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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

LARRY ROSS, 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.

MORRISON EXPRESS CORPORATION (U.S.A.), a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 23STCV22454

Honorable Kenneth R. Freeman
Department 14

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 5, 2025
Time:	2:00 p.m.
Department:	14
Complaint Filed:	September 15, 2023
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on August 5, 2025, at 2:00 p.m., or as soon thereafter as the matter may be heard before the Honorable Kenneth R. Freeman in Department 14 of the Superior Court of the State of California, for the County of Los Angeles, 312 North Spring Street, Los Angeles, California 90012, Plaintiff Larry Ross ("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 ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 2**" to the Declaration of Ryan Slinger in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Larry Ross as Class Representative;
- Appointing Arby Aiwazian, Yasmin Hosseini, and Ryan Slinger of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("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 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 (Ryan Slinger) and Proposed Class Representative (Larry Ross) 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 7, 2025

LAWYERS *for* JUSTICE, PC

By: Ryan Slinger
Ryan Slinger
Attorneys for Plaintiff

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

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

Statutes

Other Authorities

Rules

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

Plaintiff Larry Ross ("Plaintiff" or "Class Representative") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("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 Morrison Express Corporation (U.S.A.) ("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 Total Settlement Amount of $650,000.00.[1]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes which Defendant does not oppose: All current or former hourly-paid or non-exempt employees of Defendant in California 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 ("Participating Class Member") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"). The net payment of each Participating Class Member's Individual Settlement Share ("Individual Settlement Payment") will be distributed to Participating Class Members based upon the number of weeks each Class Member worked for Defendant as an hourly-paid or non-exempt employee within California during the Class Period ("Workweeks").[3] PAGA Members will also receive a *pro rata* share of 25% of the PAGA Penalties ("Individual PAGA Payment"), calculated according to the number of PAGA Pay Periods worked during the PAGA Period.[4]

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[1] Settlement Agreement, attached as **Exhibit 2** to Declaration of Ryan Slinger ("Slinger Decl."), ¶ 3.1. Defendant represents that there are 12,694 Workweeks during the period from September 15, 2019 to August 7, 2024. Should the Workweeks during the Class Period increase beyond 10%, then Defendant shall elect to either (a) increase the Total Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10% (e.g., if the number of Workweeks increase by 11% to 14,091 Workweeks, the Total Settlement Amount will increase by 1%), or (b) the Class Period and PAGA Period shall end on the last day on which the Workweeks do not exceed 13,964 ("Alternate End Date"). *Id.* ¶ 8.

[2] *Id.*, ¶ 1.4; "Class Period" is defined as the time period from September 15, 2019 through either (a) the date of the Court's preliminary approval of class settlement, or (b) if applicable, the Alternate End Date. *Id.* ¶ 1.10.

[3] *Id.* ¶ 3.2.5.

[4] *Id.* ¶ 3.2.6.

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a global logistics service company, providing services such as air, ocean, rail, road freight, contract logistics, and customs brokerage for companies. Defendant operates three locations in California. Plaintiff is a former employee of Defendant.

On July 12, 2023, Plaintiff provided written notice to the LWDA and Defendant of the specific provisions of the alleged California Labor Code violations ("PAGA Notice").[6]

On September 15, 2023, Plaintiff filed the Class Action Complaint for Damages & Enforcement Under The Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint") in the Superior Court for the County of Los Angeles, thereby commencing the above-captioned lawsuit.[7]

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 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. Plaintiff contends that he, the Class Members, and the PAGA Members are entitled to, *inter alia*, unpaid wages, interest, restitution, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees and costs.

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[5] See *id*. ¶ 5.2, for the full scope of the "Released Class Claims;" see *id*. ¶ 5.3, for the full scope of the "Released PAGA Claims;" and see *id*. ¶ 1.40, for the full scope of the "Released Parties."
[6] Slinger Decl. ¶ 2.
[7] *Id*. ¶ 3.

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Glendale, California 91203

The Parties have actively litigated the Action since it commenced on September 15, 2023. On August 7, 2024, the Parties participated in arm's-length and informed negotiations with Mediator Tagore Subramaniam, Esq. ("Mediator"), a respected mediator of complex wage and hour actions. After ongoing settlement negotiations, on August 12, 2024, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.[8]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount of $650,000.00 to resolve the Action.[9] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed 35% of the Total Settlement Amount (i.e., $227,500.00, if the Total Settlement Amount remains $650,000.00) ("Class Counsel Fees Payment") and litigation costs and expenses in an amount not to exceed $50,000.00 ("Class Counsel Litigation Expenses Payment") to Class Counsel; (2) Administration Costs, which are currently estimated not to exceed $6,500.00, to the Administrator ("Administration Costs"); (3) PAGA Penalties of $35,000.00 ("PAGA Penalties"); and (4) payment in the amount of up to $7,500.00 to Plaintiff ("Enhancement Award").[10] The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Administrator") to handle the notice and settlement administration process.[11]

The Parties have agreed that the Administrator will determine each Participating Class Member's 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 Participating Class Members.[12] The Parties have agreed that the Administrator will determine each PAGA Member's share of the 25% share of the PAGA Penalties in accordance with the Settlement Agreement on a *pro rata* per PAGA Pay Period basis.[13]

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[8] Slinger Decl. ¶ 20.
[9] Settlement Agreement ¶ 3.1.
[10] *Id.* ¶¶ 3.2.1–3.2.4.
[11] *Id.* ¶ 7.1.
[12] *Id.* ¶ 3.2.5.
[13] Settlement Agreement ¶ 3.2.6.

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

The Parties agree, for purposes of this Settlement, that Individual Settlement Shares will be allocated 20% to wages subject to withholdings (the "Wage Portion") and 80% to penalties and interest (the "Non-Wage Portion").[14] The Administrator will withhold the employees' share of taxes and withholdings with respect to the Wage Portions and issue checks to Participating Class Members for their Individual Settlement Payments. Individual PAGA Payments to PAGA Members will be allocated as 100% penalties and will not be subject to taxes or withholdings. Defendant will provide the funds for any employer-side taxes related to the Individual Settlement Shares.[15]

Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance, and thereafter, shall be canceled.[16] Thereafter, funds from uncashed Individual Settlement Payment and/or Individual PAGA Payment checks shall be transmitted to the Legal Aid Foundation of Los Angeles, a non-profit organization or foundation consistent with Code of Civil Procedure section 384, subd.[17]

Any Class Member may request to be excluded from the Class Settlement by mailing a signed written Request for Exclusion postmarked on or before the date that is sixty (60) calendar days after the Administrator initially mails the Class Notice to Class Members and PAGA Members ("Response Deadline").[18] The Response Deadline shall be extended by fourteen (14) calendar days for those Class Members who had their Class Notices remailed after having been returned undeliverable to the Administrator.[19] PAGA Members shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[20]

Only Class Members who have not submitted a Request for Exclusion (i.e., Participating Class Members) may object to the Class Settlement by submitting signed written Objections to the

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[14] *Id.* ¶ 3.2.7.
[15] Ibid.
[16] *Id.* ¶ 4.4.1.
[17] *Id.* ¶ 4.4.3.
[18] *Id.* ¶¶ 1.42 & 7.5.1.
[19] *Id.* ¶ 1.42.
[20] *Id.* ¶ 7.5.1.

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

Class Settlement to the Administrator prior to the Response Deadline or, in the alternative, by presenting their objection verbally at the Final Approval Hearing.[21]

In order to dispute the number of Workweeks and/or PAGA Pay Periods attributable to an individual Class Member and/or PAGA Member, that Class Member and/or PAGA Member must mail a signed written Workweeks / PAGA Pay Periods Dispute to the Administrator that includes identifying information and any documentation to support the dispute.[22]

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

[21] Settlement Agreement ¶ 7.7.2.
[22] *Id.* ¶¶ 7.6. & 1.45.

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

the circumstances of the case. *Dunk*, 48 Cal.App.4th at 1800. To make this fairness determination, courts must consider several relevant factors, including “the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba 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 v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 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. **The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.**

The Parties have actively litigated the Action since it commenced on September 15, 2023. 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.[23]

Class Counsel conducted significant investigation 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.[24] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: a sampling of Class Members’ time records, Plaintiff’s personnel records, multiple iterations of Defendant’s

[23] Slinger Decl. ¶ 21.
[24] *Ibid.*

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Glendale, California 91203

Employee Handbook, earning statements, company policy acknowledgements (including an Employee Meal Period Acknowledgment and Compliance Agreement), Defendant's operations and employment practice, policies, and procedures, among other information and documents.[25] Class Counsel had the opportunity to interview Plaintiff and others to gather facts and to identify potential witnesses. In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[26]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation, conducted by Tagore Subramaniam, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[27] 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.[28] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[29] 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.[30] After conducting investigations, informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[31]

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

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[25] Slinger Decl. ¶ 21.
[26] Ibid.
[27] *Id.* ¶ 20.
[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] Ibid.

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[32] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information.[33] 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.[34]

Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Enhancement Award, 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 $323,500.00.[35] Additionally, 25% of the PAGA Penalties, which is $8,750.00 out of $35,000.00, will be distributed to the PAGA Members (i.e., Individual PAGA Payments). The entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement.

The amount of each Participating Class Member's Individual Settlement Share and each PAGA 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.[36] "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 Members, and the State of California.[37] Although the recommendations of Class Counsel are not

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[32] *Id*. ¶¶ 20, 22 & 31.
[33] *Id*. ¶¶ 25-29.
[34] *Id*. ¶ 23
[35] *Id*. ¶ 5.
[36] Settlement Agreement ¶¶ 3.2.5 & 3.2.6.
[37] Slinger Decl. ¶¶ 20, 22 & 31.

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Glendale, California 91203

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. <u>The Settlement Is of Significant Value.</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[38] 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.[39] As outlined in the Declaration of Ryan Slinger, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[40]

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

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[41] 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. <u>The Class Is Ascertainable and Sufficiently Numerous.</u>

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify

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[38] *Id.* ¶ 21.
[39] *Id.* ¶ 29.
[40] *Id.* ¶¶ 29 (a)–(j).
[41] Settlement Agreement ¶ 11.1.

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Glendale, California 91203

himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; s*ee also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 162 individuals, which is sufficiently numerous.[42] Further, all Class Members can and will be identified by Defendant to the Administrator through a review of Defendant's employment records regarding hourly-paid or non-exempt employees of Defendant employed in California during the Class Period. As such, the Class is ascertainable.[43]

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 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.[44] 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

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[42] Slinger Decl. ¶ 26.
[43] *Id.* ¶ 10.
[44] *Id.* ¶ 12.

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

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.[45] 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.[46]

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 CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT

Class Counsel has litigated the matter for over one (1) year and was actively preparing the matter for class certification and trial.[47] 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.[48] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[49] Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[50]

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[45] Declaration of Larry Ross in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Ross Decl.") ¶¶ 2–5.
[46] Slinger Decl. ¶¶ 14–18.
[47] *Id.* ¶ 20.
[48] *Id.* ¶ 21.
[49] Slinger Decl. ¶ 20.
[50] *Id.* ¶¶ 14–18.

LAWYERS *for* JUSTICE, PC
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Glendale, California 91203

The Settlement establishes a Total Settlement Amount of $650,000.00, and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment, in an amount up to 35% of the Total Settlement Amount (i.e., $227,500.00 if the Total Settlement Amount remains $650,000.00) and Class Counsel Litigation Expenses Payment, in an amount up to $50,000.00.[51] 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 informs Class Members that an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.[52]

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

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[51] Settlement Agreement ¶ 3.2.2.
[52] See *id*. Exh. A.

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

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.[53] Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's Motion for Final Approval of the Settlement and application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment 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)

[53] Slinger Decl. ¶ 6;

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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 an Objection to the Class Settlement, a Request for Exclusion, and/or Workweeks / PAGA Pay Periods Dispute, and the date and time set for the Final Approval Hearing.[54] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[55] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[56] 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.[57] 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. Rules Civ. Proc. 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 ADMINISTRATOR

The Parties have selected Simpluris, Inc. as the Administrator. Within fourteen (14) calendar days of receipt of the Class Data, the Administrator will perform an NCOA check and mail the Class Notice with Spanish translation to each Class Member.[58] No later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice by using any forwarding address provided by the USPS, and if there is no forwarding address, the Administrator shall conduct a

[54] Settlement Agreement Exh. A.
[55] Ibid.
[56] Ibid.
[57] Ibid.
[58] Settlement Agreement ¶ 7.4.2.

Class Member Address Search and re-mail the Class Notice to the most current address obtained.[59] In the case of a re-mailed Class Notice, the Response Deadline will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice.[60]

The Administrator will receive and process Requests for Exclusion, Objections to the Class Settlement, or Workweeks / PAGA Pay Periods Disputes.[61] In addition, the Administrator will be responsible for translating, 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.[62] The Administration Costs are currently estimated to be up to $6,500.00 and will be paid out of the Total Settlement Amount, subject to approval by the Court.[63] Accordingly, Plaintiff respectfully requests that the Court appoint Simpluris, Inc. as the Administrator and direct the mailing of the Class Notice to the Class Members and PAGA Members in accordance with the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. ENHANCEMENT AWARD

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Award in an amount up to $7,500.00.[64] It is within the Court's discretion to award payment to a Class Representative for his efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make an 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

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[59] *Id.* ¶ 7.4.3.
[60] *Id.* ¶ 7.4.4.
[61] *Id.* ¶¶ 7.8.2–7.8.4.
[62] *Id.* ¶ 7.8.
[63] *Id.* ¶ 3.2.3.
[64] Settlement Agreement ¶ 3.2.1.

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

the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id*.

The Enhancement Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[65] 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.[66] Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award for his services on behalf of the Class, PAGA Members, and the State of California, in addition to his individual settlement payment.

XI. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; appoint Lawyers *for* Justice, PC as Class Counsel; appoint Plaintiff Larry Ross as Class Representative; appoint Simpluris, Inc. as the Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Enhancement Award, PAGA Penalties, and Administration Costs; approve the proposed Class Notice; direct the 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 six (6) months.

Dated: February 7, 2025

LAWYERS *for* JUSTICE, PC

By: Ryan Slinger

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Attorneys for Plaintiff

[65] Slinger Decl. ¶ 7; Ross Decl. ¶ 3.
[66] Slinger Decl. ¶ 7; Ross Decl. ¶¶ 4–5.

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