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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

RAFAEL LIRA CUPA, 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,

v.

ORGANICGIRL, LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 23CV003744

Honorable Ian A. Rivamonte
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

[Declaration of Proposed Class Counsel (Selena Matavosian); Declaration of Proposed Class Representative (Rafael Lira Cupa); and [Proposed] Order filed concurrently herewith]

Date:	March 27, 2026
Time:	8:30 a.m.
Department:	14
Complaint Filed:	November 15, 2023
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on March 27, 2026, at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Ian A. Rivamonte in Department 14 of the Superior Court of California for the County of Monterey, located at 1200 Aguajito Road, Monterey, California 93940, Plaintiff Rafael Lira Cupa ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Settlement Agreement and Release of Class and PAGA Actions ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 2**" to the Declaration of Selena Matavosian in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Settlement Class for settlement purposes;
- Appointing Plaintiff Rafael Lira Cupa as Class Representative;
- Appointing Arby Aiwazian, Joanna Ghosh, Brian J. St. John, Selena Matavosian, and Erica Stepanian of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Proposed Class Action Settlement ("Notice Packet"), attached as "**EXHIBIT 1**" 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 Apex Class Action Administration, LLC 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 (Selena Matavosian) and Proposed Class Representative (Rafael Lira Cupa) 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 9, 2026

LAWYERS *for* JUSTICE, PC

By: ______________________

Selena Matavosian
Erica Stepanian
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Rafael Lira Cupa ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Settlement Agreement and Release of Class and PAGA Actions ("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 Organicgirl, LLC ("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 $1,315,000.00.[1]

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

> All current and former hourly-paid employees who worked for Defendant within the State of California at any time during the Class Period. ("Settlement Class" or "Settlement Class Members").[2]

Settlement Class Members who do not timely and validly opt-out of the Settlement Class ("Participating Settlement Class Member(s)") will receive a *pro rata* share of the Net Settlement Amount.[3] The net payment of each Settlement Class Member's Individual Settlement Share ("Individual Class Payment") will be distributed to Participating Settlement Class Members on a *pro rata* basis based upon any workweek during the Class Period in which a Settlement Class Member worked at least one day in that workweek starting Sunday at 12:00 a.m. to Saturday 11:59 p.m. ("Workweeks").[4]

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[1] Settlement Agreement, attached as "**EXHIBIT 2**" to Declaration of Selena Matavosian ("Matavosian Decl."), ¶ 1.15. The Gross Settlement Amount is based on Defendant's representation that Settlement Class Members worked a total of approximately 100,000 Workweeks as of August 16, 2024 ("Certified Workweek Amount"). If the final total number of Workweeks worked by Settlement Class Members during the Class Period ultimately exceeds the Certified Workweek Amount by more than 10% (i.e., an increase of more than 10,000 Workweeks), Defendant will have the option of: (1) increasing 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 10% (e.g., if the number of workweeks increases by 11%, the GSA will increase by 1%) or (ii) shorten the release period to an earlier date at which only the represented number of workweeks plus 10% are covered by the Class Period. *See id.*, ¶ 5.1.

[2] *Id.*, ¶ 1.39. "Class Period" is defined as the period from November 15, 2019 through December 31, 2024. *See id.*, ¶ 1.6.

[3] *Id.*, ¶ 1.28.

[4] Settlement Agreement, ¶¶ 1.15, 1.16, 1.28 & 1.41.

PAGA Members will receive a proportionate share of the 25% of the PAGA Payment ("Individual PAGA Payment") based upon the number of pay periods a PAGA Member worked during the PAGA Period ("Pay Periods").[5]

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 Participating Settlement Class Members and the Released PAGA Claims of the PAGA Members and the State of California.[6]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Founded in 2007, Defendant is a produce company selling packaged greens and salad dressings nationwide. Defendant is headquartered in Salinas, California. Plaintiff is a former employee of Defendant.

On September 8, 2023, Plaintiff provided written notice by certified mail to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code that were alleged to be violated, including the facts and theories to support the alleged violations (the "PAGA Notice").[7] Aside from confirmation of receipt of the PAGA Notice, the LWDA did not respond to the PAGA Notice.[8]

On November 15, 2023, Plaintiff commenced the above-captioned action by filing the Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Complaint") in the Superior Court of the State of California for the County of Monterey, Case No. 23CV003744 ("Action").[9]

On January 22, 2024, Defendant filed a Motion to Compel Arbitration, along with supporting documents.[10] On March 11, 2024, Plaintiff filed an opposition to Defendant's Motion to Compel Arbitration, along with supporting documents.[11] On March 15, 2024, Defendant filed

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[5] Settlement Agreement, ¶¶ 1.17 & 1.30.
[6] *Id.*, at ¶¶ 11.1, 11.2 and 11.3. See *id.* at ¶ 1.33 for the full scope of the "Released Class Claims" *id.* at ¶ 1.34 for the full scope of the "Released PAGA Claims," and *id.* at ¶ 1.35 for the definition of the "Released Parties."
[7] Matavosian Decl., ¶ 2.
[8] Ibid.
[9] *Id.*, ¶ 3.
[10] *Id.*, ¶ 4.
[11] Ibid.

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a reply in support of its Motion to Compel Arbitration.[12] On April 16, 2024, the Court issued an Order, thereby denying Defendant's Motion to Compel Arbitration and ordering Defendant to file a responsive pleading to Plaintiff's Complaint.[13]

On April 17, 2024, Plaintiff and Defendant (together, the "Parties") filed a Joint Stipulation to Extend Time to File Responsive Pleading to Plaintiff's Complaint, thereby seeking to extend Defendant's time to file a responsive pleading to Plaintiff's Complaint ("Joint Stipulation").[14] On April 29, 2024, the Court granted the Parties' Joint Stipulation.[15]

On September 25, 2024, Defendant filed a Demurrer to Plaintiff's Complaint, along with supporting documents.[16] On November 8, 2024, Plaintiff filed an opposition to Defendant's Demurrer.[17] On November 15, 2024, Defendant filed a reply in support of its Demurrer.[18]

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, Settlement 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 giving rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq*.). Plaintiff contends that he, and the Settlement Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees and costs.

The Parties have actively litigated the Action since the Action commenced on November

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[12] Matavosian Decl., ¶ 4.
[13] Ibid.
[14] *Id*., ¶ 5.
[15] Ibid.
[16] *Id*., ¶ 6.
[17] Ibid.
[18] Ibid.

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15, 2023. On August 16, 2024, the Parties participated in arm's-length and informed negotiations with mediator Daniel J. Turner, Esq. ("Mediator"), a respected mediator of complex wage and hour actions.[19] Although the matter did not settle at mediation, the Parties were ultimately able to reach the Settlement via direct negotiations and described herein to resolve the Action in its entirety.[20]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of $1,315,000.00 to resolve the Action.[21] 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 33.33% of the Gross Settlement Amount (i.e., $438,333.33 if the Gross Settlement Amount remains $1,315,000.00) and litigation costs and expenses in an amount not to exceed $16,000.00 (together, "Class Counsel's Attorneys' Fees and Expenses") to Class Counsel; (2) Administration Expenses, which are currently estimated not to exceed $17,000.00 to the Settlement Administrator ("Administration Expenses"); (3) PAGA Payment of $300,000.00 ("PAGA Payment"); and (4) payment in the amount of up to $10,000.00 to Plaintiff ("Enhancement Payment").[22] The Parties have agreed to retain Apex Class Action Administration, LLC ("Apex" or "Settlement Administrator") to handle the notice and settlement administration process.[23]

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount (i.e., Individual Class Payment), 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 Participating Settlement Class Member.[24] The Parties have agreed that the Settlement Administrator will determine each PAGA Member's proportionate share of the 25% of the

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[19] Matavosian Decl., ¶ 23.
[20] *Id.*, ¶ 23.
[21] Settlement Agreement, ¶¶ 1.15 & 5.1.
[22] *Id.*, ¶¶ 1.26, 5.6, 5.9, & 6.1.
[23] *Id.*, ¶ 1.38.
[24] *Id.*, ¶ 8.3.

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PAGA Payment (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement on a *pro rata* per Pay Period basis.[25]

The Parties agree, for purposes of this Settlement, that Individual Class Payments will be allocated 20% to wages subject to withholdings, 40% to interest, and 40% to penalties.[26] The Settlement Administrator will withhold the share of any and all applicable federal, state, or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act ("FICA"), FUTA and/or SUTA on the portion of the Participating Settlement Class Member's Individual Settlement Payment that constitutes wages ("Employee's Taxes and Required Withholding"), and issue checks to Participating Settlement Class Members for their Individual Class Payments.[27] Each Individual PAGA Payment will be allocated one hundred percent (100%) penalties to be reported on an IRS form 1099.[28] Defendant's share of corporate, federal, state, and/or local payroll taxes that is owed on the portion of the Participating Settlement Class Member's Individual Settlement Payment that constitutes wages ("Employer's Taxes") shall be separately paid by Defendant in addition to the Gross Settlement Amount.[29]

Participating Settlement Class Members and PAGA Members shall have one hundred eighty days (180) to cash their Individual Class Payment and Individual PAGA Payment checks.[30] If a Participating Settlement Class Member or PAGA Member does not cash his or her check within 180 days, the uncashed funds, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq*. for the benefit of those Participating Settlement Class Members and PAGA Members who did not cash their checks until such time that they claim their property.[31]

Any Settlement Class Member may request to be excluded from the Class Settlement by mailing a timely and valid request for exclusion from the Settlement Class portion of the

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[25] Settlement Agreement, ¶ 8.3.
[26] *Id.*, ¶ 5.4.
[27] *Id.*, ¶¶ 1.11, 1.16, & 5.2.
[28] *Id.*, ¶ 5.4.
[29] *Id.*, ¶¶ 1.12 & 5.4.
[30] *Id.*, ¶ 8.5.
[31] Ibid.

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Settlement ("Opt-Out"), postmarked no later than sixty (60) calendar days following the date on which the Settlement Administrator first mails the Notice Packet ("Response Deadline") (plus an additional 15 days for Settlement Class Members whose Notice Packet is re-mailed).[32] PAGA Members who submit a valid and timely Opt-Out will still receive an Individual PAGA Payment and will still be bound by the PAGA Released Claims regardless of whether they submit a valid and timely Opt-Out.[33]

Only Settlement Class Members who have not submitted an Opt-Out (i.e., Participating Settlement Class Members) may object to the Settlement Class portion of the Settlement by submitting a timely and valid written objection ("Objection") to the Settlement Administrator prior to the Response Deadline or by presenting their objection orally at the Final Approval Hearing, regardless of whether they submitted a written objection.[34]

In order to dispute the number of Workweeks and/or Pay Periods attributable to an individual Settlement Class Member, that Settlement Class Member must submit a written dispute to the Settlement Administrator, and include 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 only at the final approval stage. Cal. R. Ct. 3.769(g).

[32] Settlement Agreement, ¶¶ 1.23, 1.36 & 7.4.
[33] *Id.*, ¶ 7.4(ii).
[34] *Id.*, ¶¶ 1.22 & 7.5.
[35] *Id.*, ¶ 7.3.

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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 PRELIMINARY APPROVE THE SETTLEMENT

The trial court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk,* 48 Cal.App.4th at 1800. To make this fairness determination, courts must consider several relevant factors, including "the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class 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 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.

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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 the Action commenced on November 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.[36]

Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data from Plaintiff, Defendant, and other sources.[37] Class Counsel served multiple sets of formal written discovery requests onto Defendant (specifically, Special Interrogatories (Sets One and Two), Form Interrogatories – General (Set One), Requests for Admissions (Set One), and Requests for Production of Documents (Set One)).[38] Class Counsel also served a deposition subpoena for Dianna Skillicorn, and prepared for and took the deposition of Dianna Skillicorn.[39] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a detailed sampling of Settlement Class Members' time and pay data, Defendant's Employee Handbook, company policy acknowledgements (including but not limited to Employee Handbook Acknowledgment Form and Job Description Acknowledgement), earning statements, internal memoranda, job descriptions, new hire packet/orientation checklist, Defendant's operations and employment practices, forms (including but not limited to Time Card Approval Forms, Timecard Change Authorization Forms, and Meal Period Waivers), and procedures, and policies (including but not limited to Off Duty Meal Period Policies, Anit-Harassment Policy, Timekeeping and Meal/Rest Period Requirements, COVID-19 Policies, Drug and Alcohol Policy, and Anti-Harassment Policy), among other information and documents.[40] Class Counsel had the opportunity to interview Plaintiff and other Settlement

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[36] Matavosian Decl., ¶¶ 23-27.
[37] *Id.*, ¶ 24.
[38] Ibid.
[39] Ibid.
[40] Ibid.

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Class Members to gather facts and to identify potential witnesses.[41] In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[42]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation on August 16, 2024 conducted by Daniel J. Turner, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[43] Although the matter did not settle at mediation, the Parties were ultimately able to reach the Settlement via direct negotiations.[44] Prior to and during the mediation and settlement negotiations, 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, meal and rest periods, PAGA representative claims, and wage-and-hour enforcement; the evidence produced and analyzed; and the possibility of appeals.[45] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[46] 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.[47] After conducting investigations, formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[48]

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

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[49] The Settlement was calculated using the information and data uncovered during litigation, case

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[41] Matavosian Decl., ¶ 24.
[42] *Id.,* ¶¶ 17-21.
[43] *Id.*, ¶ 23.
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] *Id.*, ¶¶ 23, 25 & 28.

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investigation, and the formal and informal exchange of information.[50] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[51] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[52]

Assuming that the Class Counsel's Attorneys' Fees and Expenses, Enhancement Payment, PAGA Payment, and Administration Expenses 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 $533,666.67.[53] Additionally, twenty-five percent (25%) of the PAGA Payment, which is $75,000.00 out of $300,000.00, will be distributed to the PAGA Members.[54] The entire Net Settlement Amount will be fully paid out to the Participating Settlement Class Members, in accordance with the Settlement Agreement.

The amount of each Participating Settlement Class Member's Individual Class Payment and each PAGA Members' Individual PAGA Payment will be calculated based on their Workweeks and/or Pay Periods during the Class Period and PAGA Period, respectively.[55] "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 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 Settlement Class Members, PAGA Members, and the State of California.[56] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this

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[50] Matavosian Decl., ¶¶ 24-26.
[51] *Id.*, ¶ 23.
[52] *Id.*, ¶¶ 23 & 28.
[53] *Id.*, ¶ 8.
[54] Ibid.
[55] Settlement Agreement, ¶ 8.3.
[56] Matavosian Decl., ¶¶ 23, 25 & and 28.

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.[57] 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 Settlement 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 Settlement 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 Settlement Class here is estimated to be approximately 1,580 individuals, which is sufficiently numerous.[58] Further, all Settlement Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid employees in California during the Class Period. As such, the Settlement Class is ascertainable and sufficiently numerous.

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[57] Settlement Agreement, ¶ 10.2.

[58] Matavosian Decl., ¶ 14.

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B. The Settlement 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 formal and informal discovery and exchange of information in the case, Plaintiff contends that Settlement 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.[59] As a result, Plaintiff claims that all of the Settlement 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 employees who worked in California during the Class Period.

As a member of the Settlement Class who was subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Settlement Class. Moreover, Plaintiff has no interests adverse to the Settlement Class. Plaintiff has taken steps to initiate and maintain the action and to ensure that it comes to a fair and reasonable resolution.[60] Importantly, Plaintiff

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[59] Matavosian Decl., ¶ 15.

[60] Declaration of Rafael Lira Cupa in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Cupa"), ¶¶ 2-4.

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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 Settlement Class.[61]

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

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

Class Counsel has litigated the matter for over two (2) 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[63] 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 mediation.[64] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[65]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[66]

The Settlement establishes a Gross Settlement Amount of $1,315,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount not to exceed 33.33% of the Gross Settlement Amount (i.e., $438,333.33 if the Gross Settlement Amount remains $1,315,000.00) and reimbursement of actual costs and expenses in an amount up to $16,000.00.[67] 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)

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[61] Matavosian Decl., ¶¶ 17-21.
[62] *Id.*, ¶ 23.
[63] *Id.*, ¶ 24 & 27.
[64] *Id.*, ¶¶ 23-24.
[65] *Id.*, ¶ 23.
[66] *Id.*, ¶¶ 17-21.
[67] Settlement Agreement, ¶¶ 1.15 & 8.1.

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the value of the Settlement that Class Counsel has achieved for the Settlement Class Members, PAGA Members, and the State of California, 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 Notice Packet provides Settlement Class Members that an award of the Class Counsel's Attorneys' Fees and Expenses will be sought, and the amount allocated toward the Class Counsel's Attorneys' Fees and Expenses by the Settlement.[68]

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." *Id.* 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*, *supra*, 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%

[68] Settlement Agreement, Exh. A.

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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.[69]

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's Attorneys' Fees and Expenses 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 NOTICE PACKET 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 Notice Packet describes the Settlement, the deadlines and procedures to submit an Objection to the Class Settlement, submit an Opt-Out from the Class Settlement, and/or dispute regarding Workweeks, and the date and time set for the Final

[69] Matavosian Decl., ¶ 9.

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Approval Hearing.[70] The proposed Notice Packet summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[71] The proposed Notice Packet recognizes that the Court has not yet granted final approval of the settlement.[72] The proposed Notice Packet also apprises the Settlement Class Members and PAGA Members of, *inter alia*, how their Individual Class Payment and if applicable, their Individual PAGA Payment is calculated and the number of Workweeks and/or Pay Periods credited to them.[73] The proposed Notice Packet fulfills the requirement of neutrality in notice procedure. *Newberg,* at § 8.39.

Thus, the proposed Notice Packet 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 Notice Packet.

IX. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected Apex Class Action Administration, LLC as the Settlement Administrator. Within ten (10) calendar days of receipt of the Class List and Data from Defendant and after the Settlement Administrator performs an NCOA search to update Settlement Class Members' addresses, the Settlement Administrator will mail the Notice Packet by first-class U.S. Mail to all Settlement Class Members.[74] If a Notice Packet is returned to the Settlement Administrator with a forwarding address affixed to the front, the Settlement Administrator will resend the Notice Packet to the forwarding address affixed thereto.[75] If a Notice Packet is returned because of an incorrect mailing address, without a forwarding address affixed, the Settlement Administrator will promptly, and no later than three (3) business days of receipt of the returned Notice Packet, search for a more current address by way of skip-trace using the Settlement Class Member's Social Security Number, and perform a single remailing

[70] Settlement Agreement, Exh. A.
[71] Ibid.
[72] Ibid.
[73] Ibid.
[74] Settlement Agreement, ¶ 7.1.
[75] *Id*., ¶ 7.2.

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of the Notice Packet to the Settlement Class Member if an updated address is located.[76] The Settlement Administrator will receive and process Opt-Outs, Objections, and any disputes to Workweeks.[77] In addition, the Settlement Administrator will be responsible for translating the Notice Packet to Spanish, printing, distributing, and tracking the Notice Packet and other documents for the Settlement, calculating and distributing payments due under the Settlement, issuing 1099 and W-2 IRS Forms and undertaking all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth here to process the Settlement and as requested by the Parties.[78] The Administration Expenses are currently estimated to be $17,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[79] Accordingly, Plaintiff respectfully requests that the Court appoint Apex Class Action Administration, LLC as the Settlement Administrator and direct the mailing of the Notice Packet to the Settlement Class Members and PAGA Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

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XI. ENHANCEMENT PAYMENT

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to $10,000.00.[80] It is within the Court's discretion to award payment to a Class Representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make an Enhancement Payment include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id.*

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[76] Settlement Agreement, ¶ 7.2.
[77] *Id.*, ¶¶ 7.3-7.5.
[78] Settlement Agreement, ¶¶ 5.4, 6.1 & 8.3.
[79] *Id.*, ¶¶ 1.38 & 5.1.
[80] *Id.*, ¶ 5.9.

The Enhancement Payment 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.[81] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.[82] Accordingly, it is appropriate and just for Plaintiff to receive $10,000.00 for his services on behalf of the Settlement Class, PAGA Members, and the State of California, in addition to his individual settlement payment.

XII. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Preliminary Approval of the Settlement; conditionally certify the Settlement Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; appoint Plaintiff Rafael Lira Cupa as Class Representative; appoint Apex Class Action Administration, LLC as the Settlement Administrator; preliminarily approve the allocations for Class Counsel's Attorneys' Fees and Expenses, Enhancement Payment, PAGA Payment, and Administration Expenses; approve the proposed Notice Packet; 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 six (6) months.

Dated: February 9, 2026

LAWYERS *for* JUSTICE, PC

By: ______________________

Selena Matavosian
Erica Stepaninan
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[81] Matavosian Decl., ¶ 10; Cupa Decl., ¶¶ 3-4.
[82] Matavosian Decl., ¶ 10; Cupa Decl., ¶¶ 3-5.

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