Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Vartan Madoyan (SBN 279015)
Helene Mayer (SBN 332975)
LAWYERS *for* JUSTICE, PC
450 North Brand Blvd., Suite 900
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

RENE REYES, 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; ANGIE MEDINA, individually, and on behalf of other members of the general public similarly situated; Plaintiffs, vs. INLAND PSYCHIATRIC MEDICAL GROUP, an unknown business entity; and DOES 1 through 100, inclusive, Defendants.	Case No.: CIVSB2123455 Honorable Christian Towns Department S26 **CLASS ACTION** **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: June 12, 2025 Time: 8:30 a.m. Department: S26 Complaint Filed: August 9, 2021 FAC Filed: November 21, 2024 Trial Date: None Set

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

PLEASE TAKE NOTICE that on June 12, 2025 at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Christian Towns in Department S26 of the Superior Court of the State of California, for the County of San Bernadino, 247 West Third Street, San Bernardino, CA 92415, Plaintiffs Rene Reyes and Angie Medina ("Plaintiffs") will, and hereby do, 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 ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Helene Mayer in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Rene Reyes and Angie Medina as Class Representatives;
- Appointing Arby Aiwazian, Joanna Ghosh, Vartan Madoyan, 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 Simpluris, Inc., 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

LAWYERS *for* JUSTICE, PC
450 North Brand Blvd., Suite 900
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Class Representatives (Rene Reyes and Angie Medina) 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 26, 2025

LAWYERS *for* JUSTICE, PC

By: Helene Mayer
Helene Mayer
Attorneys for Plaintiffs

LAWYERS *for* JUSTICE, PC
450 North Brand Blvd., Suite 900
Glendale, California 91203

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Rene Reyes and Angie Medina ("Plaintiffs" or "Class Representatives") seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Inland Psychiatric Medical Group ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendant (together, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of $1,600,000.00.[1]

Plaintiffs also seek to provisionally certify the following Class for settlement purposes, which Defendant does not oppose: all current and former non-exempt employees employed by Defendant in California who worked 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 Members") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment").[3] 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 that a Class Member worked for Defendant as a non-exempt employee in California during the Class Period and includes any week in which a Class Member had a time worked entry in Defendant's timekeeping system ("Workweeks").[4]

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

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[1] Settlement Agreement, attached as Exhibit 1 to Declaration of Helene Mayer ("Mayer Decl."), § I.I. Defendant has represented that there are 31,746 Workweeks from August 9, 2017 through October 6, 2023. Should the actual number of Workweeks during this same time period increase beyond 10%, i.e., there are more than 34,920 Workweeks for the referenced time period ("Workweeks Threshold"), the Gross Settlement Amount shall increase on a pro rata basis for each additional Workweek. For example, if the Workweeks for the referenced time period exceed the Workweeks Threshold by 1%, then the Gross Settlement Amount will be increased by 1%. *Id.*, § VIII.B.

[2] *Id.*, § I.C.; "Class Period" means the period from August 9, 2017 through December 31, 2023. *See id.*, § I.D.

[3] *Id.*, § I.J. & I.W.

[4] *Id.*, §§ I.X. & XII.A.

[5] *Id.*, § VII.A. & VII.B. *See id.*, at § I.S., for the full scope of the "Released Class Claims;" *See id.*, at § I.T., for the full scope of the "Released PAGA Claims" and *id.* at § I.R. for the full scope of the "Released Parties."

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450 North Brand Blvd., Suite 900
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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Founded in 1992, Defendant is psychiatric medical group consisting of psychiatrists, nurse practitioners, psychologists, and licensed therapists in California who provide treatment for various mental health conditions to a wide range of patients. Plaintiffs are former employees of Defendant.

On July 19, 2021, Plaintiff Reyes sent a letter to the Labor and Workforce Development Agency ("LWDA") and Defendant, pursuant to California Labor Code section 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code section 2698, et seq., for Defendant's alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders, including inter alia, Wage Orders 4-2001, and 5-2001 ("LWDA Letter").[6]

On August 9, 2021, Plaintiff Reyes filed Case No. CIVSB2123450 in San Bernardino County Superior Court, which is a wage and hour class action against Defendant. In this class action (the "Class Action"), Plaintiff alleges, inter alia, on behalf of himself and all others similarly situated, that Defendant violated California state wage and hour laws and the California Business and Professions Code Section 17200 et seq. as a result of Defendant's California wage and hour policies and practices.[7] Specifically, Plaintiff alleged that Defendant violated the following provisions of the California Labor Code: (1) California Labor Code sections 510 and 1198 (failure to pay overtime); (2) California Labor Code sections 226.7 and 512(a) (failure to provide compliant meal periods and associated premiums); (3) California Labor Code section 226.7 (failure to provide rest periods and associated premiums); (4) California Labor Code sections 1194, 1197, and 1197.1 (failure to pay minimum wages); (5) California Labor Code sections 201-203 (failure to timely pay final wages); (6) California Labor Code section 204 (failure to timely pay wages during employment); (7) California Labor Code section 226(a) (failure to provide accurate wage statements); (8) California Labor Code section 1174(d) (failure to keep requisite payroll

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[6] Mayer Decl. ¶ 2.
[7] *Id.*, ¶ 3.

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records); (9) California Labor Code sections 2800 and 2802 (failure to reimburse necessary business expenses); and (10) California Business & Professions Code sections 17200, et seq.[8]

On September 23, 2021, Plaintiff Reyes filed Case No. CIVSB2127286 in San Bernardino County Superior Court ("PAGA Case") (together, with the Class Action, the "Actions"), alleging a single representative cause of action under Private Attorneys General Act, California Labor Code section 2698, et seq. ("PAGA") action against Defendant.[9]

On November 24, 2021, Defendant filed a demurrer and motion to strike Plaintiff Reyes' Class Action Complaint.[10] On February 1, 2022, Defendant's demurrer was overruled and Defendant's motion to strike was denied. On May 6, 2022, the Class Action and PAGA Case were consolidated.[11]

On May 20, 2022, Plaintiff Reyes propounded multiple sets of written discovery including Form Interrogatories (Set One), Special Interrogatories (Sets One & Two), Request for Admissions (Set One), and Request for Production of Documents (Set One) on Defendant.[12] Thereafter, on July 13, 20222 Defendant responded to Plaintiff Reye's discovery requests.[13] Defendant further supplemented those responses on September 16, 2022 and November 9, 2022.[14]

On December 6, 2022, Defendant propounded multiple sets of written discovery including Form Interrogatories – Employment Law (Set One), Special Interrogatories (Set One), Request for Admissions (Set One), and Request for Production of Documents (Set One) on Plaintiff Reyes.[15] Thereafter, on March 8, 2023, Plaintiff Reyes responded to Defendant's discovery requests.[16]

On October 31, 2024, Plaintiff Reyes sought leave to file a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Actions ("First Amended Complaint"), to add the PAGA cause

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[8] Mayer Decl. ¶ 3.
[9] *Id.*, ¶ 4.
[10] *Id.*, ¶ 5.
[11] *Id.*, ¶ 5.
[12] *Id.*, ¶ 6.
[13] Ibid.
[14] Ibid.
[15] *Id.*, ¶ 7.
[16] Ibid.

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of action that had been asserted in the PAGA Case and add Angie Medina as a named plaintiff.[17] The Court granted Plaintiff Reyes leave to file the proposed First Amended Complaint on November 4, 2024, and Plaintiff Reyes filed the First Amended Complaint on November 21, 2024.[18]

Plaintiffs' 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 Plaintiffs, Class Members, and PAGA Group Members of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, 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. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees and costs.[19]

The Parties have actively litigated the Actions since the Class Action was commenced on August 9, 2021. On October 16, 2023, the Parties participated in arm's-length and informed negotiations with Mediator Monique Ngo-Bonnici, Esq. ("Mediator"), a respected mediator of complex wage and hour actions. With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.[20]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of $1,600,000.00 to resolve the Actions.[21] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement

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[17] Mayer Decl., ¶ 8.
[18] Ibid.
[19] *Id.*, ¶ 17.
[20] *Id.*, ¶ 26.
[21] Settlement Agreement, § I.I.

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Amount: (1) attorneys' fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e., $560,000.00, if the Gross Settlement Amount remains $1,600,000.00) ("Attorneys' Fees") and litigation costs and expenses in an amount not to exceed $30,000.00 ("Litigation Costs") to Class Counsel; (2) Settlement Administration Costs, which are currently estimated not to exceed $10,000.00 to the Settlement Administrator ("Administration Costs"); (3) PAGA Penalties of $250,000.00 ("PAGA Penalties"); and (4) payment in the amount of up to $7,500.00 each to Plaintiffs ($15,000.00 total) ("Enhancement Payments").[22] The Parties have agreed to retain Simpluris, Inc., ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.[23]

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 and as follows: the value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks of all Settlement Class Members ("Class Workweek Point Value"); then each Settlement Class Member's individual Workweeks will be multiplied by the Class Workweek Point Value to arrive at his or her Individual Settlement Payment.[24] The Parties have agreed that the Settlement Administrator will determine each PAGA Group Members' share of the 25% share of the PAGA Penalties, in accordance with the Settlement Agreement and as follows: the value of each PAGA Workweek shall be determined by the Settlement Administrator by dividing the Employee PAGA Amount by the total number of Workweeks of each PAGA Group Member during the PAGA Period ("PAGA Workweeks") of all PAGA Group Members ("PAGA Workweek Point Value"); then each PAGA Group Member's individual PAGA Workweeks will be multiplied by the PAGA Workweek Point Value to arrive at his or her Individual PAGA Payment.[25]

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[22] Settlement Agreement, §§ IX, XIV, XV, & XVII.
[23] *Id.*, § I.V.
[24] *Id.*, §§ XII.A.2 & XII.A.3.
[25] *Id.*, §§ XII.B.1, XII.B.2, & XII.B.3.

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The Parties agree, for purposes of this Settlement, that Individual Settlement Payments will be allocated thirty-three percent (33%) wages, thirty-three percent (33%) penalties, and thirty-four (34%) interest and fees.[26] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payments, and issue checks to Settlement Class Members for their Individual Settlement Payments. Individual PAGA Payments to PAGA Group Members will be allocated as 100% penalties and will not be subject to withholdings. Defendant will provide the funds for any employer-side taxes related to the Individual Settlement Payments.[27]

Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be canceled.[28] Thereafter, funds from uncashed Individual Settlement Payment and/or Individual PAGA Payment checks will be paid to Legal Aid Association of California.[29] Legal Aid Association of California is a statewide membership organization of legal services nonprofits that provide critical legal assistance to low-income Californians and ensure equal access to justice.

Any Class Member may request to be excluded from the Class Settlement by mailing a written request to be excluded ("Request for Exclusion") postmarked on or before the date that is 60 calendar days from the date of the initial mailing of the Class Notice by the Settlement Administrator ("Response Deadline").[30] PAGA Group Members shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[31]

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 written objection to the Settlement Administrator prior to the Response Deadline or by presenting their objection orally at the Final Approval Hearing, regardless of whether they submitted a written objection.[32]

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[26] Settlement Agreement, § XVI.C.
[27] *Id.*, § XVI.D.
[28] *Id.*, § XII.D.3.
[29] Ibid.
[30] *Id.*, §§ X.A.5 & X.C.1.
[31] *Id.*, § X.C.3.
[32] *Id.*, § X.B.

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In order to dispute the number of Workweeks attributable to an individual Class Member and/or PAGA Group Member, that Class Member and/or PAGA Group Member must a written dispute ("Workweeks Dispute") to the Settlement Administrator and include copies of any supporting evidence they may have.[33]

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.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

[33] Settlement Agreement, XI.A.

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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 v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Furthermore, courts must give "proper deference to the private consensual 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 Actions since the Class Action was commenced on August 9, 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.[34]

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 Plaintiffs, Defendant, and other sources.[35] 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, Plaintiffs' personnel records, Defendant's Handbook, earning statements, company policy acknowledgements, job descriptions, internal memorandum, Defendant's operations and employment practice, policies, and procedures, among

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[34] Mayer Decl., ¶¶ 26-27.
[35] *Id.*, ¶ 26.

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other information and documents.[36] Class Counsel had the opportunity to interview Plaintiffs and others to gather facts and to identify potential witnesses. In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[37]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation, conducted by Monique Ngo-Bonnici, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[38] Prior to and during the mediation and settlement 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, regular rate, meal and rest periods, PAGA representative claims, and wage-and-hour enforcement; the evidence produced and analyzed; and the possibility of appeals.[39] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[40] 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.[41] 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 Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.[42]

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

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[43] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information.[44] The Settlement takes into account the

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[36] Mayer Decl., ¶ 27.
[37] *Id.*, ¶¶ 19-24.
[38] *Id.*, ¶ 26.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] *Id.*, ¶ 31.
[44] *Id.*, ¶¶ 26-27.

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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.[45]

Assuming that the Attorneys' Fees and Litigation Costs, Enhancement Payments, PAGA Penalties, and Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be $735,000.00.[46] Additionally, 25% of the PAGA Penalties (i.e., Employee PAGA Amount), which is $62,500.00 out of $250,000.00, will be distributed to the PAGA Group Members. The entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement.

The amount of each Settlement Class Member's Individual Settlement Payment and each PAGA Group Member's Individual PAGA Payment will be calculated based on his or her Workweeks and/or PAGA Workweeks during the Class Period and PAGA Period, respectively.[47] "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 Workweeks and/or PAGA Workweeks actually worked for Defendant during the relevant period 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 Group Members, and the State of California.[48] 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.

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[45] Mayer Decl., ¶ 31.
[46] *Id.*, ¶ 10.
[47] Settlement Agreement, §§ I.P & XVII.
[48] Mayer Decl., ¶ 31.

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450 North Brand Blvd., Suite 900
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450 North Brand Blvd., Suite 900
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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.[49] The information that Class Counsel obtained from Plaintiffs, Defendant, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.[50] 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.[51]

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[52] 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.*

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; 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

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[49] Mayer Decl., ¶¶ 26-27.
[50] *Id.*, ¶ 30.
[51] Ibid.
[52] Settlement Agreement, § IV.B.

numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 413 individuals, which is sufficiently numerous.[53] 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.[54]

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).

Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Actions. Based on the documents and information obtained through informal discovery and exchange of information in the case, Plaintiffs contend 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.[55] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue. Plaintiffs maintain 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.

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[53] Mayer Decl. ¶ 16.
[54] *Id.*, ¶ 15.
[55] *Id.*, ¶ 17.

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As members of the Class who were subject to these same policies, practices, and procedures, Plaintiffs' claims are typical of the Class. Moreover, Plaintiffs have no interests adverse to the Class. Plaintiffs have taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.[56] Importantly, Plaintiffs have retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiffs and the Class.[57]

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

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

Class Counsel has litigated the matter for over three years and was actively preparing the matter for class certification and trial.[58] 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 Plaintiffs, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to the mediation.[59] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[60] Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[61]

The Settlement establishes a Gross Settlement Amount of $1,600,000.00, 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., $560,000.00 if the Gross Settlement Amount remains $1,600,000.00), and reimbursement of actual costs and expenses in an amount up to $30,000.00.[62]

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[56] Declaration of Rene Reyes in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Reyes Decl."), ¶¶ 2-6; Declaration of Angie Medina in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Medina Decl."), ¶¶ 2-5.
[57] Mayer Decl., ¶¶ 19-24.
[58] *Id.*, ¶ 26.
[59] Ibid.
[60] Ibid.
[61] *Id.*, ¶¶ 19-24.
[62] Settlement Agreement, § XIV.

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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 Attorneys' Fees and Litigation Costs will be sought and the amount allocated toward the Attorneys' Fees and Litigation Costs by the Settlement.[63]

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).

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[63] Settlement Agreement, Exh. A.

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[64] Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs' Motion for Final Approval of the Settlement and application for the Attorneys' Fees and Litigation Costs 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.

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

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).

[64] Mayer Decl., ¶ 11.

The proposed Class Notice describes the Settlement, the deadlines and procedures to submit a written objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or Workweeks Dispute, and the date and time set for the Final Approval Hearing.[65] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[66] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[67] The proposed Class Notice also apprises the Class Members and PAGA Group Members of, *inter alia*, how their Individual Settlement Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Workweeks credited to them.[68] 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.

IX. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris, Inc. as the Settlement Administrator. Within 14 calendar days of receipt of the Class List, the Settlement Administrator shall run all the addresses provided through the United States Postal Service Notice of Change of Address database to obtain current address information, and shall mail the Class Notice to the Class Members via first-class U.S. Mail in English using the most current mailing address information available.[69] If a Class Notice is returned as undeliverable within 30 calendar days after the initial mailing, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address within 3 business days of receipt of the returned mail.[70] In the case of a re-mailed Class Notice, the Response Deadline for the Class Member whose Class Notice is re-mailed will be extended an

[65] Settlement Agreement, Exh. A.
[66] Ibid.
[67] Ibid.
[68] Ibid.
[69] Ibid.
[70] Ibid.

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additional 15 calendar days from the original Response Deadline.[71] The Settlement Administrator will receive and process Requests for Exclusion, written objections, or Workweeks Disputes.[72] In addition, the Settlement Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the 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.[73] The Administration Costs are currently estimated to be $10,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[74] Accordingly, Plaintiffs 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 Group Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS

Plaintiffs respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Enhancement Payments in an amount up to $7,500.00 each to Plaintiff Reyes and Plaintiff Medina (for a total of $15,000.00).[75] 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. The factors that courts may consider in determining whether to make an 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 Enhancement Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing

[71] Settlement Agreement, § X.A.5.
[72] *Id.*, § IX.
[73] Ibid.
[74] Ibid.
[75] *Id.*, § XV.

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the facts and evidence necessary to attempt to prove the allegations.[76] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[77] For example, Plaintiff Reyes expended effort to review and provide responses to multiple sets of discovery requests that were propounded by Defendant.[78] Accordingly, it is appropriate and just for Plaintiffs to receive Enhancement Payments for their services on behalf of the Class, PAGA Group Members, and the State of California, in addition to their individual settlement payment.

XI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request 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 Plaintiffs Rene Reyes and Angie Medina as Class Representatives; appoint Simpluris, Inc., as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Litigation Costs, Enhancement Payments, PAGA Penalties, and Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and to schedule a Final Approval Hearing to take place in approximately 6 months.

Dated: February 26, 2025

LAWYERS *for* JUSTICE, PC

By: Helene Mayer
Helene Mayer
Attorneys for Plaintiffs

[76] Mayer Decl., ¶ 12; Reyes Decl., ¶¶ 3-6; Medina Decl., ¶¶ 3-5.
[77] Mayer Decl., ¶ 12; Reyes Decl., ¶¶ 3-6; Medina Decl., ¶¶ 3-5.
[78] Mayer Decl., ¶ 12; Reyes Decl., ¶ 4.

LAWYERS *for* JUSTICE, PC
450 North Brand Blvd., Suite 900
Glendale, California 91203