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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

FABIAN RIVERA, individually, and on behalf of other members of the general public similarly situated; Plaintiff, vs. METRO RF SERVICES, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. CIVSB2121607 Honorable Tony Raphael Department S36 **CLASS ACTION** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** [Declaration of Proposed Class Counsel (Helene Mayer); Declaration of Proposed Class Representative (Fabian Rivera); and [Proposed] Order filed concurrently herewith] Date: December 24, 2024 Time: 8:30 a.m. Department: S36 Complaint Filed: July 26, 2021 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 December 24, 2024 at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Tony Raphael in Department S36 of the Superior Court of the State of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Fabian Rivera ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the parties' Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Helene Mayer in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, including the means of allocation and distribution of the Maximum Settlement Amount, and the allocations for Attorneys' Fees and Costs, Enhancement Award, PAGA Allocation, and Settlement Administration Costs;
- Certifying the proposed Class for settlement purposes only;
- Preliminarily appointing Plaintiff Fabian Rivera as Class Representative;
- Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Helene Mayer of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class and Representative Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Appointing Simpluris, Inc. as the Settlement Administrator to handle the notice and administration process for the Settlement and preliminarily approving the Settlement Administration Costs;
- Directing the Settlement Administrator to mail the Class Notice to the proposed Class;
- Approving the proposed deadlines for the notice and administration process as reflected herein and in the Settlement Agreement;

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- Scheduling a hearing to consider final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for an award of the Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, and PAGA Allocation.

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 (Fabian Rivera) 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: October 30, 2024

LAWYERS *for* JUSTICE, PC

By: Helene Mayer

Helene Mayer
Attorneys for Plaintiff Fabian Rivera

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Fabian Rivera ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Metro R.F. Services, Inc. ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to settle the lawsuits for a Maximum Settlement Amount of Four Hundred Fifty Thousand Dollars and Zero Cents ($450,000.00).[1] The Maximum Settlement Amount includes the following: (1) Individual Settlement Payments to Settlement Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Enhancement Award of Five Thousand Dollars and Zero Cents ($5,000.00) to Plaintiff[3]; (3) the Attorneys' Fees and Costs to Class Counsel, consisting of attorneys' fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, or $157,000.00 if the Maximum Settlement Amount remains $450,000.00, and reimbursement of litigation costs and expenses not to exceed Sixteen Thousand Dollars and Zero Cents ($16,000.00)[4]; (4) the Settlement Administration Costs to the Settlement Administrator in the amount estimated to be up to Six Thousand Five Hundred Dollars and Zero Cents

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Helene Mayer ("Mayer Decl."), ¶ 8.s. Defendant estimated that, there are approximately 350 Class Members who worked at any time during the period of January 27, 2017 to June 16, 2022. If it is determined that the total number of Class Members during the period referenced actually exceed this amount by more than ten percent (10%) (i.e., the Class Members during the period referenced are actually more than 385), then the Maximum Settlement Amount will increase on a proportional basis to the extent the threshold is exceeded (e.g., if the number of the Class Members during the aforementioned time period is actually 11% more than 350, i.e., increases by 11% to 389, the Maximum Settlement Amount will increase by one percent (1%)). Defendant represented that for the period of January 27, 2017 to June 16, 2022, there were approximately 15,500 total Workweeks. If it is determined that the total number of Workweeks during the period referenced actually exceed this amount by more than ten percent (10%) (i.e., the Workweeks for the period referenced are actually more than 17,050), then the Maximum Settlement Amount will increase on a proportional basis to the extent the threshold is exceeded (e.g., if the number of Workweeks during the aforementioned time period is actually 11% more than 15,500, i.e., increases by 11% to 17,205 Workweeks, the Maximum Settlement Amount will increase by one percent (1%)). *Id.*, ¶ 38.

[2] *Id.*, ¶¶ 8.u, 8.x, & 8.mm.

[3] *Id.*, ¶¶ 8.o & 13.

[4] *Id.*, ¶¶ 8.a & 12.

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($6,500.00);[5] and (5) the amount of Fifty Thousand Dollars and Zero Cents ($50,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA") ("PAGA Allocation"), of which 75% (i.e., $37,500.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $12,500.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant who worked in California at any time during the PAGA Release Period ("PAGA Members").[6]

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

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

According to information provided by Defendant, the Class is estimated to consist of approximately two hundred forty-two (242) individuals.[8]

Class Members who do not submit a timely and valid request to be excluded from the Class Settlement ("Settlement Class Members") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") based the number of weeks worked by Class Members during the Class Release Period, which Defendant will calculate in a manner that credits one (1) Workweek for any period of seven consecutive calendar days, beginning on Sunday at midnight and ending on Saturday at 11:59:59 PM, during which a Class Member began at least one shift ("Workweeks"); and PAGA Members will receive a *pro rata* share of the twenty-five percent (25%) portion of the PAGA Allocation ("Individual PAGA Payment") on a *pro rata* basis") based the number of Workweeks worked by PAGA Members during the PAGA Release Period.[9]

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Class Released Claims of Plaintiff and Settlement Class Members, and the PAGA

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[5] Settlement Agreement, ¶¶ 8.ll & 14.

[6] *Id.*, ¶¶ 8.z, & 8aa. "PAGA Release Period" means the period from December 7, 2019 through March 12, 2023. *Id.*, ¶ 8.cc.

[7] *Id.*, ¶ 8.d. "Class Release Period" means the period from January 27, 2017 through March 12, 2023, subject to Paragraph 38 of the Settlement Agreement. *Id.*, ¶ 8.f.

[8] Mayer Decl., ¶ 8.

[9] Settlement Agreement, ¶¶ 8.t, 8.v, 8.mm, 8.nn, 16, & 17.

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Released Claims of Plaintiff, PAGA Members, and the State of California, against the Released Parties.[10]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On June 2, 2021, Plaintiff Fabian Rivera provided written notice by certified mail to the LWDA and Defendant of the specific provisions of the California Labor Code that were alleged to be violated ("LWDA Letter").

On July 26, 2021, Plaintiff filed a Class Action Complaint for Damages ("Complaint"), thereby commencing a putative class action entitled *Fabian Rivera v. Metro R.F. Services, Inc.*, Superior Court of California for the County of San Bernardino, Case No. CIVSB2121607 (the "*Rivera* Class Action") against Defendant.

On August 10, 2021, Plaintiff filed his Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et. Seq., thereby commencing a representative action entitled *Fabian Rivera v. Metro R.F. Services, Inc.*, Superior Court of California for the County of San Bernardino, Case No. CIVSB2123539 (the "*Rivera* PAGA Action," collectively with the *Rivera* Class Action, the "Actions") against Defendant.

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, Class Members, and PAGA 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 PAGA Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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[10] Settlement Agreement, ¶ 32. See *id.*, at ¶ 8.h for the full scope of "Class Released Claims," *id.*, at ¶ 8.dd for the full scope of "PAGA Released Claims," and *id.*, at ¶ 8.hh for the definition of "Released Parties."

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

On June 16, 2022, the Parties participated in a formal, full-day mediation conducted by Hon. Patrick J. Walsh (Ret.) (the "Mediator"), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Maximum Settlement Amount to resolve the Class Released Claims of Plaintiff and Settlement Class Members and the PAGA Released Claims of Plaintiff, PAGA Members, and the State of California with respect to the Released Parties.[11] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees up to thirty-five percent (35%) of the Maximum Settlement Amount (i.e., up to $157,500.00 if the Maximum Settlement Amount is $450,000.00), and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, in an amount not to exceed Sixteen Thousand Dollars and Zero Cents ($16,000.00) (collectively referred to as the "Attorneys' Fees and Costs"); (2) costs to the Settlement Administrator in an amount not to exceed Six Thousand Five Hundred Dollars and Zero Cents ($6,500.00) ("Settlement Administration Costs"); (3) PAGA Allocation of Fifty Thousand Dollars and Zero Cents ($50,000.00), of which seventy-five percent (75%) (i.e., $37,500.00 out of $50,000.00) will be paid to the LWDA ("LWDA Payment") and twenty-five percent (25%) (i.e., $12,500.00 out of $50,000.00) will be distributed to PAGA Members on a *pro rata* basis ("PAGA Member Amount"); and (4) payment in the amount of up to Five Thousand Dollars and Zero Cents

[11] Settlement Agreement, ¶ 32.

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($5,000) to Plaintiff Fabian Rivera ("Enhancement Award").[12] The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.[13]

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

a. After Preliminary Approval of the Settlement, the Settlement Administrator will determine the Workweeks of each Class Member, divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.[14]

b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.[15]

The Parties have agreed that the Settlement Administrator will determine each Individual PAGA Payment in accordance with the Settlement Agreement as follows:

a. The Settlement Administrator will divide the PAGA Member Amount by the total number of Workweeks worked by all PAGA Members during the PAGA Release Period to produce a "Weekly PAGA Value." The Weekly PAGA Value will be multiplied by the number of Workweeks attributable to the individual PAGA Member to derive his or her Individual PAGA Payment.[16]

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as interest, penalties, and other non-wage damages, which will be reported on an IRS Form 1099.[17] Any payment for an Individual PAGA Payment will be

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[12] Settlement Agreement, ¶¶ 12-15.
[13] *Id.*, ¶ 8.kk.
[14] *Id.*, ¶ 16.a.
[15] *Id.*, ¶ 16.b.
[16] *Id.*, ¶ 17.
[17] *Id.*, ¶ 27.

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allocated as penalties, will not be subject to taxes or withholding, and will be reported on an IRS Form-1099, if necessary.[18] Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as the "Individual Settlement Payment").[19] Defendant will pay the employer's share of payroll taxes and contributions on the wages portion of Individual Settlement Shares ("Employer Taxes") in addition to the Maximum Settlement Amount.[20]

The Individual Settlement Payment and Individual PAGA Payment checks shall be valid and negotiable for one hundred eighty (180) calendar days after mailing by the Settlement Administrator, and thereafter, shall be canceled.[21] The funds associated with such canceled checks will be transmitted by the Settlement Administrator to the California State Controller's Unclaimed Property Fund Division in the name of the Settlement Class Member of PAGA Member and in the respective amount of funds payable to them.[22]

Class Members who wish to be excluded from the Class Settlement (i.e., opt out) must submit a written request to be excluded from the Class Settlement ("Request for Exclusion") to the Settlement Administrator, by mail or fax, postmarked no later than forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. ("Response Deadline").[23] The Request for Exclusion must: (a) contain the case name and number of the Action(s); (b) contain the full name, signature, address, telephone numbers, and the last four (4) digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be submitted by fax or mail to the Settlement Administrator at the specified address and/or facsimile number,

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[18] Settlement Agreement, ¶ 27.
[19] *Id.*, ¶ 8.u.
[20] *Id.*, ¶ 8.n.
[21] *Id.*, ¶ 22.
[22] Ibid.
[23] *Id.*, ¶¶ 8.ii, 8.jj, & 23.

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postmarked or faxed on or before the Response Deadline.[24] A Class Member who does not request exclusion from the Class Settlement will be deemed a Settlement Class Member and will be bound by Class Settlement if the Settlement is granted Final Approval by the Court.[25] PAGA Members shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[26]

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Settlement Class Members) have standing to object to the Class Settlement ("Notice of Objection").[27] Settlement Class Members who wish to object to the Class Settlement must submit a Notice of Objection to the Settlement Administrator, by fax or mail, on or before the Response Deadline.[28] Any such written Notice of Objection must include: (a) the case name and number of the Action(s); (b) the objector's full name, signature, address, telephone number, and last four (4) digits of his or her Social Security Number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) copies of any papers, briefs, or other documents upon which the objection is based; and (e) be submitted by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or faxed on or before the Response Deadline.[29] Settlement Class Members may also present their objection orally at the Final Approval Hearing regardless of whether they submitted a Notice of Objection.[30]

Class Members and PAGA Members who wish to dispute the number of Workweeks credited to them in their Class Notice may do so by submitting a written letter, by fax or mail, to the Settlement Administrator on or before the Response Deadline.[31] The letter must: (a) contain the case name and number of the Action(s); (b) contain the full name, signature, address, telephone number, and the last four (4) digits of the Social Security Number of the disputing

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[24] Settlement Agreement, ¶ 8.ii.
[25] Ibid.
[26] Ibid.
[27] *Id.*, ¶¶ 8.y & 24.
[28] *Id.*, ¶ 24.
[29] *Id.*, ¶ 8.y.
[30] *Id.*, ¶ 24.
[31] *Id.*, ¶ 21.

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individual; (c) clearly state that the Class Member and/or PAGA Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her for the Class Release Period and/or PAGA Release Period; (d) include information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct; and (e) be returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or fax-stamped on or before the Response Deadline.[32]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk*, *supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class 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.

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[32] Settlement Agreement, ¶ 21.

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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.

V. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT</u>

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

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

The Parties actively litigated the Actions since the *Rivera* Class Action commenced on July 26, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.[33]

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.[34] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a detailed set of Plaintiff's and other Class Members' time and pay data, Employee Handbook, forms (including, but not limited to, Acknowledgment Forms), procedures and policies (including, but not limited to, Leaves of Absence, Employee Benefits, Timekeeping, Overtime, Meal and Rest Break Period policies), among other information and documents.[35] Class Counsel interviewed Plaintiff and conducted investigations to gather information regarding the facts and circumstances surrounding Plaintiff's and putative class members' employment and to identify potential witnesses.[36] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.[37] Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended

[33] Mayer Decl., ¶¶ 10-12.
[34] *Id.*, ¶ 11.
[35] Ibid
[36] Ibid.
[37] Ibid.

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court proceedings, settlement negotiations, and the mediation, among other tasks.[38]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Hon. Patrick J. Walsh (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters.[39] In the course of litigation and in connection with mediation and settlement discussions, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the cases and various aspects of the cases, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[40] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[41] Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[42] After conducting investigations, formal and informal discovery, exchange of information, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[43]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.[44] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[45] Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and

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[38] Mayer Decl., ¶ 11.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] *Id.*, ¶¶ 10 & 15-17.
[43] *Id.*, ¶ 10.
[44] *Id.*, ¶ 17.
[45] *Id.*, ¶ 10.

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the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.[46] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[47]

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

The Settlement, which provides for a Maximum Settlement Amount of Four Hundred Fifty Thousand Dollars and Zero Cents ($450,000.00), represents a fair, adequate, and reasonable resolution of the matter.[48] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[49] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[50] Moreover, considering all of the facts and circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[51]

Assuming that the Attorneys' Fees and Costs, Enhancement Award, PAGA Allocation, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Two Hundred Fifteen Thousand Dollars and Zero Cents ($215,000.00).[52] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during the Class Release Period, and the amount of each PAGA

[46] Mayer Decl., ¶¶ 10-12 & 15-17.
[47] *Id*., ¶¶ 2-6.
[48] Settlement Agreement, ¶¶ 8.s. & 50.
[49] Mayer Decl., ¶¶ 10-12.
[50] *Id*., ¶¶ 15-17.
[51] *Id*., ¶¶ 10, 12, & 21.
[52] *Id*., ¶¶ 13, 18 & 19.

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Member's Individual PAGA Payment will be calculated based on his or her Workweeks during the PAGA Release Period.[53] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.[54] 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. *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 extensive formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[55] The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.[56] As outlined in the Declaration of Helene Mayer, Class Counsel performed an extensive analysis of each claim pursuant to *Kullar* prior to entering into the Settlement.[57]

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[53] Settlement Agreement, ¶¶ 16 & 17.
[54] Mayer Decl., ¶¶ 10, 12, & 21.
[55] *Id.*, ¶¶ 10-12 & 17.
[56] *Id.*, ¶ 17.
[57] *Id.*, ¶¶ 10-12 & 15-17.

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VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[58] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

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

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[58] Settlement Agreement, ¶¶ 9 & 10.

This matter involves a class of approximately three hundred fifty (350) individuals.[59] 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 or non-exempt employees in California during the Class Release Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Actions. Based on the documents and information obtained through formal and informal discovery and exchange of information in the cases, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment

[59] Mayer Decl., ¶ 8.

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practices, policies, and procedures during the time period at issue.[60] Plaintiff's claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[61]

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.[62] 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.[63]

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 Release Period. Accordingly, the Court should certify the Class for settlement purposes only.

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

Class Counsel has litigated the matter for over three (3) years and was actively preparing the matter for class certification and trial.[64] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the cases and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant.[65] Class Counsel reviewed a large volume of documents and data[66] and also interviewed and obtained information from Plaintiff, researched applicable law, undertook

[60] Mayer Decl., ¶ 15.
[61] Ibid.
[62] Ibid.
[63] Ibid.
[64] *Id.*, ¶¶ 10-12.
[65] *Id.*, ¶ 11.
[66] *Id.*, ¶ 11.

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damages/valuation calculations, and met and conferred with Defendant' counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.[67] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[68]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[69]

The Settlement establishes a Maximum Settlement Amount of Four Hundred Fifty Thousand Dollars and Zero Cents ($450,000.00), and provides for Class 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 Maximum Settlement Amount and an amount not to exceed Sixteen Thousand Dollars and Zero Cents ($16,000.00) for costs and expenses.[70] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (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 with information about the amount allocated toward the Attorneys' Fees and Costs, and that an award of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.[71]

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

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[67] Mayer Decl., ¶ 11.
[68] *Id.*, ¶ 10.
[69] *Id.*, ¶¶ 2-6.
[70] Settlement Agreement, ¶¶ 8.a & 12
[71] *Id.*, Exh. A.

be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (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).

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Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[72]

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 Attorneys' Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Class Notice[73] describes the Settlement, the deadlines and procedures to object to the Class Settlement, request exclusion from the Class Settlement, and/or dispute the number of Workweeks, and the date and time set for the Final Approval Hearing.[74]

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.[75] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[76] The proposed Class Notice also apprises the Class Members and PAGA Members of, *inter alia*, how their Individual Settlement Share and, if applicable,

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[72] Mayer Decl., ¶ 18.
[73] Settlement Agreement, Exh. A.
[74] Ibid.
[75] Ibid.
[76] Ibid.

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Individual PAGA Payment, is calculated and the number of Workweeks credited to them.[77]

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 ("The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit."). Accordingly, the Court should approve the proposed Class Notice.

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

The Parties have selected Simpluris, Inc. ("Settlement Administrator") to administer the Settlement.

Within ten (10) business days after receiving the Class and PAGA Data and List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database, or any other similar services available, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.[78] With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.[79] The Settlement Administrator will receive and process Notices of Objections, Requests for Exclusions, and/or disputes regarding Workweeks.[80]

The Settlement Administrator will be responsible distributing, and tracking Class Notices and other documents for this Settlement, calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other

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[77] Settlement Agreement, Exh. A.
[78] *Id.*, ¶ 20.a.
[79] *Id.*, ¶ 20.b.
[80] *Id.*, ¶ 21, 23, & 24.

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duties and responsibilities to process this Settlement, and as requested by the Parties.[81] The Settlement Administration Costs are currently estimated to be Six Thousand Five Hundred Dollars and Zero Cents ($6,500.00) and will be paid out of the Maximum Settlement Amount, subject to approval by the Court.[82]

Accordingly, Plaintiff respectfully request that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members and PAGA Members 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 and PAGA Members based on Defendant's records.[83]

Within twenty-one (21) calendar days after the Preliminary Approval Order is entered, Defendant shall provide to the Settlement Administrator a list of Class Members and PAGA Members formatted in a password protected and formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member's last-known full name, mailing address, telephone number, Social Security Number, and number of Workweeks during the Class Release Period and, as applicable, during the PAGA Release Period. (collectively, "Class ad PAGA Data and List").[84]

Within ten (10) business days after receiving the Class and PAGA Data and List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database, or any other similar services available, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses

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[81] Mayer Decl., ¶ 14.
[82] Ibid.
[83] Settlement Agreement, ¶ 8.c.
[84] Ibid.

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identified by the Settlement Administrator. [85] With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.[86] Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, Notice of Objection, and/or dispute regarding Workweeks.[87]

Within fifteen (15) calendar days after the first court date after both of the following have occurred: (i) Final Approval of this settlement is granted by the Court, and (ii) judgment approving this settlement becomes Final ("Effective Date"), the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement Agreement.[88] Within thirty (30) calendar days of the Effective Date, Defendant will make a one-time deposit of the Maximum Settlement Amount plus an amount sufficient for Employer Taxes into a settlement account to be established by the Settlement Administrator.[89] Within seven (7) calendar days of the funding of the Maximum Settlement Amount and an amount sufficient for Employer Taxes, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) Individual PAGA Payments to PAGA Members; (c) LWDA Payment to the Labor and Workforce Development Agency; (d) Enhancement Award to Plaintiff; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to itself (the Settlement Administrator).[90]

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.[91] Subject to Court approval, the Settlement Administrator shall transmit the funds represented by such cancelled checks to the California State Controller's Unclaimed Property Fund Division in the name of the Settlement Class

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[85] Settlement Agreement, ¶ 20.a.
[86] *Id.*, ¶ 20.b.
[87] *Id.*, ¶ 8.jj.
[88] *Id.*, ¶¶ 8.m, & 11.
[89] Ibid.
[90] Ibid.
[91] *Id.*, ¶ 22.

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Member or PAGA Member and in the respective amount of funds payable to them.[92]

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR ENHANCEMENT AWARD

Plaintiff Fabian Rivera respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Award in an amount up to Five Thousand Dollars and Zero Cents ($5,000.00).[93] 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 enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Enhancement 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.[94] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[95] The requested Enhancement Award is reasonable in light of the general release of all claims Plaintiff agreed to, which includes any unknown claims against Defendant – a release far greater than the release given by other class members.[96]

Furthermore, Plaintiff's status as the lead named Plaintiff in a class and PAGA representative action against an employer puts him at risk in connection with possible future job

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[92] Settlement Agreement, ¶ 22.
[93] *Id.*, ¶ 13.
[94] Mayer Decl., ¶ 19; Declaration of Fabian Rivera in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Rivera Decl."), ¶ 4.
[95] Mayer Decl., ¶ 19; Rivera Decl., ¶¶ 3-6.
[96] Settlement Agreement, ¶ 33.

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searches. Prospective employers have access to the public records that will disclose his named Plaintiff status, and how much he cost their former employer through this Settlement. Moreover, in pursuing this action on behalf of the Class, Plaintiff risked a judgment entered against him for attorneys' fees and costs in the event this matter had been lost.[97] In addition, the amount of the requested award will be disclosed in the Class Notice.[98] The Court may consider any objections by Class Members to the enhancement award at that time.[99] Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for his services on behalf of the Class, PAGA Members, and the State of California, in addition to his Individual Settlement Payment and Individual PAGA Payment.

XII. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Fabian Rivera as Class Representative; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Award, PAGA Allocation, 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; schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: October 30, 2024

LAWYERS *for* JUSTICE, PC

By: Helene Mayer

Helene Mayer
Attorneys for Plaintiff

[97] Mayer Decl., ¶¶ 10 & 16.
[98] Settlement Agreement, Exh. A.
[99] *Id.*, ¶ 24.

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