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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JACOB GREENWELL, 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. ENVIGO RMS, LLC, a Delaware limited liability company; and DOES 1 through 100, inclusive Defendants.	Case No. RG21108069 Honorable Somnath Raj Chatterjee Department 16 **<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** Date: April 24, 2025 Time: 2:30 p.m. Department: 16 Reservation ID: 211598178171 Complaint Filed: June 25, 2021 FAC Filed: July 23, 2024 Trial Date: None set

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

PLEASE TAKE NOTICE that on April 24, 2025 at 2:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Somnath Raj Chatterjee in Department 16 of the Superior Court of the State of California, for the County of Alameda, Administration Building, 1221 Oak Street, St, Oakland, CA 94612, Plaintiff Jacob Greenwell ("Plaintiff") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the parties' Joint Stipulation of Class Action and PAGA Settlement and Release of Claims ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 2**" to the Declaration of Helene Mayer in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Classes for settlement purposes;
- Appointing Jacob Greenwell as Class Representative;
- Appointing Arby Aiwazian, Joanna Ghosh, and Helene Mayer of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, and directing the mailing thereof in accordance with the Settlement Agreement;
- Approving Atticus Administration, LLC, as the Settlement Administrator; and
- Scheduling a hearing to consider final approval of the Settlement.

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

Class Representative (Jacob Greenwell) in support thereof; as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: February 6, 2025 **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 Jacob Greenwell ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims ("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 Envigo RMS, LLC ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (together, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of $795,000.00.[1]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose: All current or former hourly-paid or non-exempt employees who worked for Defendant (including any entities that merged with Defendant) within the State of California at any time during the Class Period ("Class" or "Class Members").[2] Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Settlement Class Member") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment"). The net payment of each Settlement Class Member's Individual Settlement Payment (will be distributed to Settlement Class Members on a *pro rata* basis based upon the number of weeks each Class Member worked at least one shift for Defendant as an hourly-paid or non-exempt employee in California during the Class Period ("Compensable Workweeks").[3]

Plaintiff also seeks to provisionally certify the following FCRA Class for settlement purposes, which Defendant does not oppose: All current and former employees and prospective applications for employment in the United States who applied for a job with Defendant (including

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[1] Settlement Agreement, attached as Exhibit 2 to Declaration of Helene Mayer ("Helene Mayer Decl."), ¶ 27. Defendant estimates that there are 18,926 Compensable Workweeks worked by Settlement Class Members within the Class Period. The Gross Settlement Amount will increase proportionally for Compensable Workweek amounts over 19,388 (105% of the estimated number). If the verified number of Compensable Workweeks exceeds 19,388, Defendant, at its option, shall have the option to (1) shorten the Class Period to reduce the number of Compensable Workweeks below 19,388 and avoid application of this Escalator Clause; or (2) pay the increase on a pro rata basis. This shall be determined by Defendant **prior to** the Class Notice being delivered to the Class Members. *Id.*, ¶ 94.

[2] *Id.*, ¶ 6.; "Class Period" is defined as the time period from June 25, 2017 to August 31, 2023. *See id.*, ¶ 7.

[3] *Id.*, ¶¶ 6, 29, 82, and 13.

any entities that merged with Defendant) on whom a background check was performed at any time during the FCRA Class Period of June 25, 2016 through August 31, 2023.[4] FCRA Class Members who do not submit a timely and valid Request for Exclusion will receive their Individual FCRA Settlement Payment on an equal pro rata basis.

The Settlement, upon final approval by the Court and funding of the Gross Settlement Amount, will operate to resolve the Released Class Claims, Released FCRA Class Claims, and the Released PAGA Claims of the State of California.[5]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant owned and operated a facility that bred and sold laboratory animals for research. Plaintiff is a former employee of Defendant.

On April 2, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant, of his intent to seek civil penalties for alleged violations of the California Labor Code under PAGA (the "PAGA Notice").[6]

On June 25, 2021, Plaintiff filed the Class Action Complaint for Damages in the Superior Court for the County of Alameda, thereby commencing the above-captioned lawsuit.[7]

On June 25, 2021, Plaintiff filed a separate PAGA lawsuit in Alameda County Superior Court, Case No. RG21107600 (the "PAGA Action").[8] The above-captioned action and the PAGA Action were deemed related.

On September 22, 2021, Defendant filed its Answer in the above-captioned action as well as in the PAGA Action.[9]

On June 2, 2023, the Parties attended a mediation with experienced mediator Eve Wagner, Esq. At the conclusion of the mediation, the Parties reached an agreement to globally settled Plaintiff's actions on a class-wide and representative basis, subject to Court approval.[10]

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[4] Settlement Agreement, ¶¶ 20-21.
[5] *See id.*, at ¶ 46-48, for the full scope of the Released Class Claims, Released FCRA Class Claims, and Released PAGA Claims, respectively; *see id.* at ¶ 49 for the full scope of the "Released Parties."
[6] Mayer Decl., ¶ 2 and Exh 1.
[7] *Id.*, ¶ 3.
[8] *Id.*, ¶ 4.
[9] *Id.*, ¶ 5.
[10] *Id.*, ¶ 6.

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On July 18, 2024, Plaintiff sought leave to file a First Amended Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq*., adding his PAGA cause of action to this action.[11] The Court granted Plaintiff leave to file the proposed First Amended Complaint on July 22, 2024, and Plaintiff filed the First Amended Complaint on July 22, 2024.[12]

Plaintiff's core allegations are that Defendant has violated California wage and hour law, including but not limited to laws set forth in the California Labor Code, by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA Employees of, *inter alia*, (a) failure to pay all wages due, including minimum wages, straight time, overtime, and double wages; (b) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; (d) failure to pay all wages timely at the time of termination and/or during employment; (e) failure to provide timely, complete, accurate or properly formatted wage statements and employment records; (f) failure to keep requisite payroll records; (g) failure to reimburse and indemnify business expenses; (h) violation of California's unfair competition law, including unfair business practices, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, et seq., and (i) conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and Class Counsel Award.

III. <u>SUMMARY OF THE SETTLEMENT TERMS</u>

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of $795,000.00 to resolve the Action.[13] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e., $278,250.00, if the Gross Settlement Amount remains $795,000.00) and litigation costs and expenses in an

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[11] Mayer Decl. ¶ 7.
[12] Ibid.
[13] Settlement Agreement, ¶ 27.

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amount not to exceed $30,000.00 ("Attorneys' Fees and Costs" or "Class Counsel Award") to Class Counsel; (2) Settlement Administration Costs, which are currently estimated not to exceed $27,400 to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Settlement Amount of $100,000.00 ("PAGA Settlement"); (4) FCRA Settlement Amount of $100,000.00; and (5) payment in the amount of $10,000.00 to Plaintiff ("Class Representative Enhancement Award").[14] The Parties have agreed to retain Atticus Administration, LLC, ("Atticus" or "Settlement Administrator") to handle the notice and settlement administration process.[15]

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount ("Individual Settlement Payment"), in accordance with the Settlement Agreement on a *pro rata* per Compensable Workweek basis, which will be adjusted after Final Approval to reflect the total Compensable Workweeks worked by the Settlement Class Members.[16] The Parties have also agreed that the Settlement Administrator will determine Individual FCRA Settlement Payments to Participating FCRA Class Members on an equal pro rata basis of the FCRA Settlement Amount.[17] The Parties have agreed that the Settlement Administrator will determine each PAGA Employees' share of the 25% share of the PAGA Settlement Amount, in accordance with the Settlement Agreement on a *pro rata* per Compensable Pay Period basis.[18]

The Parties agree, for purposes of this Settlement, that Individual Settlement Payment will be allocated 33.33% as wages and 66.67% as interest, penalties, and non-wage damages.[19] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payment, and issue checks to Participating Settlement Class Members net of these taxes and withholdings. All Individual PAGA

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[14] Settlement Agreement, ¶ 81.
[15] *Id.*, ¶ 53.
[16] *Id.*, ¶ 82.
[17] *Id.*, ¶ 84.
[18] *Id.*, ¶ 85.
[19] *Id.*, ¶ 83.

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Settlement Payments and FCRA Settlement Payments will be allocated as 100% civil penalties for which and IRS Form 1099 will be issued (if applicable).[20]

Each Individual Class Settlement Payment, Individual FCRA Settlement Payment, and Individual PAGA Settlement Payment will be valid and negotiable for 180 calendar days from the date the checks are issued, and thereafter, shall be canceled.[21]

All funds associated with such canceled checks will be transmitted to the State of California Office of the Controller Unclaimed Property Division in the name of the Participating Class Members and/or PAGA Employees who did not cash his/her/their Settlement check. The Parties agree to coordinate their efforts to seek Court approval for such an escheatment process of uncashed funds. If, for some reason, the Court does not approve the escheatment of uncashed funds, the Parties agree to meet and confer to identify a mutually-agreeable cy pres recipient(s).[22]

Any Class Member may request to be excluded from the Class Settlement by mailing a Request for Exclusion postmarked on or before the Response Deadline, which is 45 calendar days after the Settlement Administrator mails the Notice of Class Action Settlement to Class Members ("Response Deadline").[23] PAGA Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[24]

Only Class Members who have not submitted a Request for Exclusion (i.e., Settlement Class Members) may object to the Class Settlement by submitting a Notice of Objection to the Settlement Administrator at the specific address, postmarked on or before the Response Deadline.[25]

In order to dispute the number of Compensable Workweeks attributable to an individual Class Member and/or PAGA Employee, that Class Member and/or PAGA Employee must submit a written letter to the Settlement Administrator and include copies of any supporting evidence they may have.[26]

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[20] Settlement Agreement, ¶¶ 84-85.
[21] *Id.*, ¶ 86.
[22] Ibid.
[23] *Id.*, ¶ 51.
[24] *Id.*, ¶ 77.
[25] *Id.*, ¶ 34.
[26] *Id.*, ¶ 14

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IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

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

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decision of the parties." *Hanlon*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties have actively litigated the Action since it commenced on June 25, 2021. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.[27]

Class Counsel conducted significant 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 documents and data from Plaintiff, Defendant, and other sources.[28] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: a sampling of Class Members' time and payroll data, Plaintiff's personnel records, Defendant's Handbooks, earning statements, time punch data, company policy acknowledgements, job descriptions, Defendant's operations and employment practice, policies, and procedures, among other information and documents.[29] Class Counsel had the opportunity to interview Plaintiff and others to gather facts and to identify potential witnesses. In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[30]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation, conducted by Eve Wagner, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[31] Prior to and during the mediation and settlement

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[27] Mayer Decl., ¶¶ 25-26.
[28] *Id.*, ¶ 26.
[29] Ibid.
[30] Ibid.
[31] Ibid.

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discussions, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, including the risks of proceeding with class certification and/or representative adjudication; the law relating to off-the-clock theory, non-compliant meal and rest periods, business expense reimbursements, improper rounding, incorrect calculation of regular rate, non-compliant wage statements, waiting time penalties, violation of Fair Credit Reporting Act, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[32] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[33] Arriving at a settlement that was acceptable to both Parties was not easy. Both sides felt strongly about their ability to prevail at certification and at trial.[34] 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.[35]

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

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

Assuming that the Class Counsel Award, Class Representative Enhancement Award, FCRA Settlement Amount, PAGA Settlement Amount, and Settlement Administrator Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement

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[32] Mayer Decl., ¶ 25.
[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] *Id.*, ¶ 30.
[37] *Id.*, ¶¶ 25-26.
[38] *Id.*, ¶ 30.

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provides for a Net Settlement Amount that is approximately $249,350.00.[39] Additionally, 25% of the PAGA Settlement Amount (i.e., Individual PAGA Settlement Payment), which is $25,000.00 out of $100,000.00, will be distributed to the PAGA Employees; and 100% of the FCRA Settlement Amount will be distributed to Participating FCRA Class Members.[40] The entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement.

An allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. Here, the allocation is reasonably related to the number of Compensable Workweeks and/or Compensable Pay Periods actually worked for Defendant during the relevant period as detailed above and should be approved.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, PAGA Employees, and the State of California.[41] 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 investigation have been completed, as is the case here.[42] *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

V. <u>CERTIFICATION OF THE CLASS IS APPROPRIATE</u>

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[43] 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.

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[39] Mayer Decl., ¶ 10.
[40] Ibid.
[41] *Id.*, ¶ 30.
[42] *Id.*, ¶¶ 19-39.
[43] Settlement Agreement, ¶ 59.

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California courts certify class actions where the Plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

A. <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; s*ee also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 219 individuals, which is sufficiently numerous.[44] Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid or non-exempt employees of Defendant in California during the Class Period. As such, the Class is ascertainable.[45]

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

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

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[44] Mayer Decl., ¶ 16.
[45] *Id.*, ¶ 15.

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Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through formal and informal discovery and exchange of information in the case, Plaintiff contends that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.[46] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue. Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked in California during the Class Period.

As a member of the Class who was subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.[47] Importantly, Plaintiff has retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff and the Class.[48]

Accordingly, the proposed Class shares a community of interest, and the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over three years and was actively preparing the matter for class certification and trial.[49] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff and other percipient witnesses, researched applicable law, undertook damages/valuation

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[46] Mayer Decl., ¶ 17.
[47] Declaration of Jacob Greenwell in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Greenwell Decl."), ¶¶ 2-6.
[48] Mayer Decl., ¶¶ 19-23.
[49] *Id.*, ¶¶ 25-26.

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calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to the mediation.[50] Class Counsel served multiple sets of formal written discovery requests, including Form Interrogatories - General (Set One); Special Interrogatories (Sets One and Two); Requests for Production of Documents (Set One); and on Defendant and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure, and reviewed Defendant's responses thereto. Class Counsel also prepared responses to formal discovery propounded by Defendant, including Requests for Production of Documents (Set One). Class Counsel also prepared for and defended the deposition of Plaintiff. Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[51] Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[52]

The Settlement establishes a Gross Settlement Amount of $795,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount up to 35% of the Gross Settlement Amount (i.e., $278,250.00 if the Gross Settlement Amount remains $795,000.00), and reimbursement of litigation costs and expenses associated with Class Counsel's prosecution of the Actions in an amount not to exceed $30,000.00, both of which will be paid from the Gross Settlement Amount.[53] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members that an award of the Class Counsel Fees and Costs will be sought and the amount allocated toward the Class Counsel Fees and Costs by the Settlement.[54]

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[50] Mayer Decl., ¶ 26.
[51] Ibid.
[52] *Id.*, ¶¶ 19-23.
[53] Settlement Agreement, ¶ 88.
[54] *Id.*, Exh. A, Exh B., and Exh. C.

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

The California Supreme Court has confirmed the propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others. *Laffitte*, 1 Cal.5th 480 at 486 & 506. The Court has taken the position that while "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id.* (internal quotation marks omitted).

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

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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.[55] Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's Motion for Final Approval of the Settlement and application for the Class Counsel Award and Fees at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement are well within the range of reasonableness for preliminary approval.

VII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory authority and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177). "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004).

The proposed Class Notice describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or dispute regarding Compensable Workweeks and/or Compensable Pay Periods, and the date and time set for the Final Approval Hearing.[56] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[57] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[58] The proposed Class Notice also apprises the Class Members, FCRA Class Members, and PAGA Employees of, *inter alia*, how their respective

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[55] Mayer Decl., ¶ 11.
[56] Settlement Agreement, Exh. A, Exh B., and Exh. C.
[57] Ibid.
[58] Ibid.

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individual payments will be calculated and credited to them.[59] The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg,* at § 8.39.

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

VIII. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected Atticus Administration, LLC as the Settlement Administrator. Within 14 calendar days of receipt of the Class List and the FCRA Class List, the Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all Class Members via regular First-Class U.S. Mail. The Class Notice attached as Exhibit A shall be mailed to Settlement Class Members, the Class Notice attached as Exhibit B shall be mailed to FCRA Class Members, and the Class Notice attached as Exhibit C shall be mailed to Class Members who are both Settlement Class Members and FCRA Class Members. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member, including performing a skip-trace to identify any updated addresses. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.[60]

The Settlement Administrator will skip-trace returned Class Notices and re-mail the Class Notice to the new addresses within five calendar days.[61] In the case of a re-mailed Class Notice, the Response Deadline will be the later of 45 calendar days after initial mailing or 14 calendar days from the date of re-mailing or the remaining original Response Deadline period.[62] The Administrator will receive and process Requests for Exclusion, Notices of Objection, and Compensable Workweeks Disputes.[63] In addition, the Settlement Administrator shall be responsible for printing, distributing, and tracking Class Notices and other documents for the

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[59] Settlement Agreement, Exh. A, Exh B., and Exh. C.
[60] *Id.*, ¶ 73.
[61] *Id.*, ¶ 74.
[62] *Id.*, ¶ 51.
[63] *Id.*, ¶¶ 77, 78, and 90.

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Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.[64] The Settlement Administrator Costs are currently estimated to be $27,400.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[65] Accordingly, Plaintiff respectfully requests that the Court appoint Atticus Administration, LLC, 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.

IX. CLASS REPRESENTATIVE ENHANCEMENT AWARD

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Enhancement Award in an amount up to $10,000.00.[66] It is within the Court's discretion to award payment to a Class Representative for his efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make an Class Representative Enhancement Award include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id.*

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.[67] Plaintiff also provided verified discovery responses and appeared for and sat for his deposition. Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and

[64] Settlement Agreement, ¶ 90.
[65] *Id.*, ¶ 89.
[66] *Id.*, ¶ 87.
[67] Mayer Decl., ¶¶ 12 and 18; Greenwell Decl., ¶¶ 2-6.

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provide information that would facilitate the pursuit of class and PAGA claims.[68] Plaintiff also agreed to provide a full general release in exchange for the Class Representative Enhancement Award. Accordingly, it is appropriate and just for Plaintiff to receive an Class Representative Enhancement Award for his services on behalf of the Class, PAGA Employees, and the State of California, in addition to his individual settlement payment.

X. CONCLUSION

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

Dated: February 6, 2025

LAWYERS *for* JUSTICE, PC

By: Helene Mayer

Helene Mayer
Attorneys for Plaintiff

[68] Mayer Decl., ¶¶ 12 and 18; Greenwell Decl., ¶¶ 5-6.

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