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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

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

Plaintiff,

vs.

MERAKEY ALLOS, a Pennsylvania
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 37-2022-00032123-CU-OE-CTL

Honorable Loren G. Freestone
Department C-64

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: August 1, 2025
Time: 10:30 a.m.
Department: C-64

Complaint Filed: August 11, 2022
FAC Filed: October 20, 2022
SAC Filed: September 24, 2024
Trial Date: None Set

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

3 **PLEASE TAKE NOTICE** that on August 1, 2025 at 10:30 a.m., or as soon thereafter as
4 the matter may be heard before the Honorable Loren G. Freestone in Department C-64 of the
5 Superior Court of the State of California, for the County of San Diego, 1100 Union Street, San
6 Diego, California 92101, Plaintiff Felissia Fry (“Plaintiff”) will, and hereby does, move for an
7 order:

- 8 • Granting preliminary approval of the proposed class action settlement described herein
9 and as set forth in the parties’ Joint Stipulation of Class Action and PAGA Settlement
10 and Release (“Settlement,” “Agreement” or “Settlement Agreement”), attached as
11 “**EXHIBIT 2**” to the Declaration of Helene Mayer in Support of Plaintiff’s Motion for
12 Preliminary Approval of Class Action and PAGA Settlement;
- 13 • Certifying the proposed Class for settlement purposes;
- 14 • Appointing Felissia Fry as Class Representative;
- 15 • Appointing Arby Aiwezian, Joanna Ghosh, and Helene Mayer of Lawyers *for* Justice,
16 PC as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached
18 as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class
19 Action and PAGA Settlement, and directing the mailing thereof in accordance with
20 the Settlement Agreement;
- 21 • Approving Simpluris, Inc., as the Settlement Administrator; and
- 22 • Scheduling a hearing to consider final approval of the Settlement.

23 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which require
24 approval by the Court of the settlement of a putative class action, and Rule 3.1113(e), which allows
25 the Court to preliminarily certify a class for settlement purposes, and permits the Court to extend
26 the page limit for memoranda.

27 This motion is based upon the following memorandum of points and authorities; the
28 Settlement Agreement; the Declarations of Proposed Class Counsel (Helene Mayer) and Proposed

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

4 Dated: January 29, 2025

LAWYERS for JUSTICE, PC

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6 By: Helene Mayer
7 Helene Mayer
8 *Attorneys for Plaintiff*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Felissia Fry (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Merakey Allos (“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 \$1,953,000.00.¹

Plaintiff also seeks to provisionally certify the following Class for settlement purposes only, which Defendant does not oppose: All individuals who worked for Defendant as hourly-paid or non-exempt employees in the State of California at any time during the Class Period (“Class” or “Class Members”).² Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement (“Settlement Class Member”) will receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement 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 for Defendant, for at least one day, as a non-exempt 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

¹ Settlement Agreement, attached as Exhibit 2 to Declaration of Helene Mayer (“Mayer Decl.”), ¶ 7(s). The Parties agreed to settle the lawsuit for a Gross Settlement Amount of \$1,800,000, following Defendant’s representation that there were 36,000 Workweeks during the period from August 11, 2018 through November 2, 2023. The Parties also agreed that if the total number of Workweeks during the Class Period is determined to exceed this amount by more than 10% (i.e., the Workweeks for the Class Period are actually more than 39,600), Defendant will have the option of paying the increase to the Gross Settlement Amount on a *pro rata* basis (for example, if the increase in Workweeks is 12% over 36,000 Workweeks, the Gross Settlement Amount will increase by 2%), or of timely electing to end the Class Period and PAGA Period as of the last date on which the Workweeks do not exceed 39,600 (“Settlement End Date”). Defendant has determined that the total number of Workweeks during the Class Period is 42,661 and therefore, exceeds 36,000 Workweeks by more than 10% (specifically, by 18.5%). Defendant has exercised its option of increasing the Gross Settlement Amount by 8.5%, from \$1,800,000 to \$1,953,000.

² *Id.*, ¶ 7(d).; “Class Period” is defined as the period from August 11, 2018, through March 4, 2024. *See id.*, ¶ 7(f).

³ *Id.*, ¶¶ 7(q), 7(r), 7(kk) and 7(ll).

Members and the Released PAGA Claims of Plaintiff, PAGA Group Members, and the State of California.⁴

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides developmental, behavior, health, and educational services to clients across 12 states, including California, and is headquartered in Lafayette Hill, Pennsylvania. Plaintiff is a former employee of Defendant.

On July 20, 2022, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code that were alleged to be violated (“LWDA Notice”).⁵

On August 11, 2022, Plaintiff filed the Class Action Complaint for Damages in the Superior Court for the County of San Diego, thereby commencing the above-captioned lawsuit.⁶

On October 20, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code §§ 2698, *Et Seq.* (“First Amended Complaint”), adding a PAGA cause of action.⁷

On November 16, 2022, Defendant Merakey Allos (“Defendant”) filed its Answer to Plaintiff’s First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code §§ 2698, *Et Seq.*⁸

On August 7, 2024, Plaintiff sought leave to file a Second Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code §§ 2698, *Et Seq.* (“Second Amended Complaint” or “Operative Complaint”), alleging additional causes of action against Defendant for violations of the California Labor Code. The Court granted Plaintiff leave to file the proposed Second Amended Complaint on September 9, 2024, and Plaintiff filed the Second Amended Complaint on September 24, 2024.⁹

⁴ See Settlement Agreement, at ¶ 7(dd), for the full scope of the “Released Class Claims;” *See id.*, at ¶ 7(ee), for the full scope of the “Released PAGA Claims;” and *id.* at ¶ 7(ff), for the full scope of the “Released Parties.”

⁵ Mayer Decl. ¶ 2, Exh. 1.

⁶ *Id.*, ¶ 3.

⁷ *Id.*, ¶ 4.

⁸ *Id.*, ¶ 5.

⁹ *Id.*, ¶ 6.

On October 1, 2024, Defendant filed its Answer to Plaintiff's Second Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code §§ 2698, *Et Seq.*¹⁰

Plaintiff's core allegations are that Defendant has violated California wage and hour laws, 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 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 meal and rest periods and associated premium payments, failing to pay timely wages during employment, failing to timely pay final wages and associated waiting-time penalties, failing to keep compliant wage statements, failing to keep compliant payroll records, failing to reimburse business expenses, failing to provide one day's rest in seven, and violating the Wage Theft Protection Act, 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 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.¹¹

The Parties have actively litigated the Action since it was commenced on August 11, 2022. On November 2, 2023, the Parties participated in arm's-length and informed negotiations with Mediator Deborah Saxe, 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 Action in its entirety.¹²

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

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¹⁰ Mayer Decl., ¶ 7.

¹¹ *Id.*, ¶ 17.

¹² *Id.*, ¶ 25.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of \$1,953,000.00 to resolve the Action.¹³ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e., \$683,550.00) and litigation costs and expenses in an amount not to exceed \$18,000.00 ("Attorneys' Fees and Costs") to Class Counsel; (2) Settlement Administration Costs, which are currently estimated not to exceed \$11,000.00 to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Penalties of \$150,000.00 ("PAGA Penalties"); and (4) payment in the amount of up to \$7,500.00 to Plaintiff ("Incentive Award").¹⁴ The Parties have agreed to retain Simpluris, Inc., ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration process.¹⁵

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement on a *pro rata* per Workweek basis, which will be adjusted after Final Approval to reflect the total Workweeks worked by the Settlement Class Members.¹⁶ The Parties have agreed that the Settlement Administrator will determine each PAGA Group Member's individual PAGA Payment, i.e. their share of the 25% portion of the PAGA Penalties being distributed to the PAGA Group Members, on *pro rata* basis utilizing the PAGA Pay Periods for each PAGA Group Member compared to the total PAGA Pay Periods for all PAGA Group Members, in accordance with the Settlement Agreement.¹⁷

The Parties agree, for purposes of this Settlement, that Individual Settlement Shares will be allocated 30% wages subject to withholdings and 70% as penalties, interest, and non-wage damages.¹⁸ The Settlement Administrator will withhold the employee's share of taxes and

¹³ Settlement Agreement, ¶ 7(s).

¹⁴ *Id.*, ¶¶ 7(y), 11, 12 and 13.

¹⁵ *Id.*, ¶ 34(e).

¹⁶ *Id.*, ¶ 15(a).

¹⁷ *Id.*, ¶ 15(b).

¹⁸ *Id.*, ¶ 26.

1 withholdings with respect to the wages portion of the Individual Settlement Shares, and issue
2 checks to Settlement Class Members for their Individual Settlement Payments. Individual PAGA
3 Payments to PAGA Group Members will be allocated as 100% penalties and will not be subject
4 to withholdings. The employer's share of taxes and contributions on the wages portion of
5 Individual Settlement Shares will be paid by Defendant separately and in addition to the Gross
6 Settlement Amount.¹⁹

7 Individual Settlement Payment and Individual PAGA Payment checks shall remain valid
8 and negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be
9 canceled.²⁰ After the 180-day check-cashing deadline, the Parties shall file a stipulation to amend
10 the Final Approval Order and Judgment that sets forth the total amount to be paid to Settlement
11 Class Members and the amount of unpaid residue, plus any interest on such funds.²¹ Thereafter,
12 all funds associated with such cancelled checks will be transferred to the State of California's
13 Unclaimed Property Division in the name of the Settlement Class Member and/or Aggrieved
14 Employee, subject to the requirements of California Code of Civil Procedure Section 384, subd.
15 (b), after the Court enters an order approving the Parties' stipulation to amend the Final Approval
16 Order and Judgment.²²

17 Any Class Member may request to be excluded from the Settlement by submitting a timely
18 and valid Request for Exclusion to the Settlement Administrator by mail or fax, postmarked or
19 fax-stamped on or before the date that is 60 calendar days from the date of the initial mailing of
20 the Class Notice by the Settlement Administrator ("Response Deadline").²³ PAGA Group
21 Members shall be bound to the PAGA Settlement irrespective of whether they exercise their option
22 to opt out of the Class Settlement.²⁴

23 Only Class Members who have not submitted a Request for Exclusion (i.e., Settlement
24 Class Members) may present their objection orally at the Final Approval Hearing and/or submit a
25

26 ¹⁹ Settlement Agreement, ¶ 26.

27 ²⁰ *Id.*, ¶ 20.

28 ²¹ *Ibid.*

²² *Ibid.*

²³ *Id.*, ¶¶ 7(hh) & 21.

²⁴ *Id.*, ¶ 21.

1 timely and complete Notice of Objection to the Settlement Administrator, by mail, on or before
2 the Response Deadline.²⁵

3 In order to dispute the number of Workweeks attributable to an individual Class Member,
4 that Class Member must submit a written letter to the Settlement Administrator and include copies
5 of any supporting evidence they may have.²⁶

6 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
7 **SETTLEMENTS**

8 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
9 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). Courts review class action
10 settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later
11 detailed review after the period during which notice is distributed to class members for their
12 comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002).
13 Preliminary approval of a settlement does not require a court to make a final determination that
14 the settlement is fair, reasonable, and adequate. Rather, that decision is made at the final approval
15 stage. Cal. R. Ct. 3.769(g).

16 In considering a potential class settlement, a court need not reach any ultimate conclusions
17 on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial
18 on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456;
19 *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir.
20 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant
21 provisional class certification and preliminary approval; the court may grant such relief upon an
22 informal application by the settling parties and may conduct any necessary hearing in court or in
23 chambers, at the court's discretion. *Newberg*, § 11.25.

24 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

25 The trial court has broad discretion to determine whether a proposed settlement is fair under
26 the circumstances of the case. *Dunk*, 48 Cal.App.4th at 1800. To make this fairness determination,

27
28 ²⁵ Settlement Agreement, ¶ 23.

²⁶ *Id.*, ¶ 19.

1 courts must consider several relevant factors, including “the strength of the Plaintiff’s case, the
2 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
3 action status through trial, the amount offered in settlement, the extent of discovery completed and
4 the stage of the proceedings, the experience and view of counsel, the presence of a governmental
5 participant, and the reaction of the class members to the proposed settlement.” *Dunk*, 48
6 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a
7 balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v.*
8 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Furthermore, courts must give “proper
9 deference to the private consensual decision of the parties.” *Hanlon*, 150 F.3d at 1027 (citation
10 omitted).

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

17 **A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon**
18 **Extensive Investigation and Discovery.**

19 The Parties have actively litigated the Action since it commenced on August 11, 2022.
20 Both sides investigated the veracity, strength, and scope of the claims throughout the case, and
21 Class Counsel was actively preparing the matter for class certification and trial.²⁷

22 Class Counsel conducted significant investigation and informal discovery regarding the
23 facts of the case, including and not limited to, the exchange, review, and analysis of a large volume
24 of documents and data from Plaintiff, Defendant, and other sources.²⁸ The volume of data and
25 documents that Class Counsel reviewed and analyzed included and was not limited to: a sampling
26 of Class Members’ time and payroll data, Plaintiff’s personnel records, Defendant’s Handbooks,
27 earning statements, company policy acknowledgements, job descriptions, Defendant’s operations

28 ²⁷ Mayer Decl., ¶ 25.

²⁸ *Id.*, ¶ 26.

1 and employment practices, policies, and procedures, among other information and documents.²⁹
2 Class Counsel had the opportunity to interview Plaintiff and others to gather facts and to identify
3 potential witnesses. In addition, Class Counsel has extensive experience in California wage-and-
4 hour class actions.³⁰

5 The Parties engaged in extensive settlement negotiations and participated in a full-day
6 mediation, conducted by Deborah Saxe, Esq., a well-respected mediator experienced in mediating
7 complex labor and employment matters.³¹ Prior to and during the mediation and settlement
8 discussions, the Parties exchanged extensive information and engaged in discussions regarding
9 their evaluations of the case and various aspects of the case, including but not limited to, the risks
10 and delays of further litigation, including the risks of proceeding with class certification and/or
11 representative adjudication; the law relating to off-the-clock theory, regular rate, meal and rest
12 periods, PAGA representative claims, and wage-and-hour enforcement; the evidence produced and
13 analyzed; and the possibility of appeals.³² During all settlement discussions, the Parties conducted
14 their negotiations at arm's length in an adversarial position.³³ Arriving at a settlement that was
15 acceptable to both Parties was not easy. Both sides felt strongly about their ability to prevail at
16 certification and at trial.³⁴ As noted above, Defendant has denied, and continues to deny, any
17 liability and wrongdoing of any kind associated with any of the allegations in the Action, and
18 further denies that the Action is appropriate for class treatment for any purpose other than for
19 settlement purposes only. After conducting investigations, informal discovery, extensive
20 settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that
21 the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims,
22 as well as the costs and risks to both sides that would attend further litigation.³⁵

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25 ²⁹ Mayer Decl., ¶ 26.

26 ³⁰ *Id.*, ¶¶ 19-23.

27 ³¹ *Id.*, ¶ 25.

28 ³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

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

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

Assuming that the Attorneys' Fees and Costs, Incentive Award, PAGA Penalties, 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 \$1,082,950.00.³⁹ Additionally, 25% of the PAGA Penalties (i.e., Individual PAGA Payment), which is \$37,500.00 out of \$150,000.00, 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 Pay Periods during the Class Period and PAGA Period, respectively.⁴⁰ "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 Group Members, and the State of California.⁴¹ Although the recommendations of Class Counsel

³⁶ Mayer Decl., ¶ 25.

³⁷ *Id.*, ¶ 26.

³⁸ *Id.*, ¶ 30.

³⁹ *Id.*, ¶ 10.

⁴⁰ Settlement Agreement, ¶¶ 15(a) & 15(b).

⁴¹ Mayer Decl., ¶ 30.

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.

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.⁴² 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; *see also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 1,109 individuals, which is sufficiently numerous.⁴³ 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 who worked for Defendant in California during the Class Period. As such, the Class is ascertainable.⁴⁴

⁴² Settlement Agreement, ¶ 9.

⁴³ Mayer Decl. ¶ 16.

⁴⁴ *Id.*, ¶ 15.

B. The Class Members Share a Well-Defined Community of Interest.

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 Action. Based on the documents and information obtained through 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.⁴⁵ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue. Plaintiff maintains that the outcome of this litigation would be determined by Defendant’s alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked in California during the Class Period.

As a member of the Class who was subject to these same policies, practices, and procedures, Plaintiff’s claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.⁴⁶ 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.⁴⁷

⁴⁵ Mayer Decl., ¶ 17.

⁴⁶ Declaration of Felissia Fry in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Fry Decl.”), ¶ 4.

⁴⁷ Mayer Decl., ¶¶ 25-26.

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 & COSTS

Class Counsel has litigated the matter for over two (2) years and was actively preparing the matter for class certification and trial.⁴⁸ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff and other percipient witnesses, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to the mediation.⁴⁹ Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.⁵⁰ Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁵¹

The Settlement establishes a Gross Settlement Amount of \$1,953,000.00, 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., \$683,550.00), and reimbursement of actual costs and expenses in an amount up to \$18,000.00.⁵² 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 to Class Members that an

⁴⁸ Mayer Decl., ¶ 25.

⁴⁹ *Id.*, ¶¶ 25-26.

⁵⁰ *Id.*, ¶ 25.

⁵¹ *Id.*, ¶¶ 19-23.

⁵² Settlement Agreement, ¶ 11.

award of the Attorneys' Fees and Costs will be sought and the amount allocated toward the Attorneys' Fees and Costs by the Settlement.⁵³

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

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40

⁵³ Settlement Agreement, Exh. A.

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.⁵⁴ 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.

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 the date and time set for the Final Approval Hearing.⁵⁵ The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁵⁶ The proposed Class

⁵⁴ Mayer Decl., ¶ 11.

⁵⁵ Settlement Agreement, Exh. A.

⁵⁶ Ibid.

1 Notice recognizes that the Court has not yet granted final approval of the settlement.⁵⁷ The
2 proposed Class Notice also apprises the Class Members and PAGA Group Members of, *inter alia*,
3 how their Individual Settlement Payment and, if applicable, Individual PAGA Payment is
4 calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.⁵⁸ The
5 proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at §
6 8.39.

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

11 **IX. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR**

12 The Parties have selected Simpluris, Inc. as the Settlement Administrator. Within 10
13 business days after receiving the Class Data and List from Defendant, the Settlement Administrator
14 will perform a search based on the National Change of Address Database or any other similar
15 services available, and will mail the Class Notice to each Class Member and PAGA Group
16 Member.⁵⁹ With respect to Class Notices that are returned as undeliverable and received by the
17 Settlement Administrator on or before the Response Deadline, the Settlement Administrator will
18 search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5)
19 calendar days.⁶⁰ In the event that a Class Notice is re-mailed to a Class Member, the Response
20 Deadline for that Class Member shall be extended 15 calendar days.⁶¹ The Administrator will
21 receive and process Requests for Exclusion, Notices of Objection, or disputes regarding
22 Workweeks.⁶² In addition, the Settlement Administrator will be responsible for printing,
23 distributing, and tracking Class Notices and other documents for the Settlement; calculating and
24 distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all
25

26 ⁵⁷ Settlement Agreement, Exh. A.

27 ⁵⁸ *Ibid*.

28 ⁵⁹ *Id.*, ¶ 18(a).

⁶⁰ *Id.*, ¶ 18(b).

⁶¹ *Id.*, ¶ 7(hh).

⁶² *Id.*, ¶¶ 7(v), 7(gg), & 19.

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.⁶³ The Settlement Administration Costs are currently estimated to be \$11,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁶⁴ 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 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 INCENTIVE AWARD

Plaintiff respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Incentive Award in an amount up to \$7,500.00.⁶⁵ 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 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 Incentive Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁶⁶ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁶⁷ Plaintiff also agreed to provide a general release in exchange for the Incentive Award. Accordingly, it is appropriate and just for Plaintiff to receive

⁶³ Settlement Agreement, ¶ 13.

⁶⁴ *Ibid.*

⁶⁵ *Id.*, ¶ 12.

⁶⁶ Mayer Decl., ¶¶ 12, 18; Declaration of Felissia Fry in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Fry Decl."), ¶ 4.

⁶⁷ Mayer Decl., ¶¶ 12, 18; Fry Decl., ¶¶ 3-7.

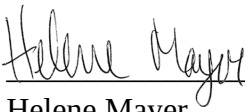
an Incentive Award for her services on behalf of the Class, PAGA Group Members, and the State of California, in addition to her individual settlement payment.

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 Felissia Fry as Class Representative; appoint Simpluris, Inc., as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Incentive Award, PAGA Penalties, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and to schedule a Final Approval Hearing to take place in approximately 6 months.

Dated: January 29, 2025

LAWYERS for JUSTICE, PC

By: 
Helene Mayer
Attorneys for Plaintiff