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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GREGORY BRULE, 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.

CATALINA ISLAND COMPANY, a California corporation; SANTA CATALINA ISLAND COMPANY, a Delaware corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 24LBCV00582

Honorable Mark C. Kim
Department S27

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

[Declaration of Plaintiff's Counsel (Melissa LeBlanc-Mansell); Declaration of Plaintiff (Gregory Brule); and [Proposed] Order and Judgment filed concurrently herewith]

Date:	March 6, 2025
Time:	8:30 a.m.
Department:	S27
Reservation ID:	Specially Set by Court
Complaint Filed:	March 21, 2024
FAC Filed:	August 19, 2024
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on March 6, 2025 at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Mark C. Kim in Department S27 of the Superior Court of the State of California, for the County of Los Angeles, 275 Magnolia Avenue, Long Beach, California 90802, Plaintiff Gregory Brule ("Plaintiff") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the parties' Class Action and PAGA Settlement Agreement and Release (with Proposed Notice of Class and PAGA Action Settlement) ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 3**" to the Declaration of Melissa LeBlanc-Mansell in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Gregory Brule as Class Representative;
- Appointing Arby Aiwazian, Joanna Ghosh, and Melissa LeBlanc-Mansell 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 Settlement Administrator; and
- Scheduling a hearing to consider final approval of the Settlement.

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

This motion is based upon the following memorandum of points and authorities; the

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Settlement Agreement; the Declarations of Proposed Class Counsel (Melissa LeBlanc-Mansell) and Proposed Class Representative (Gregory Brule) 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 6, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________________
Melissa LeBlanc-Mansell
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Gregory Brule ("Plaintiff" or "Class Representative") seek preliminary approval of the Class Action and PAGA Settlement Agreement and Release (with Proposed Notice of Class and PAGA Action Settlement) ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Catalina Island Company and Santa Catalina Island Company ("Defendants"), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (together, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of $985,000.00.

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendants do not oppose: (a) All current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time during the period of February 29, 2020 through preliminary approval; and (b) All current and former salaried maintenance managers or persons who held similar job titles and/or performed similar job duties, who were classified by Defendants as "exempt" and worked for Defendants within the State of California during the period of February 29, 2020 through preliminary approval. ("Class" or "Class Members").[1] 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 Class Payment"). The net payment of each Participating Class Member's Individual Class Payment will be distributed to Participating Class Members on a *pro rata* basis based upon the number of weeks each Class Member worked at least one shift for Defendants as either (a) an hourly-paid or non-exempt employee or (b) a salaried maintenance manager or similar job title in California during the Class Period ("Workweeks").[2]

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[1] Settlement Agreement, ¶ 1.4.; "Class Period" is defined as the time period from February 29, 2020 to preliminary court approval. *See id.*, ¶ 1.13.

[2] *Id.*, ¶¶ 1.23. and 3.2.4.

The Settlement, upon final approval by the Court and funding of the Gross Settlement Amount, will operate to resolve the Released Class Claims of Plaintiff and Participating Class Members and the Released PAGA Claims of the State of California.[3]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants provide individual and group experiences to guests and visitors of Santa Catalina Island. Plaintiff is an employee of Defendants who has been classified as both "exempt" and "non-exempt" during the Class Period.

On January 11, 2024, Plaintiff provided written notice by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice").[4]

On March 21, 2024, Plaintiff filed the Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et. Seq.* in the Superior Court for the County of Los Angeles, thereby commencing the above-captioned lawsuit.[5]

On May 6, 2024, Defendants filed the Answer to Plaintiff's Unverified Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et. Seq.* of Defendant Catalina Island Company.[6]

On July 30, 2024, Plaintiff provided an amended written notice by certified mail to the LWDA and Defendants, to allege violations of California Labor Code Section 221 ("Amended PAGA Notice").[7]

On August 15, 2024, Plaintiff sought leave to file a First Amended Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq*. ("Operative Complaint"), adding class allegations premised on (1) failure to pay overtime pursuant to Labor Code sections 510 and 1198; (2) failure to provide meal period premiums in violation of sections 226.7 and 512(a); (3) failure to provide rest period premiums in violation of section 226.7;

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[3] *See id.*, at ¶ 5.2, for the full scope of the "Released Class Claims;" *See id.*, at ¶ 5.3, for the full scope of the "Released PAGA Claims" and *id.* at ¶ 1.41 for the full scope of the "Released Parties."
[4] *Id.*, ¶ 2, Exh. 1.
[5] LeBlanc-Mansell Decl. ¶3.
[6] *Id.*, ¶4.
[7] *Id.*, ¶5, Exh. 2.

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(4) failure to pay minimum wages pursuant to sections 1194, 1197, and 1197.1; (5) failure to timely pay wages upon termination in violation of sections 201 and 202; (6) failure to timely pay wages during employment in violation of section 204; (7) failure to provide accurate and itemized wage statements in violation of section 226(a); (8) failure to keep requisite payroll records in violation of section 1174(d); (9) failure to reimburse business expenses in violation of sections 2800 and 2802; (10) violations of California Business and Professions Code §§ 17200, *et seq*. The Court granted Plaintiff leave to file the proposed First Amended Complaint on August 15, 2024, and Plaintiff filed the First Amended Complaint on August 19, 2024.[8]

Plaintiff's core allegations are that Defendants have 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 Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, et seq. and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that 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.[9]

The Parties have actively litigated the Action since it was commenced on March 21, 2024. On August 21, 2024, the Parties participated in arm's-length and informed negotiations with Mediator Honorable Zaven Sinanian (Ret.) ("Mediator"), a respected mediator of complex wage and hour actions. Although the case did not settle at the mediation session, the Parties continued informal settlement negotiations after the mediation session, and with the aid of the Mediator's

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[8] *Id.*, ¶ 6.
[9] *Id.*, ¶ 27.

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evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.[10]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount of $985,000.00 to resolve the Action.[11] 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., $344,750.00 ("Class Counsel Fees Payment") to Class Counsel, (2) litigation costs and expenses in an amount not to exceed $25,000.00 ("Class Counsel Litigation Expenses Payment") to Class Counsel; (3) Settlement Administration Costs, which are currently estimated not to exceed $11,000.00 to the Settlement Administrator ("Administration Expenses Payment"); (4) PAGA Penalties of $180,000.00 ("PAGA Penalties"); and (5) payment in the amount of up to $7,500.00 to Plaintiff ("Class Representative Service Payment").[12] The Parties have agreed to retain Simpluris, Inc., ("Simpluris" or "Administrator") to handle the notice and settlement administration process.[13]

The Parties have agreed that the Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Class Payment"), in accordance with the Settlement Agreement on a *pro rata* per Class Workweek basis, which will be adjusted after Final Approval to reflect the total Class Workweeks worked by the Participating Class Members.[14] The Parties have agreed that the Administrator will determine each Aggrieved Employees' share of the 25% share of the PAGA Penalties, in accordance with the Settlement Agreement on a *pro rata* per PAGA Pay Period basis.[15]

The Parties agree, for purposes of this Settlement, that Individual Class Payment will be allocated 20% to wages subject to withholdings and 80% to penalties and interest.[16] The Administrator will withhold the employee's share of taxes and withholdings with respect to the

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[10] LeBlanc-Mansell Decl., ¶ 23.
[11] Settlement Agreement, ¶ 3.1.
[12] *Id.*, ¶¶ 3.2.1, 3.2.2, 3.2.3, and 3.2.5.
[13] *Id.*, ¶ 7.1.
[14] Settlement Agreement, ¶ 3.2.4. and 3.2.4.2.
[15] *Id.*, ¶ 3.2.5.
[16] *Id.*, ¶ 3.2.4.1.

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wages portion of the Individual Class Payment, and issue checks to Participating Class Members for their Individual Class Payments. Individual PAGA Payments to Aggrieved Employees will be allocated as 100% penalties and will not be subject to withholdings.[17] Defendants will provide the funds for any employer-side taxes related to the Individual Class Payments.[18]

Individual Class Payment and Individual PAGA Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be canceled.[19] Thereafter, funds from uncashed Individual Class Payment and/or Individual PAGA Payment checks shall be transmitted to the *cy pres* organization, Catalina Island Health Fund.[20]

Any Class Member may request to be excluded from the Class Settlement by mailing a Request for Exclusion postmarked on or before the date that is 60 calendar days from the date of the initial mailing of the Class Notice by the Administrator ("Response Deadline").[21] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[22]

Only Class Members who have not submitted a Request for Exclusion (i.e., Participating Class Members) may object to the Class Settlement by submitting an Objection to the Settlement to the 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.[23]

In order to dispute the number of Class Workweeks attributable to an individual Class Member and/or Aggrieved Employee, that Class Member and/or Aggrieved Employee must communicate with the Administrator via fax, email, or mail, by the Response Deadline. The Administrator must encourage the challenging Class Member and/or Aggrieved Employee to submit supporting documentation.[24]

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[17] *Id.*, ¶ 3.2.5.1
[18] *Id.*, ¶ 3.1 and 4.3.
[19] Settlement Agreement, ¶ 4.4.1.
[20] *Id.*, ¶ 4.4.3.
[21] *Id.*, ¶¶ 7.5.1.
[22] *Id.*, ¶ 5.3.
[23] *Id.*, ¶ 7.7.2.
[24] *Id.*, ¶ 7.6.

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IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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

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

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 245. Furthermore, courts must give "proper deference to the private consensual decision of the parties." *Hanlon*, 150 F.3d at 1027 (citation omitted).

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

A. <u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Discovery.</u>

The Parties have actively litigated the Action since it commenced on March 21, 2021. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.[25]

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, Defendants, and other sources.[26] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: a sampling of Class Members' time and payroll data, Plaintiff's personnel records, Defendants' Handbooks, earnings statements, company policy acknowledgements, job descriptions, performance reviews, Defendant's operations and employment practice, policies, and procedures, among other information and documents.[27] 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.[28]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation, conducted by the Honorable Zaven Sinanian (Ret.)., a well-respected mediator

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[25] LeBlanc-Mansell Decl., ¶ 23.
[26] Ibid.
[27] LeBlanc-Mansell Decl., ¶ 24.
[28] *Id.*, ¶¶ 17-21.

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experienced in mediating complex labor and employment matters.[29] 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, arbitration agreements, regular rate, meal and rest periods, PAGA representative claims, and wage-and-hour enforcement; the evidence produced and analyzed; and the possibility of appeals.[30] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[31] 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.[32] 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.[33]

Although a resolution has been reached, Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action and further deny that, for any purpose other than settlement, the Action is appropriate for class treatment. Defendants contend, among other things, Plaintiff and the putative class members were paid for all hours worked at the correct rate of pay, Defendants' meal and rest period policies and practices have fully complied with the law and Plaintiff and the putative class members were and are provided the opportunity to take meal and rest periods in accordance with Defendants' legally compliant policies and practices, Defendants had a written policy providing for reimbursement of reasonable and necessary business expenses and neither Plaintiff nor the putative class members have been required to incur any expenses related to their job for which they have not been reimbursed by Defendants, Defendants provided complete, accurate itemized wage statements, maintained accurate payroll records, and

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[29] *Id.*, ¶ 23.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] LeBlanc-Mansell Decl., ¶ 23.

Defendants timely paid all wages owed upon the termination of employment, and otherwise complied at all times with the California Labor Code and applicable Wage Orders. Further, Defendants contend that class certification would be inappropriate for any reason other than for settlement. Specifically Defendants contend that if Plaintiff proceeded with his lawsuit and survived summary judgment, the class and representative action allegations would be stricken, no class would be certified in connection with any of Plaintiff's claims, and the action would proceed on an individual basis because, among other reasons, individual issues predominate, Plaintiff is not similarly situated to any of the putative class members, and the case would not be manageable as a representative action.

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

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[34] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information.[35] 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.[36]

Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, PAGA Penalties, and Administration Expenses Payment 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 $416,750.00.[37] Additionally, 25% of the PAGA Allocation (i.e., Individual PAGA Payment), which is $45,000.00 out of $180,000.00, will be distributed to the Aggrieved Employees. The entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement.

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[34] *Id.*, ¶ 23.
[35] *Id.*, ¶ 24.
[36] Ibid.
[37] LeBlanc-Mansell Decl., ¶ 8.

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The amount of each Participating Class Member's Individual Class Payment and each PAGA Employees' Individual PAGA Payment will be calculated based on his or her Class Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.[38] "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 Class Workweeks and/or PAGA Pay Periods actually worked for Defendants 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, Aggrieved Employees, and the State of California.[39] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[40] The information that Class Counsel obtained from Plaintiff, Defendants, 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 Defendants' defenses thereto.[41] As outlined in the Declaration of Melissa LeBlanc-Mansell, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[42]

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[38] Settlement Agreement, ¶¶ 3.2.4. & 3.2.5.1.
[39] *Id.*, ¶ 2.2.
[40] LeBlanc-Mansell Decl., ¶ 23.
[41] *Id.*, ¶ 27.
[42] *Id.*, ¶ 25.

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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.[43] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the Plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; s*ee also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 1,256 individuals, which is sufficiently numerous.[44] Further, all Class Members can and will be identified by Defendants to the Administrator through a review of Defendants' employment records regarding (a) an hourly-paid or non-exempt employee, and (b) salaried maintenance managers or similar job title in California during the Class Period. As such, the Class is ascertainable.[45]

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

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[43] Settlement Agreement, ¶ 12.1.
[44] LeBlanc-Mansell Decl. ¶ 14.
[45] *Id.*, ¶13.

(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.[46] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue. Plaintiff maintains that the outcome of this litigation would be determined by Defendants' 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.[47] 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.[48]

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

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[46] LeBlanc-Mansell Decl., ¶ 15.
[47] Declaration of Gregory Brule in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Brule Decl."), ¶ 4.
[48] LeBlanc-Mansell Decl., ¶ 17-21.

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

Class Counsel has actively litigated the matter for approximately one year.[49] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution in a relatively short amount of time. 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 Defendants' counsel regarding the pleadings and the production of documents and data prior to the mediation.[50] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[51] Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[52]

The Settlement establishes a Gross Settlement Amount of $985,000.00, 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., $344,750.00), and reimbursement of actual costs and expenses in an amount up to $25,000.00.[53] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with notice that an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment

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[49] *Id.*, ¶ 23.
[50] Ibid.
[51] Ibid.
[52] *Id.*, ¶ 22.
[53] Settlement Agreement, ¶ 3.1.

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will be sought and the amount allocated toward the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment by the Settlement.[54]

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

[54] *Id.*, 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.[55] 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) 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 Class Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[56] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[57] The proposed Class Notice recognizes that the Court has not yet granted final approval

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[55] LeBlanc-Mansell Decl., ¶ 9.
[56] Settlement Agreement, Exh. A.
[57] Ibid.

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of the settlement.[58] The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Class Payment and, if applicable, Individual PAGA Payment is calculated and the number of Class Workweeks and/or PAGA Pay Periods credited to them.[59] The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39.

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

IX. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris, Inc. as the Administrator. Within 14 calendar days of receipt of the Class List, the Administrator will mail the Class Notice to each Class Member and Aggrieved Employee.[60] The Administrator will skip-trace returned Class Notices and re-mail the Class Notice to the new addresses within three business days.[61] In the case of a re-mailed Class Notice, the Response Deadline will be extended by 14 days from the original Response Deadline.[62] The Administrator will receive and process Requests for Exclusion, Objections to the Settlement, or disputes regarding Workweeks.[63] In addition, the Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.[64] The Administration Expenses Payment is currently estimated to be $11,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[65] Accordingly,

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[58] Ibid.
[59] Settlement Agreement, Exh. A.
[60] Ibid.
[61] Ibid.
[62] *Id*., ¶ 7.5.1.
[63] *Id*., ¶¶ 7.5.1, 7.6 & 7.7.
[64] *Id*., ¶ 7.
[65] Settlement Agreement, ¶ 3.2.3.

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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 Aggrieved Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. CLASS REPRESENTATIVE SERVICE PAYMENT

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Service Payment in an amount up to $7,500.00.[66] 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 Class Representative Service 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 and undertook the risks associated with filing a public lawsuit against his employer.[67] 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.[68] Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Service Payment for his services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to their individual settlement payment.

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[66] Settlement Agreement, ¶ 3.2.1.

[67] LeBlanc-Mansell Decl., ¶¶ 10, 16; Declaration of Gregory Brule in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Brule Decl."), ¶ 3.

[68] LeBlanc-Mansell Decl., ¶¶ 10, 16; Brule Decl., ¶¶ 3-6.

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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 Gregory Brule as Class Representative; appoint Simpluris, Inc., as Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, PAGA Penalties, and Administration Expenses Payment; 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 6 months.

Dated: February 6, 2025

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By: ______________________________
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