and in connection with the mediations and settlement negotiations, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to class certification, off-the-clock theory, meal and rest periods, representative PAGA actions, and wage-and-hour law and enforcement, 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/PAGA Counsel believed that they would be able to obtain class certification and prevail at trial.[53] After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediators' 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

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[49] *Id.*, ¶ 10.
[50] Ibid.
[51] Madoyan Decl., ¶ 10.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] *Id.*, ¶ 16-17.
[56] *Id.*, ¶ 11.

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the Class Members' employment with Defendant and performed significant research into the applicable law, which is often evolving as it relates to class certification, representative PAGA claims, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts discovered.[57] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class/PAGA Counsel has 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 Settlement, which provides for a Gross Settlement Amount of Three Million Three Hundred Fifty Thousand Dollars and Zero Cents ($3,350,000.00), represents a fair, adequate, and reasonable resolution of the action.[59] The Settlement was calculated using the information and data uncovered during 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 the case at issue.[61] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class, the PAGA Employees, and the State of California.[62]

Assuming that the Class/PAGA Counsel attorneys' fees and costs payment, Class Representative Enhancement Award, PAGA Fund, and settlement administration fees 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 One Million Seven Hundred Sixteen Thousand Five Hundred Dollars and Zero Cents ($1,716,500.00).[63] Additionally, seventy-five percent (75%) of the PAGA Fund, which is $300,000.00 out of $400,000.00, will be distributed to the LWDA and twenty-five percent (25%) of the PAGA

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[57] *Id.*, ¶¶ 11-12 and 16-17.
[58] Madoyan Decl., ¶¶ 2-6.
[59] *Id.*, ¶¶ 13 & 26.
[60] *Id.*, ¶¶ 10-12.
[61] *Id.*, ¶ 17.
[62] *Id.*, ¶¶ 10, 13, and 26.
[63] *Id.*, ¶ 13.

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Fund, which is $100,000.00 out of $400,000.00, will be distributed to PAGA Employees.[64] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members and the PAGA Fund will be fully paid out to the LWDA and PAGA Employees, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Payment will be calculated based on his or her Qualifying Pay Periods and each PAGA Employees PAGA Payment Share will be calculated based on his or her Qualifying PAGA Pay Periods.[65] 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/PAGA Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA Employees, and the State of California.[66] Although the recommendations of Class/PAGA Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class/PAGA 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 a large volume of documents, data, and information in the course of litigation and in connection with the mediations and settlement negotiations.[67] The discovery and information that Class/PAGA Counsel obtained from Defendant, Plaintiff, and other sources allowed Class/PAGA Counsel to

[64] Settlement Agreement, ¶ I.1.E.
[65] Settlement Agreement, ¶¶ IV.H.67-68.
[66] Madoyan Decl., ¶¶ 10, 13, and 26.
[67] *Id*., ¶¶ 10-12 & 15.

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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.[68] As outlined in the Declaration of Vartan Madoyan, Class/PAGA Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[69]

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes only, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[70] 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/PAGA 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. 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

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[68] *Id.*, ¶¶ 10-12 and 24.
[69] *Id.*, ¶ 24.
[70] Settlement Agreement, ¶ IV.A.51.

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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 action involves a class of approximately one thousand four hundred and sixty-six (1,466) individuals.[71] 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.[72] As such, the Class is ascertainable and sufficiently numerous.

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

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

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

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[71] Madoyan Decl., ¶ 8.
[72] Settlement Agreement, ¶ IV.I.75.

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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 this case, 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.[73] 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, failing to provide one days rest in seven, and failing to reimburse necessary business-related expenses.[74]

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.[75] 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.[76]

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 Court should certify the Class for settlement purposes only.

VII. <u>APPOINTMENT OF CLASS/PAGA COUNSEL AND ALLOCATION FOR CLASS/PAGA COUNSEL ATTORNEYS' FEES AND COSTS</u>

Class/PAGA Counsel has litigated the matter for over three (3) years and was actively preparing the matter for class certification and trial prior to reaching the Settlement. The ongoing work has been extensive, demanding, and ultimately successful in achieving a

[73] Madoyan Decl., ¶ 15.
[74] Ibid.
[75] Ibid.
[76] Ibid.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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substantial settlement resolution. Class/PAGA 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 and responding to multiple sets of formal written discovery propounded onto Plaintiff. Class/PAGA Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees and defended the deposition of Plaintiff.[77] Class/PAGA Counsel reviewed a large volume of documents and data[78] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages and penalties valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data in the course of litigation and in connection with mediation and settlement negotiations.[79] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[80]

Class/PAGA Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[81]

The Settlement establishes a Gross Settlement Amount of Three Million Three Hundred Fifty Thousand Dollars and Zero Cents ($3,350,000.00), and provides for Class/PAGA Counsel to apply to the Court for attorneys' fees and costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., $1,172,500.00) and an amount not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00) for costs and expenses.[82] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class/PAGA Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class/PAGA Counsel dedicated to the case, (3) the skill and determination that Class/PAGA Counsel has shown, (4) the results that Class/PAGA Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class/PAGA Counsel

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[77] Madoyan Decl., ¶ 11.
[78] Ibid.
[79] Ibid.
[80] *Id.*, ¶ 10.
[81] *Id.*, ¶¶ 2-6.
[82] Settlement Agreement, ¶ IV.L.78.

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has achieved for the Class Members, the PAGA Employees, and the State of California, and (6) the other cases that Class/PAGA 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 Class/PAGA Counsel attorneys' fees and costs, and that an award of the attorneys' fees and costs will be sought, as provided for by the Settlement.[83]

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).

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[83] Settlement Agreement, Exh. 1.

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

Class/PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[84]

Class/PAGA Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Class/PAGA Counsel 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/PAGA Counsel are well within the range of reasonableness.

VIII. <u>THE PROPOSED CLASS NOTICE IS ADEQUATE</u>

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).

[84] Madoyan Decl., ¶ 18.

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The proposed Class Notice[85] describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, submit an Opt Out Form[86] requesting exclusion from the Class Settlement, and/or mail a Proof of Work to dispute regarding Qualifying Pay Periods and/or Qualifying PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[87]

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.[88] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[89] The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Payments and PAGA Payment Shares are calculated and the number of Qualifying Pay Periods and/or Qualifying PAGA Pay Periods credited to them.[90]

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.

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[85] Settlement Agreement, Exh. 1.
[86] *Id.*, Exh. 2.
[87] *Id.*, Exh. 1.
[88] Settlement Agreement., Exh. 1.
[89] Ibid.
[90] Ibid.

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410 West Arden Avenue, Suite 203
Glendale. California 91203

IX. APPOINTMENT OF SIMPLURIS, INC. AS THE ADMINISTRATOR

The Parties have selected Simpluris, Inc. to administer the Settlement.

The Settlement Administrator will mail the Class Notice in English and Spanish to each Class Member by First-Class U.S. Mail.[91] If the Settlement Administrator receives any Class Notices returned by the USPS as undelivered, before the Response Deadline, then the Settlement Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[92] If the USPS does not provide a forwarding address, the Settlement Administrator shall promptly attempt to determine a correct address by the use of skip-tracing, or other type of automated searching, and re-mail the Class Notice to the most current address obtained.[93] The Settlement Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.[94] The Settlement Administrator will receive and process Opt Outs, Objections, and any Proof of Works.

The Settlement Administrator will also calculate the amounts of the Individual Settlement Payments; deduct and transmit applicable state and/or federal taxes in connection with the wages portion of the Individual Settlement Payments; mail the Individual Settlement Payment checks to Participating Class Members and PAGA Payment Shares to PAGA Employees; issue W-2 and 1099 forms; calculate and disburse the Class/PAGA Counsel attorneys' fees and costs payment, Class Representative Enhancement Award, and payment to the LWDA; and perform any other tasks necessary to effectuate the terms of the Settlement Agreement.[95] The settlement administration fees are currently estimated to be Sixteen Thousand Dollars and Zero Cents ($16,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[96]

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[91] *Id.*, ¶ IV.B.53.
[92] Id., ¶ IV.B.54.
[93] Settlement Agreement, ¶ IV.B.54.
[94] Ibid.
[95] Settlement Agreement, ¶ IV.I.73; Madoyan Decl., ¶ 14.
[96] Settlement Agreement, ¶ I.1.C.

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The Parties and their counsel have no interest or relationship, financial or otherwise, with Simpluris and that Class/PAGA Counsel has worked with Simpluris on prior occasions in connection with their administration of settlements in other unrelated cases.[97]

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 and PAGA 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 Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.[98]

Within thirty (30) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant shall provide the Settlement Administrator with the following information about each Class Member: full name, last known mailing address, Social Security number, and number of Qualifying Pay Periods and Qualifying PAGA Pay Periods (collectively referred to as the "Class Data").[99]

Within forty-five (45) calendar days after the Court grants Preliminary Approval of the Settlement, the Settlement Administrator will mail the Class Notice in English and Spanish to each Class Member by First-Class U.S. Mail.[100] Any Class Notice returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto.[101] If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by the use of skip-tracing, or other type of automated search, using the name, address and/or Social Security Number of the Class Member and/or PAGA Employee involved, and shall then perform a re-mailing to the

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[97] Madoyan Decl., ¶ 14.
[98] Settlement Agreement, ¶ IV.I.75.
[99] Ibid.
[100] *Id.*, ¶ IV.B.53.
[101] *Id.*, ¶ IV.B.54.

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

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

Class Member and/or PAGA Employee whose Class Notice was returned as non-delivered, assuming another mailing address is identified by the Settlement Administrator.[102] If these procedures are followed, notice to Class Members and PAGA Employees shall be deemed to have been fully satisfied, and if the intended recipient of the Class Notice does not receive the Class Notice, the intended recipient shall nevertheless remain a Participating Class Member and/or PAGA Employee, as applicable, and shall be bound by all terms of the settlement and the Final Order and Judgment.[103]

Within ten (10) business days of the Effective Date[104], Defendant transmit the entire Gross Settlement Amount to the Settlement Administrator.[105] Within twenty (20) business days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will transmit payment for (i) the Class/PAGA Counsel attorneys' fees and costs, (ii) the Class Representative Enhancement Award, (iii) payment to the LWDA, and (iv) Individual Settlement Payments to all Participating Class Members and PAGA Payment Shares to all PAGA Employees.[106]

The Individual Settlement Payment and PAGA Payment Share checks will remain negotiable for one hundred eighty (180) calendar days from the date of mailing.[107] The Settlement Administrator will cancel all checks after the void date.[108] The Settlement Administrator shall transmit the leftover funds represented by canceled Individual Settlement Payment and PAGA Payment Share checks to the California Controller's Unclaimed Property Fund in the name of the Class Member or PAGA Employee.[109]

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

Plaintiff Amit Singh respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Enhancement Award in an

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[102] Ibid.
[103] Ibid.
[104] *See* Settlement Agreement. ¶ II.12 for the full definition of "Effective Date."
[105] *Id*., ¶ IV.H.69.
[106] Ibid.
[107] *Id*., ¶ IV.H.72.
[108] Ibid.
[109] Ibid.

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

amount up to Fifteen Thousand Dollars and Zero Cents ($15,000.00) to Plaintiff.[110] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an service 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 Class Representative Enhancement Award 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.[111] During the discovery phase of litigation, Plaintiff spent significant time reviewing Defendant's discovery responses, locating and providing documents, discovery responses, and supplemental responses to Class/PAGA Counsel.[112] Further, Plaintiff attended a full day deposition.[113] Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Enhancement Award for his services on behalf of the Class, State of California, and PAGA Employees, 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/PAGA Counsel; preliminarily appoint and designate Plaintiff Amit Singh as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Class/PAGA Counsel attorneys' fees and costs, Class Representative Enhancement Award, PAGA Fund, and

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[110] *Id*., ¶ I.1.D.
[111] Madoyan Decl., ¶ 19; Declaration of Amit Singh in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Singh Decl."), ¶ 3.
[112] Madoyan Decl., ¶ 19; Singh Decl., ¶ 4.
[113] Madoyan Decl., ¶ 19; Singh Decl., ¶ 5.

settlement administration fees; 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 five (5) months.

Dated: January 3, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________________
Vartan Madoyan
Attorneys for Plaintiff

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