Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Tara Zabehi (SBN 314706)
Margaux Gundzik (SBN 340116)
LAWYERS *for* JUSTICE, PC
450 North Brand Boulevard, Suite 900
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ALBERT WALKER, individually, and on behalf of other members of the general public similarly situated, and individually, and on behalf of other aggrieved employees under the California Private Attorney General Act of 2004; Plaintiff, vs. THE CHRYSALIS CENTER, an unknown business entity; and DOES 1 through 100, inclusive, Defendants.	Case No. 22STCV22659 [*consolidated with* Case No. 22STCV22510] Honorable Samantha P. Jessner Department 7 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: August 21, 2025 Time: 10:00 AM Complaint Filed: July 12, 2022

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

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

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

PLEASE TAKE NOTICE that on August 21, 2005 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Samantha P. Jessner in Department 7 of the Superior Court of the State of California, for the County of Los Angeles, 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Albert Walker ("Plaintiff") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the parties' Class Action and PAGA Settlement Agreement and Class Notice ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 2**" to the Declaration of Margaux Gundzik in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Albert Walker as Class Representative;
- Appointing Arby Aiwazian, Joanna Ghosh, Tara Zabehi, and Margaux Gundzik 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.

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This motion is based upon the following memorandum of points and authorities; the Settlement Agreement; the Declarations of Proposed Class Counsel (Margaux Gundzik) and Proposed Class Representative (Albert Walker) 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: May 29, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________________
Margaux Gundzik
Attorneys for Plaintiff

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

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450 North Brand Blvd., Suite 900
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Glendale. California 91203

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Albert Walker ("Plaintiff" or "Class Representative") seek preliminary approval of the Class Action and PAGA Action Settlement ("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 The Chrysalis Center ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (together, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of $1,450,000.[1]

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 who worked for Chrysalis in California during the Class Period, except that all settlement class members' claims that arose from events that occurred before January 31, 2021 and were covered and released by the *Jones vs. The Chrysalis Center* settlement shall be excluded from the Settlement Class in the Actions, except and unless they were employed by Chrysalis in California in hourly paid or non-exempt positions at any time after January 31, 2021, in which case, only their post-January 31, 2021 workweeks shall be included in the Class Period Workweeks calculations ("Class" or "Class Members").[2] Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Settlement Class Member") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"). The net payment of each Settlement Class Member's Individual Settlement Share ("Individual Settlement Payment") will be distributed to Settlement Class Members on a *pro rata* basis based upon the number of weeks each Class Member worked at least one shift for Defendant as an hourly-paid or non-exempt

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[1] Settlement Agreement, attached as Exhibit 2 to Declaration of Margaux Gundzik ("Gundzik Decl."), ¶ 7. Defendant estimated that there were 200,000 Workweeks during the period from July 12, 2018 to October 1, 2024. Should the Workweeks during the Class Period increase by more than 5% of 200,000 (i.e., more than 210,000 Workweeks), Defendant shall increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 5% (e.g., if the number of Workweeks increase by 6% to 212,000 workweeks, the Gross Settlement Amount will increase by 1%).

[2] Settlement Agreement, ¶ 1.12.; "Class Period" is defined as the time period from July 12, 2018 through the date of Preliminary Approval of this Settlement or January 31, 2025 whichever is later.

employee in California during the Class Period ("Workweeks").[3]

The Settlement, upon final approval by the Court and funding of the Gross Settlement Amount, will operate to resolve the Released Class Claims of Plaintiff and Settlement Class Members and the Released PAGA Claims of the State of California.[4]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a Southern California nonprofit organization dedicated to changing lives through jobs. Its mission is to assist homeless and at-risk individuals learn the skills necessary to obtain and retain employment in the private sector, and thereby to use the dignity and stability a job provides to achieve self-sufficiency, sometimes for the first time in their lives. Defendant's Chrysalis' Clients face enormous hurdles to obtaining and keeping jobs in the private sector. Many have been street homeless. Many live in half-way houses, live in their cars, or have other unstable living arrangements. Many have battled alcohol and drug abuse. Many have criminal records and have spent years in prison. Many are unpresentable to employers because they lack clean, appropriate clothing, dental care, and personal hygiene. Many have never held a steady job or worked a regular job at all. To its Clients, Defendant offers a myriad free services, including: one-on-one advice from a professional employment specialist; designing personal plans and strategies for employment searches; computer access and classes; resume writing classes; classes for interview skills; anger management classes; free interview clothing; free bus and train tokens to get to interviews and work; and many more. Those Clients who complete Defendant's free core programs have a good chance to find and retain employment. But some Clients have even greater hurdles to overcome, and, for those, Defendant offers additional services. For those Clients who are most at risk and most unemployable by the private sector, Defendant offers transitional jobs for a few months. These jobs are offered in four business divisions: the Works Division, the Roads Division, the Staffing Division, and the Safekeeping Division. Plaintiff is an employee of Defendant.

On April 20, 2022, Plaintiff provided written notice by certified mail to the LWDA and

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[3] *Id.,* ¶ 3.24.
[4] *See id*., at ¶ 5.2 for the full scope of the "Released Class Claims;" *See id*., at ¶ 5.3, for the full scope of the "Released PAGA Claims" and *id*. at ¶ 1.41 for the full scope of the "Released Parties."

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

Defendant of the specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice").[5] On July 12, 2022, Plaintiff filed the Class Action Complaint for Damages ("Class Action Complaint" or "Class Action") and a separate Complaint for Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq*. ("PAGA Complaint" or "PAGA Action"), thereby commencing the above-captioned lawsuit.[6] On December 7, 2022, Defendant filed its Answer to Plaintiff's Class Action Complaint.[7] On January 11, 2023, Defendant filed its Answer to Plaintiff's PAGA Complaint.[8]

Plaintiff's core allegations are that Defendant has violated California wage and hour law, including but not limited to laws set forth in the California Labor Code, by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA Employees of, *inter alia*, 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. Plaintiff contends that he, 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.[9]

The Parties have heavily litigated both the Class Action and the PAGA Action. On April 9, 2024, the Parties participated in arm's-length and informed negotiations with Mediator Steven J. Rottman, Esq. ("Mediator"), a respected mediator of complex wage and hour actions. The parties did not reach a settlement at mediation and resumed active litigation of both the Class Action and the PAGA Action for the next nine months. Simultaneously, the Parties engaged in intermittent settlement negotiations and, with the aid of the Mediator's evaluation, they ultimately reached the

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[5] Gundzik Decl., ¶ 2, Exh. 1.
[6] Gundzik Decl. ¶ 3.
[7] *Id.*, ¶ 4.
[8] *Id.*, ¶ 5.
[9] Gundzik Decl., ¶ 16.

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450 North Brand Blvd., Suite 900
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Settlement described herein to resolve both the Class Action and the PAGA Action in their entirety.[10]

On April 9, 2025, the Parties filed a Joint Stipulation to consolidate the Class Action and the PAGA action. The Court granted the Parties' Joint Stipulation to consolidate the Class Action and the PAGA Action (hereinafter "Consolidated Action") on April 14, 2025, and deemed the Class Action the lead case.[11]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of $1,450,000.00 to resolve the Consolidated Action (hereinafter, the "Action"), which will be funded by way of three (3) installments (hereinafter "Annual Installments"). No later than 30 days after preliminary approval is granted, Defendants will make an initial payment in the amount of $483,333.00[12] into the qualified settlement account established by the Settlement Administrator ("First Installment").[13] No later than one year after preliminary approval is granted, Defendants will make a second payment in the amount of $483,333.00,[14] plus the employer's share of taxes owed on the Wage Portion of Individual Class Payments, into the qualified settlement account established by the Settlement Administrator ("Second Installment").[15] No later than two years after preliminary approval is granted, Defendants will make a third and final payment in the amount of $483,334.00[16] into the qualified settlement account established by the Settlement Administrator ("Third Installment")[17], which will fund the settlement in full (the "Payment Plan").[18] Based on the review of Defendant's financial records by a jointly retained financial expert, Defendant is unable to fund the Settlement without the Payment Plan.[19]

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[10] Gundzik Decl., ¶ 25.
[11] *Id.*, ¶ 6.
[12] All such sums plus interest will be automatically returned to Defendant if final approval of the settlement is denied or the settlement otherwise becomes void. (Settlement Agreement, ¶ 4.3.1.)
[13] *Id.,* ¶ 4.3.1.
[14] All such sums plus interest to be automatically returned to Defendant if final approval of the settlement is denied or the settlement otherwise becomes void. (Settlement Agreement, ¶ 4.3.2.)
[15] *Id.,* ¶ 4.3.2.
[16] All such sums plus interest to be automatically returned to Defendant if final approval of the settlement is denied or the settlement otherwise becomes void. (Settlement Agreement, ¶ 4.3.3.)
[17] *Id.,* ¶ 4.3.2.
[18] *Id,,* ¶¶ 1.22; 4.3.
[19] *See* Gundzik Decl., ¶ 28

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Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e., $507,500.00, if the Gross Settlement Amount remains $1,450,000.00) and litigation costs and expenses in an amount not to exceed $40,000.00 ("Attorneys' Fees and Costs") to Class Counsel; (2) Settlement Administration Costs, which are currently estimated not to exceed $34,500.00 to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Allocation of $200,000.00 ("PAGA Allocation"); and (4) payment in the amount of up to $10,000.00 to Plaintiff ("Enhancement Award").[20] The Parties have agreed to retain Simpluris, Inc., ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.[21]

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement on a *pro rata* per Workweek basis,[22] which will be adjusted after Final Approval to reflect the total Workweeks worked by the Settlement Class Members.[23] The Parties have agreed that the Settlement Administrator will determine each PAGA Employees' share of the 25% share of the PAGA Allocation, in accordance with the Settlement Agreement on a *pro rata* per PAGA Pay Period basis.[24]

The Parties agree, for purposes of this Settlement, that Individual Settlement Shares will be allocated 20% to wages subject to withholdings and 80% to penalties and interest.[25] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments. Individual PAGA Payments to PAGA Employees will be allocated as 100% penalties and will not be subject to withholdings. Defendant

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[20] Settlement Agreement, ¶¶ 3.2.1, 3.2.2, 3.2.3.
[21] *Id.*, ¶ 1.2.
[22] Workweeks will be calculated using the check registers in the Class Data for transitional employees (calculating one Workweek for each employee who received a pay check for work during the Class Period) and hire/rehire/termination dates for permanent staff. (Settlement Agreement, ¶ 1.45.)
[23] Settlement Agreement, ¶ 3.2.4;
[24] *Id.,* ¶ 3.2.5.
[25] *Id.,* ¶¶ 3.2.4, 3.2.5

LAWYERS *for* JUSTICE, PC
450 North Brand Blvd., Suite 900
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will provide the funds for any employer-side taxes related to the Individual Settlement Shares.[26]

Within fifteen (15) calendar days of the funding of the Second Installment (or 15 days after the Settlement becomes Final, whichever is later), the Settlement Administrator will pay all sums due under this settlement with the exception of the attorneys' fees and litigation costs.[27] Additionally, within fifteen (15) calendar days of the funding of the Second Installment (or 15 days after the Settlement becomes Final, whichever is later), the Settlement Administrator will distribute the LWDA Payment to the LWDA, the Enhancement Payment to Plaintiff, and the Settlement Administration Costs to itself.[28] Within fifteen (15) calendar days of the funding of the Third Installment, the Settlement Administrator will distribute the Court-approved Litigation Costs and Court-Approved Attorneys' Fees to Class Counsel.[29]

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.[30] Thereafter, funds from uncashed Individual Settlement Payment and/or Individual PAGA Payment checks shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member and/or PAGA Employee to whom the checks were issued.[31]

Any Class Member may request to be excluded from the Class Settlement by mailing a 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").[32] PAGA Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[33]

Only Class Members who have not submitted a Request for Exclusion (i.e., Settlement Class Members) may object to the Class Settlement by submitting a Notice of Objection to the

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[26] *Id.,* ¶ 4.3
[27] Individual Class Payments and Individual PAGA Payments will be sent out via First Class U.S. Mail, postage prepaid. (*Id.,* ¶ 4.4.)
[28] *Ibid.*
[29] Settlement Agreement, ¶ 4.4.
[30] Settlement Agreement, ¶ 4.4.1
[31] *Id.,* ¶ 4.4.3.
[32] *Id.,* ¶¶ 7.4.4, 7.5.1, 7.6.
[33] *Id.,* ¶ 7.7.1.

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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.[34]

In order to dispute the number of Workweeks attributable to an individual Class Member and/or PAGA Employee, that Class Member and/or PAGA Employee must contact the Administrator via fax, email or mail and provide the Settlement Administrator with copies of any supporting evidence they may have.[35]

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,

[34] *Id.*, ¶ 7.7.2.
[35] *Id.*, ¶ 7.6.

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450 North Brand Blvd., Suite 900
Glendale, California 91203

courts must consider several relevant factors, including "the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba 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 Action since it commenced on July 12, 2022. 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.[36]

Class Counsel conducted significant investigation by way of both formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data from Plaintiff, Defendant, and other sources.[37] 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, personnel records of Plaintiff and a substantial number of putative class members, Defendant's Handbooks and loose leaf

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[36] Gundzik Decl., ¶ 25.
[37] *Ibid.*

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450 North Brand Blvd., Suite 900
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policies, earning statements, company policy acknowledgements, job descriptions, Defendant's operations and employment practice, policies, and procedures, among other information and documents.[38] Class Counsel took the depositions of Defendant's Persons Most Knowledgeable, the CEO and Human Resources Director, and had the opportunity to interview Plaintiff and dozens of other class members to gather facts and to identify potential witnesses. In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[39]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation, conducted by Steven J. Rottman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[40] Prior to and during mediation and in the settlement discussions that continued for the next nine months, 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, Defendant's financial condition, the risks and delays of further litigation, including the risks of proceeding with class certification and representative adjudication; the law relating to class certification, off-the-clock theory, meal and rest periods, PAGA representative claims, and wage-and-hour enforcement; and the evidence produced and analyzed.[41] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[42] Arriving at a settlement that was acceptable to both Parties was not easy, as is evidenced by the months of litigation that proceeded the Parties' initial attempt to settle the case at mediation.[43] Both sides felt strongly about their ability to prevail at certification and at trial.[44] After conducting investigations, both formal and informal discovery, extensive litigation, and several rounds of 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.[45]

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[38] Gundzik Decl., ¶ ¶ 26-27.
[39] *Id*., ¶¶ 18-23.
[40] *Id.,* ¶ 25.
[41] *Id.,* ¶ 26.
[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid*.
[45] Gundzik Decl., ¶¶ 25-30.

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450 North Brand Blvd., Suite 900
Glendale, California 91203

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

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[46] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information.[47] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue. Moreover, considering all of the facts and circumstances of the case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[48]

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 $658,000.00.[49] Additionally, 25% of the PAGA Allocation (i.e., Individual PAGA Payment), which is $50,000.00 out of $200,000.00, will be distributed to the PAGA Employees. 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 Employees' Individual PAGA Payment will be calculated based on his or her Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.[50] "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 Pay Periods 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 Employees, and the State of California.[51] Although the recommendations of Class Counsel are not

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[46] *Id.*, ¶ 30.
[47] *Id.,* ¶ 32.
[48] *Ibid*.
[49] Gundzik Decl., ¶ 8.
[50] Settlement Agreement, ¶¶ 3.2.4, 3.2.5.
[51] Gundzik Decl., ¶¶ 26, 38.

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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 and following mediation.[52] The information that Class Counsel obtained from Plaintiff, 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.[53] As outlined in the Declaration of Margaux Gundzik, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[54]

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.[55] 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

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[52] Gundzik Decl., ¶¶ 26, 27, 32.
[53] *Id.,* ¶ 32.
[54] *Id.,* ¶ 37.
[55] Settlement Agreement, ¶ 12.1.

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describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; s*ee also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is approximately 5,647 individuals, which is sufficiently numerous.[56] 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.

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, Plaintiff maintains that common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through formal and informal discovery and exchange of information in the case, Plaintiff contends that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.[57] 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.

[56] Gundzik Decl. ¶¶ 15, 34.
[57] Gundzik Decl., ¶ 16.

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

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

Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked in California during the Class Period.

As a member of the Class who was subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Class.[58] Moreover, Plaintiff has no interests adverse to the Class.[59] Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.[60] Importantly, Plaintiff has retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff and the Class.[61]

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

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

Class Counsel has litigated the matter for over two and a half years and was actively preparing the matter for class certification and trial.[62] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff, 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.[63] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[64] Class Counsel also continued to aggressively litigate the matter following mediation in order to obtain information that was not available to them during mediation, such as class contact information, which enabled them to interview and obtain the facts about their experience working for Defendant. Class Counsel also

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[58] Declaration of Albert Walker in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement ("Walker Decl."), ¶ 8
[59] *Ibid.*
[60] Walker Decl., ¶¶ 3-6.
[61] Gundzik Decl., ¶¶ 18-23
[62] *Id.*, ¶¶ 26. 27, 29, 32.
[63] *Ibid.*
[64] *Ibid.*

took the depositions of Defendant's Persons Most Knowledgeable regarding the practices upon which Plaintiff's allegations are based, through which they ascertained critical information as to his claims. Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[65]

The Settlement establishes a Gross Settlement Amount of $1,450,000.00, and provides for Class Counsel to apply to the Court for attorneys' fees in an amount up to 35% of the Gross Settlement Amount (i.e., $507,500.00 if the Gross Settlement Amount remains $1,450,000.00), and reimbursement of actual costs and expenses in an amount up to $40,000.00.[66] 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 notice to Class Members that an award of the Attorneys' Fees and Costs will be sought and the amount allocated toward the Attorneys' Fees and Costs by the Settlement.[67]

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

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[65] Gundzik Decl., ¶¶ 38-39.
[66] Settlement Agreement, ¶ 3.2.2.
[67] *Id*., Exh. A.

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

Cal.App.4th at 50.

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg,* § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 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.[68] 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 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.

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[68] Gundzik Decl., ¶ 9.

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

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

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[69] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[70] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[71] The proposed Class Notice also apprises the Class Members and PAGA Employees of, *inter alia*, how their Individual Settlement Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[72] 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.

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[69] Settlement Agreement, Exh. A.
[70] *Ibid.*
[71] *Ibid.*
[72] Settlement Agreement, Exh. A.

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 will perform an NCOA check, translate the notice, and mail the Class Notice to each Class Member and PAGA Employee.[73] The Settlement Administrator will skip-trace returned Class Notices and re-mail the Class Notice to the new addresses within three business days.[74] In the case of a re-mailed Class Notice, the Response Deadline will be will be 14 calendar days after the 60 calendar days otherwise provided.[75] The Administrator will receive and process Requests for Exclusion, Notices of Objection, or disputes regarding Workweeks.[76] 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.[77] The Settlement Administration Costs are currently estimated to be no more than $34,500.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[78] Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc., as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members and PAGA Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. CLASS REPRESENTATIVE ENHANCEMENT AWARD

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Award in the amount of $10,000.00.[79] It is within the Court's discretion to award payment to a Class Representative for her efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may

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[73] *Ibid.*
[74] *Ibid.*
[75] Settlement Agreement, ¶ 7.4.4.
[76] *Id.*, ¶ 7.8.
[77] Gundzik Decl., ¶ 11.
[78] Settlement Agreement, ¶ 3.2.3.
[79] Settlement Agreement, ¶ 3.2.1.

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

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 Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in reviewing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[80] 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.[81] Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for his services on behalf of the Class, PAGA Employees, and the State of California, in addition to his individual settlement payment.

XI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; appoint Lawyers *for* Justice, PC as Class Counsel; appoint Plaintiff Albert Walker 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; and to schedule a Final Approval Hearing to take place on the soonest available hearing date

Dated: May 29, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________
Margaux Gundzik
Attorneys for Plaintiff

[80] Gundzik Decl., ¶¶ 10, 17; Walker Decl., ¶¶ 3-5.
[81] Gundzik Decl., ¶¶ 10, 17; Walker Decl., ¶¶ 3-5.

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