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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

NATHAN POOL, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

vs.

UTC RESTAURANT VENTURE, LLC, a
California limited liability company; PASEO
RESTAURANT VENTURE, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV07785 (Lead Case)
Consolidated Case No.: 20GDCV00377

Honorable Lawrence P. Riff
Department SSC7

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT PAYMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Class Counsel
(Edwin Aiwazian); Declarations of Class
Representative (Nathan Pool); Declaration
of Settlement Administrator (Evelin Reyes);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: November 30, 2022
Time: 11:00 a.m.
Department: SSC7

Complaint Filed: February 27, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 30, 2022 at 11:00 a.m., in Department 7 of
2 the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff
3 Nathan Pool (“Plaintiff”) will and hereby does move for an order granting final approval of:

4 1. The Second Amended Joint Stipulation of Class Action and PAGA Settlement
5 (“Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the Settlement is
6 fair, adequate, and reasonable because:

- 7 • A Total Settlement Amount of approximately **\$275,000.00** will be fully distributed to
8 the Class Members who did not timely opt out of the Settlement (“Settlement Class
9 Member”);
- 10 • **No Notices of Objection** were submitted to the settlement administrator, Simpluris,
11 Inc. (“Settlement Administrator”);
- 12 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

13 2. Payment in the amount of **\$96,250.00** to Lawyers *for* Justice, PC (“Class
14 Counsel”), representing thirty-five percent (35%) of the Total Settlement Amount, as the
15 Attorneys’ Fees, which is reasonable and justified on a percentage-basis;

16 3. Payment in the amount of **\$34,700.47** to Class Counsel for reimbursement of the
17 Class Counsel Costs;

18 4. Payment in the amount of **\$10,000.00** to the Settlement Administrator, Simpluris,
19 Inc. (“Simpluris”), for Settlement Administration Costs;

20 5. Payment in the amount of **\$7,500.00** to Plaintiff Nathan Pool, as an Enhancement
21 Payment for his time and effort in representing the Class; and

22 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
23 California Labor Code section 2698, *et seq.*, in the amount of **\$50,000.00**, of which seventy-five
24 percent (75%), or \$37,500.00, will be paid to the California Labor and Workforce Development
25 Agency and twenty-five percent (25%), or \$12,500.00, will be paid to PAGA Members.

26 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
27 of Court, which require approval by the Court of a class action settlement and permit the Court to
28 extend the page limit for memoranda.

1 This motion is based upon the following Memorandum of Points and Authorities; the
2 Declarations of Class Counsel (Edwin Aiwarzian), Class Representative (Nathan Pool), and
3 Settlement Administrator (Evelin Reyes of Simpluris) in support thereof; the pleadings and other
4 records on file with the Court in this matter; and such evidence and oral argument as may be
5 presented at the hearing on this Motion.

6 Dated: November 3, 2022

LAWYERS for JUSTICE, PC

7
8 By: 
9 Edwin Aiwarzian
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Nathan Pool (“Plaintiff”) seeks final approval of: (1) the Total Settlement Amount of \$275,000.00; (2) the Attorneys’ Fees of \$96,250.00, which is thirty-five percent (35%) of the Total Settlement Amount, and reimbursement of Class Counsel Costs in the amount of \$34,700.47 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$10,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Nathan Pool; and (5) allocation of \$50,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly paid, non-exempt employees who worked for Defendants in the State of California at any time during the period from February 27, 2016 through October 20, 2020, who did not sign arbitration agreements. (“Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to extensive settlement negotiations. This matter has required 536.60 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for the Attorneys’ Fees, which represents thirty-five percent (35%) of the Total Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery.

Plaintiff moves for final approval of the Enhancement Payment in the amount of \$7,500.00, to compensate Plaintiff for the time and effort he expended spearheading this lawsuit on behalf of the Class, PAGA Members, and State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$10,000.00 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of \$50,000.00 for the PAGA Penalties, of which \$37,500.00 will be paid to the California Labor

¹ Settlement Agreement, § 7.b. “Class Period” is defined as the period of time from February 27, 2016 through October 20, 2020. See *id.*, § 7.c.

1 Workforce and Development Agency (“LWDA”) for its portion of the PAGA Penalties (“LWDA
2 Payment”), and \$12,500.00 will be paid to all current and former hourly-paid, non-exempt
3 employees who worked for Defendant Paseo Restaurant Venture, LLC in California at any time
4 during the period from January 29, 2019 through October 20, 2020 (“PAGA Members”).²

5 The requests for Attorneys’ Fees and Costs, Enhancement Payment, Settlement
6 Administration Costs, and allocation for the PAGA Penalties were fully disclosed in the Notice
7 of Class Action and PAGA Settlement (“Notice”) that was mailed to the Class Members. Most
8 importantly, as of the date of this Motion, *not a single Class Member has objected to any aspect*
9 *or opted-out of the Settlement*, including the requested Attorneys’ Fees and Costs, Enhancement
10 Payment, Settlement Administration Costs, or allocation for PAGA Penalties.

11 The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length,
12 good-faith negotiations by experienced counsel. Accordingly, the Court should grant final
13 approval of the Settlement, and award Attorneys’ Fees and Costs, Enhancement Payment,
14 Settlement Administration Costs, and PAGA Penalties in the amounts as fully disclosed to the
15 Class and as requested herein.

16 In order to efficiently present the Court with adequate information to determine whether
17 to grant final approval of the Settlement and award Attorneys’ Fees and Costs, Enhancement
18 Payment, Settlement Administration Costs, and PAGA Penalties, Plaintiff also moves for an
19 order permitting the filing of this single consolidated memorandum, although it exceeds the page
20 limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate
21 motions.

22 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

23 Defendants UTC Restaurant Venture, LLC and Paseo Restaurant Venture, LLC
24 (“Defendants”) own and operate a chain of restaurants called Great Maple throughout California.
25 Plaintiff Nathan Pool is a former employee of Defendants.

26 ///

27 ///

28 _____
² Settlement Agreement, §§ 7.u, 7.y, & 14.

On January 29, 2020, Nathan Pool provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendants alleging Defendants violated specific provisions of the California Labor Code (“LWDA Letter”).

On February 27, 2020, Nathan Pool filed a Class Action Complaint for Damages (“Class Complaint”) against Defendants in the Superior Court of California for the County of Los Angeles, Case No. 20STCV07785 (“Class Action”), alleging ten (10) causes of action for violation of California Labor Code and California Business & Professions Code §§ 17200, *et seq.* on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time since February 27, 2016 for failure to pay overtime wages, failure to provide meal periods and premium payments in lieu thereof, failure to provide rest periods and premium payments in lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business expenses.

On April 3, 2020, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“PAGA Complaint”) against Defendants in the Superior Court of California of Los Angeles, Case No. 20GDCV00377 (“PAGA Action”), alleging a single cause of action against Defendants for violation of the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”).

On July 27, 2020, Defendants filed an Answer to Plaintiff’s Class Complaint in the Class Action.

On July 31, 2020, Plaintiff propounded multiple sets of discovery in both cases including Requests for Production of Documents, (Sets One & Two); Special Interrogatories, (Sets One, Two, & Three); and Form Interrogatories, (Set One), on Defendants. On October 8 and 9, 2020, Plaintiff took the deposition of Defendants’ person most knowledgeable regarding job duties and organizational structure of Defendants.

On August 10, 2020, Plaintiff filed an Amendment to Complaint to which Defendants filed an Answer on August 17, 2020.

Also on August 17, 2020, Defendants filed an Answer to Plaintiff's PAGA Complaint in the PAGA Action.

On August 25, 2020, pursuant to stipulation by the Parties, the Court issued an Order consolidating the Class Action and PAGA Action (the "Actions") and designating the Class Action as the lead case.

On June 23, 2021, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval"). On July 7, 2021, the Court issued a Minute Order that took the Motion for Preliminary Approval hearing off calendar without prejudice to the filing of a renewed motion for preliminary approval that addresses the Court's concerns. Based on the Court's guidance, the Parties have prepared and now present for the Court's consideration, this Renewed Motion for Preliminary Approval of Class Action Settlement.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Actions, and further deny that the Actions is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The Parties have actively litigated the Actions since before the Class Action was commenced on February 27, 2020. On October 20, 2020, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

On January 14, 2022, Plaintiff filed a Renewed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") and supporting documents. On April 28, 2022, the Court issued a Minute Order wherein it raised certain points of inquiry regarding the Motion for Preliminary Approval and continued the Hearing on Motion for Preliminary Approval of Settlement. On June 13, 2022, Plaintiff filed supplemental papers in support of the Motion for Preliminary Approval. On July 6, 2022, the Court entered the Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby

preliminarily approving the terms of the Settlement, the Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, and allocation for PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants have agreed to pay a Total Settlement Amount of \$275,000.00 on a non-reversionary basis.³ 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 and Costs, consisting of Attorneys' Fees in the amount of \$96,250.00 and reimbursement of litigation costs and expenses in the amount of \$34,700.47, to Class Counsel; (2) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Nathan Pool; (3) Settlement Administration Costs in the amount of \$10,000.00 to Simpluris; and (4) PAGA Penalties in the amount of \$50,000.00.⁴ The Net Settlement Amount, which is estimated to be \$76,549.53, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendants.⁵

The Settlement Administrator calculated each Class Member's share of the Net Settlement Amount ("Individual Settlement Share"), by dividing the Net Settlement Amount by the Class Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiplying each Class Member's individual Class Workweeks by the Estimated Workweek Value to yield each Class Member's estimated Individual Settlement Share. After Final Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Class Workweeks of all Class Members who did not request exclusion from the Settlement ("Settlement Class Members") to yield the "Final Workweek Value," and will multiply each

³ Settlement Agreement; §§ 7.kk & 10.

⁴ *Id.*, §§ 11, 12, 13, & 14

⁵ This amount is higher than the amount stated in Paragraph 11 of the accompanying Declaration of Evelin Reyes Regarding Notice And Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$35,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$34,700.47 for reimbursement of litigation costs and expenses, and the difference of \$299.53 will remain part of the Net Settlement Amount.

1 Settlement Class Member's individual Class Workweeks by the Final Workweeks Value to yield
2 each Settlement Class Member's Individual Settlement Share.⁶

3 The Settlement Administrator calculated each PAGA Member's *pro rata* share of the
4 twenty-five percent (25%) portion of the PAGA Penalties attributed to PAGA Members
5 ("Individual PAGA Payment") by dividing the twenty-five percent (25%) portion of the PAGA
6 Penalties by the number of PAGA Workweeks to yield the "PAGA Workweek Value," and
7 multiplying each individual PAGA Member's number of PAGA Workweeks by the PAGA
8 Workweek Value.⁷

9 Class Members had sixty (60) calendar days after the initial mailing of the Notice to
10 dispute the number of Class Workweeks credited to each of them, opt out of the Settlement,
11 and/or object to the Settlement ("Response Deadline").⁸ The Response Deadline was October 3,
12 2022.⁹ The Settlement Administrator has not received any written requests for exclusion from the
13 Settlement ("Requests for Exclusion") or written objections to the Settlement ("Notices of
14 Objection") from Class Members.¹⁰

15 Individual Settlement Shares will be allocated as one third (1/3) as wages (the "wages
16 portion"), to be reported on an IRS Form W-2; and two thirds (2/3) as interest, penalties, and
17 non-wage damages which will be reported on an IRS Form 1099.¹¹ Individual Settlement Shares
18 will be paid out to Settlement Class Members subject to reduction for the employee's share of
19 taxes and withholdings with respect to the wages portion of each Individual Settlement Share
20 ("Individual Settlement Payment").¹² Each PAGA Member's Individual PAGA Payment will be
21 allocated as one hundred percent (100%) penalties, interest, and other non-wage damages, which
22 will be reported on an IRS Form 1099.¹³

23 Any and all Individual Settlement Payment and Individual PAGA Payment checks issued
24 to Settlement Class Members and PAGA Members will remain valid for 180 calendar days from

25 ⁶ Settlement Agreement, §§ 15.a-b.

26 ⁷ *Id.*, § 15.c.

26 ⁸ *Id.*, § 7.gg.

27 ⁹ Simpluris Decl., Exh. A & Exh. B.

27 ¹⁰ *Id.*, ¶¶ 13 & 14.

28 ¹¹ Settlement Agreement., § 26.

¹² *Ibid.*

¹³ *Ibid.*

the date of mailing.¹⁴ Thereafter, Individual Settlement Share and Individual PAGA Payment checks that are not negotiated within the 180-day period will be void, and the funds associated with such voided checks will be transmitted by the Settlement Administrator to the State Controller's Office Unclaimed Property Division in the names of the Settlement Class Members and/or PAGA Member whose checks are cancelled.¹⁵

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's July 6, 2022 Preliminary Approval Order.

On July 6, 2022, Simpluris received the Court-approved text for the Notice.¹⁶

On July 21, 2022, Simpluris received a mailing list from Defendants' counsel that contained the full names, last known mailing addresses, last known telephone numbers (if available), Social Security Numbers, their dates of employment, total Class Workweeks, and total PAGA Workweeks of all Class Members and PAGA Members. ("Data List").¹⁷ The Data List contained information for 329 individuals identified as Class Members.¹⁸ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Data List with any updated addresses located.¹⁹

On August 22, 2022, Simpluris mailed the Notice via first class mail to 329 individuals identified as Class Members in the Data List.²⁰

As of the date of this Motion, no Notices were returned as undeliverable with forwarding addresses.²¹ One hundred thirty-six (136) Notices were returned without forwarding addresses. Simpluris performed a skip-trace search on any Notices that were returned to Simpluris without forwarding addresses, and one hundred three (103) updated addresses were located, to which

¹⁴ Settlement Agreement, § 20.

¹⁵ Ibid.

¹⁶ Simpluris Decl., ¶ 5.

¹⁷ *Id.*, ¶ 6.

¹⁸ Ibid.

¹⁹ *Id.*, ¶ 7.

²⁰ *Id.*, ¶ 8.

²¹ *Id.*, ¶ 9.

Simpluris promptly remailed the Notices.²² Ultimately, thirty-three (33) Notices remain undeliverable.²³

As of the date of this Motion, the Settlement Administrator has not received any Notices of Objection or Requests for Exclusion from Class Members.²⁴

To date, there are three hundred twenty-nine (329) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁵ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$76,549.53 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁶ The average Individual Settlement Share is currently estimated to be \$193.77 and the highest Individual Settlement Share is currently estimated to be \$999.79.²⁷ The average estimated Individual PAGA Payment is \$37.99, the highest estimated Individual PAGA Payment is \$1,002.77.²⁸

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether the settlement is fair and reasonable, courts consider relevant factors such as:

the strength of plaintiffs' 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 views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 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

²² Simpluris Decl., ¶ 9.

²³ Ibid.

²⁴ *Id.*, ¶¶ 13 & 14.

²⁵ *Id.*, ¶ 10.

²⁶ *Id.*, ¶ 12; see also, n.5, *supra*.

²⁷ Simpluris Decl., ¶ 12. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$35,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$299.53, will be part of the Net Settlement Amount). See n.5, *supra*.

²⁸ *Id.*, ¶ 12.

1 circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.
2 “Due regard should be given to what is otherwise a private consensual agreement between the
3 parties.” *Dunk, supra*, 48 Cal.App.4th at 1801.

4 The proponent of the settlement has the burden to show that it is fair and reasonable.
5 *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness
6 exists where, as here: “(1) the settlement is reached through arm’s-length bargaining; (2)
7 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
8 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk,*
9 *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any
10 ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.
11 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.
12 The inquiry is not whether the settlement agreement is the best one that class members could
13 have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and
14 reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain
15 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful.
16 *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is
17 substantially narrower than it would be if the cases were to be successfully litigated, that is no
18 bar to a class settlement because the public interest may indeed be served by a voluntary
19 settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

22 The Parties have actively litigated the Actions since before the Class Action was
23 commenced on February 27, 2020. Counsel for the parties used the pre-negotiation time period
24 to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for
25 class certification, representative adjudication, and trial.²⁹ The parties conducted extensive formal
26 and informal discovery and investigation into the facts of the case, and also informally
27
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²⁹ Declaration of Edwin Aiwasian (“Aiwasian Decl.”), ¶ 6.

1 exchanged information and data in preparation for mediation and negotiation of the settlement.³⁰
2 Class Counsel propounded multiple sets of written discovery requests in various forms, reviewed
3 Defendants' responses thereto, prepared and served numerous notices of deposition of person(s)
4 most knowledgeable along with requests for production of documents, and took the deposition of
5 Defendants' person most knowledgeable designee.³¹ Class Counsel also interviewed and
6 obtained information from Plaintiff and Class Members, including and not limited to the names
7 of potential witnesses, and reviewed and analyzed a large volume of information, documents,
8 and data produced by Defendants and obtained through other sources.³² The documents and data
9 reviewed and analyzed by Class Counsel included, and were not limited to Plaintiff's
10 employment records, a sampling of class time and pay data, various agreements (including, but
11 not limited to, Employee Arbitration Agreement and Waiver of Jury Trial, Slip-Resistant Shoe
12 Agreement, and Cutting Glove Agreement), acknowledgements (including, but not limited to,
13 Employee Handbook Acknowledgement Forms, Final Paycheck Acknowledgement, Policy
14 Acknowledgement, and Receipt of Employee Handbook and Employment-At-Will Statement),
15 waivers (including, but not limited to, signed Meal Period Waivers), internal memoranda, job
16 descriptions, New Hire Packets, trainings (including, but not limited to, Defendants' Manager
17 Training – Meal and Rest Periods), reports (including, but not limited to Hours Compliance
18 Reports and Employee Schedule Report), and Defendants' operations and employment policies,
19 practices, and procedures (including, but not limited to Defendants' Employee Handbook,
20 Employee Home Book, Time Theft and Eating Policy, Recording Your Time policy, Paycheck
21 Deductions policy, Meal Periods policy, and Rest and Recovery Periods policy), among other
22 information and documents.³³ Class Counsel researched applicable law, developed
23 damages/valuation models in preparation for mediation and settlement negotiations, and met and
24 conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the

27 ³⁰ Aiwazian Decl., ¶ 6.

28 ³¹ Ibid.

³² Ibid.

³³ Ibid.

pleadings, papers related to the petition for coordination and stay. case management, discovery, and production of documents and data prior to mediation and settlement discussions.³⁴

Prior to and during mediation and settlement discussions, the parties exchanged information and data, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the parties of proceeding with class certification, representative adjudication, and trial, the law relating to off-the-clock theory, meal and rest periods, arbitration agreements, representative PAGA claims, and wage-and-hour law and enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³⁵ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.³⁶ Arriving at a settlement that was acceptable to the parties was not easy.³⁷ Defendants and their counsel felt very strongly about Defendants' ability to prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class certification would be obtained and Plaintiff would prevail at trial.³⁸ After conducting significant formal and informal discovery and investigations, and extensive settlement negotiations, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the parties that would attend further litigation.³⁹

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals. Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.⁴⁰ Class Counsel also reviewed and analyzed a large volume of documents produced by Defendants and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour law and enforcement, Plaintiff's claims, and Defendants' defenses, as well as facts

³⁴ Aiwazian Decl., ¶ 6.

³⁵ *Id.*, ¶ 8.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶ 6.

discovered.⁴¹ The Settlement was based on this large volume of facts, evidence, and investigation.⁴² Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴³

B. The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.

The Settlement, which provides for a Total Settlement Amount of \$275,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁴ The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of settlement negotiations.⁴⁵ Had the action not settled, Defendants would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendants contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendants would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendants also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Settlement Class Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation

⁴¹ Aiwazian Decl., ¶ 6.

⁴² *Id.*, ¶¶ 6 & 8.

⁴³ *Id.*, ¶¶ 15-18.

⁴⁴ *Id.*, ¶¶ 8 & 21.

⁴⁵ *Id.*, ¶¶ 5-8.

1 include a determination that the claims were unsuitable for class treatment and/or representative
2 adjudication, failure to obtain certification, class de-certification after certification of a class,
3 allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery
4 after years of litigation. Additionally, the parties were moving into the phase of the litigation
5 where they would have to conduct a significant amount of additional discovery, including and
6 not limited to, additional depositions of Defendant's Person Most Knowledgeable designees,
7 expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and
8 former employees throughout the State of California. Additional discovery would have certainly
9 arisen, which would have cost the parties additional time and money. In contrast, the Settlement
10 provides real and significant benefits for the Class here and now, while avoiding the further
11 expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

12 It would be grossly inefficient for such a large class of current and former employees to
13 bring individual actions to recover from Defendants for the alleged violations of wage-and-hour
14 laws. Moreover, the potential individual recovery that could be obtained by a Class Member
15 would not be significant enough to provide him or her with the incentive to sue. By granting final
16 approval of the Settlement, the Court can approve a resolution that provides a certain and
17 substantial recovery for Class Members, PAGA Members, and the State of California.

18 **C. The Settlement Is Fair, Reasonable, and Adequate.**

19 The Settlement, which provides for a Total Settlement Amount of \$275,000.00,
20 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
21 using information and data uncovered through extensive case investigation, formal and informal
22 discovery, and the exchange of information in the context of settlement discussions. The
23 Settlement takes into account the potential risks and rewards inherent in any case and, in
24 particular, in this matter. Moreover, considering all of the facts in the case, the Total Settlement
25 Amount represents a considerable recovery.

26 Even after deducting the Attorneys' Fees in the amount of \$96,250.00, Costs in the
27 amount of \$34,700.47, Enhancement Payment in the amount of \$7,500.00, Settlement
28 Administration Costs in the amount of \$10,000.00, and the PAGA Penalties in the amount of

\$50,000.00 from the Total Settlement Amount of \$275,000.00, the Net Settlement Amount is currently estimated to be \$76,549.53.⁴⁶ Under the Settlement Agreement, the Total Settlement Amount will be fully paid out without any reversion to Defendants, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Class Workweeks credited to him or her. To date, there are 329 Settlement Class Members, representing 100% of the Class.⁴⁷ The average Individual Settlement Share is currently estimated to be \$193.77 and the highest Individual Settlement Share is currently estimated to be \$999.79.⁴⁸ The average estimated Individual PAGA Payment is \$37.99, the highest estimated Individual PAGA Payment is \$1,002.77.⁴⁹ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n 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. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁵⁰ 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, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

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⁴⁶ Simpluris Decl., ¶ 12; see n.5, *supra*.

⁴⁷ *Id.*, ¶ 10.

⁴⁸ *Id.*, ¶ 12; see n.27, *supra*.

⁴⁹ *Id.*, ¶ 12.

⁵⁰ Aiwasian Decl., ¶ 21.

1 **D. The Class Was Represented by Competent Counsel.**

2 Class Counsel has extensive experience in employment class action law and complex
3 wage-and-hour litigation.⁵¹ Lawyers *for* Justice, PC has been appointed class counsel in
4 numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in
5 California.⁵² Both parties' counsel were capable of assessing the strengths and weaknesses of the
6 Class Members' claims against Defendants and the benefits of the Settlement under the
7 circumstances of the cases and in the context of a private, consensual settlement agreement.

8 **E. There Are No Objections to the Settlement.**

9 The Settlement has been well received by the Class – *not a single Class Member*
10 *objected to or opted out of the Settlement.*⁵³ Specifically, no objections have been made as to the
11 Total Settlement Amount or requested Attorneys' Fees, Class Counsel Costs, Enhancement
12 Payment, Settlement Administration Costs, or the allocation for PAGA Penalties. California
13 courts have consistently found that a small number of objectors indicates the class's support for a
14 settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final
15 approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53
16 (final approval granted despite 9 objectors).

17 Here, the lack of any objections speaks volumes about the fairness, reasonableness, and
18 adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair,
19 reasonable, and adequate, and the Court should grant final approval of the Settlement in its
20 entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

21 **VI. THE ATTORNEYS' FEES REQUESTED BY CLASS COUNSEL IS FAIR AND**
22 **REASONABLE AND SHOULD BE APPROVED.**

23 **A. Legal Standard for Attorneys' Fees in a Class Action Settlement.**

24 Trial courts have "wide latitude" in assessing the value of the Attorneys' Fees and their
25 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
26 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,

27 _____
28 ⁵¹ Aiwazian Decl., ¶¶ 15-18.

⁵² Ibid.

⁵³ Simpluris Decl., ¶¶ 13 & 14.

1 1132 (The “experienced trial judge is the best judge of the value of professional services
2 rendered in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.
3 Where the amount of a settlement is a “certain easily calculable sum of money,” California
4 courts may calculate the Attorneys’ Fees as a reasonable percentage of the settlement. Weil and
5 Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also*
6 *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808.
7 The percentage-of-the-benefit approach is preferred in class and representative actions because
8 “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao*,
9 *supra*, 82 Cal.App.4th at 49.

10 California law provides that an award of attorneys’ fees should be equivalent to fees paid
11 in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert*
12 *Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a
13 recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
14 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
15 in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Attorneys’ fees that are too small
16 will “chill the private enforcement essential to the vindication of many legal rights and obstruct
17 the representative actions that often relieve the courts of the need to separately adjudicate
18 numerous claims.” *Lealao, supra*, 82 Cal.App.4th at 53.

19 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
20 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
21 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126
22 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long
23 as the method chosen is applied consistently using percentage figures and/or rates that accurately
24 reflect the marketplace. In cases where class members present claims against a settlement
25 amount and the settlement agreement provides that the defendant agrees to paying the attorneys a
26 percentage of the same, use of that percentage method is appropriate. *Lealao, supra*, 82
27 Cal.App.4th at 32.

28 ///

Historically, courts have approved attorneys' Fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 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 settlement amount of \$7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve attorneys' fees "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 Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

B. A Fee Award of a Percentage of the Entire Fund Is Appropriate.

California and federal courts have long recognized that an appropriate method for determining Attorneys' Fees amounts is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁴ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent, supra*, 557 F.2d at 769.

When a litigant's efforts result in a settlement from which others may derive benefits, the litigant may require the passive beneficiaries to compensate those whose efforts brought about the settlement. *See, R. Pearle, California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine. *See Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

⁵⁴ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

8 Courts have consistently recognized that class and representative action litigation is
9 increasingly necessary to protect the rights of individuals whose injuries and/or damages are too
10 small to economically justify legal action on an individual basis. Accordingly, in determining a
11 reasonable Attorneys' Fees, courts award fees to serve as an economic incentive for lawyers to
12 pursue such litigation in order to achieve increased access to the judicial system for meritorious
13 claims and to enhance deterrents to wrongdoing. This is especially true in situations where
14 multiple similar alleged wrongs would not be economically feasible to pursue individually, such
15 as here. See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

16 When the cases were originally filed, not only was it inescapably contingent, but the
17 prospect of a long, drawn-out battle with Defendants represented by experienced counsel, was
18 almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked
19 substantial economic loss if the results were not successful. This substantial risk is the reason
20 that the courts approve the use of the percentage method when a settlement is obtained by the
21 efforts of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49
22 (discussing the risks of engaging in litigation without certainty of compensation).

23 Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement
24 Amount of \$275,000.00 on a non-reversionary basis. The requested Attorneys' Fees is thirty-five
25 percent (35%) of the total value of the monetary settlement. In light of Class Counsel's
26 successful prosecution and resolution of the case, the requested Attorneys' Fees is appropriate
27 and reasonable.

28 ///

Compensating class counsel in class litigation on a percentage basis makes good sense because: (1) it is consistent with the private marketplace where contingent fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the case; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early, yet reasonable, settlement. The requested Attorneys' Fees in this matter satisfies all of those factors such and should be approved on a percentage basis.

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of thirty-five percent (35%) of the recovery.⁵⁵

Furthermore, a percentage-fee award is not dependent on a determination of the actual amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is equitable that [the attorney's] compensation and expenses should come from the entire fund saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be calculated on the basis of the total fund made available rather than the actual payments made to the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole”).

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⁵⁵ Aiwasian Decl., ¶ 9.

1 In *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, in determining
2 reasonable attorneys' fees, the Court of Appeal valued a settlement based on the total value of
3 the settlement made available to class members by the efforts of counsel, decided in favor of
4 granting fees as a percentage of the total value of the settlement, and rejected an Notice of
5 Objection that the fees be awarded based on the exact amount claimed by class members. *Id.* at
6 247.

7 Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, PAGA
8 Members, and the State of California, and the results achieved justify attorneys' fees that are the
9 equivalent of the standard market fee and that is consistent with the contingency-fee agreements
10 entered into by and between Plaintiff and Class Counsel. Thus, the requested Attorneys' Fees is
11 appropriate.

12 C. **The Attorneys' Fees Requested by Class Counsel Is Reasonable Based on the**
13 **Factors Considered in Determination of Fee Awards.**

14 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
15 to be considered in determining whether attorneys' fees are reasonable: (1) the time and labor
16 required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform
17 the legal services properly; (4) the preclusion of other employment by the attorney due to the
18 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
19 limitation imposed by the client or the circumstances; (8) the amount involved and results
20 obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the
21 case; (11) the nature and length of the professional relationship with the client; and (12) awards
22 in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d
23 768, 772.

24 Each and every one of these factors favors the Attorneys' Fees sought here; however,
25 some of the most relevant factors to this Court's fee determination will be addressed herein. The
26 approval of Attorneys' Fees in the amount of \$96,250.00 (which is 35% of the Total Settlement
27 Amount) is commensurate with the time, effort, and expense dedicated to the case, the
28 contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill

and determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class and PAGA Members. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁵⁶

As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively participated in litigation of this case.⁵⁷ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and their operations and employment policies, practices, and procedures.⁵⁸ During the litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; propounded formal written discovery requests and reviewed Defendants' responses thereto; reviewed and analyzed a large volume of documents and data produced by Defendants and obtained through other sources; and prepared damages/valuation calculations.⁵⁹ Class Counsel also met and conferred with Defendants' counsel over the issues relating to pleadings, case management, discovery, and production of documents and data, among other things; engaged in extensive settlement negotiations with Defendants' counsel; and prepared for and attended court proceedings, and settlement negotiations.⁶⁰

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff, Class Members, PAGA Members, and the State of California.⁶¹ The Task and Time Chart is thorough and comprehensive, and was prepared so

⁵⁶ Aiwarzian Decl., ¶¶ 15-18.

⁵⁷ *Id.*, Exh. A.

⁵⁸ *Id.*, ¶ 6 & Exh. A.

⁵⁹ *Id.*, ¶ 6.

⁶⁰ *Ibid.*

⁶¹ *Id.*, Exh. A.

that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent **536.60** hours performing tasks and to obtain a significant recovery in this case.⁶² These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested Attorneys' Fees fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the matter is evident not only in the results achieved, but in the steps necessary to reach the same. Defendants retained well-respected counsel to represent their defenses. More specifically, Defendants and their counsel felt very strongly about Defendants' ability to obtain a denial of certification and to prevail on the merits. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to settlement negotiations. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the cases to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁶³

3. The Value of the Settlement for the Class Members.

The Settlement represents an excellent resolution of the action, given the risks inherent in litigating the matter through certification proceedings, trial, and/or appeals. Had the matter not

⁶² Aiwazian Decl., ¶ 11.

⁶³ *Id.*, ¶¶ 15-18.

settled, Defendants would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendants, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the cases for trial would have been expensive for the parties.

The Settlement at this stage is preferred over continued litigation because such resolutions save time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Class Members while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

As a result of this litigation and extensive settlement negotiations, Defendants agreed to pay a Total Settlement Amount of \$275,000.00 to settle the matter. After deducting the Attorneys' Fees (\$96,250.00), Class Counsel Costs (\$34,700.47), Enhancement Payment (\$15,000.00 total), Settlement Administration Costs (\$10,000.00), and PAGA Penalties (\$50,000.00) from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$76,549.53.⁶⁴ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The average Individual Settlement Share is currently estimated to be \$193.77 and the highest Individual Settlement Share is currently estimated to be \$999.79.⁶⁵ The average estimated Individual PAGA Payment is \$37.99, the highest estimated Individual PAGA Payment is \$1,002.77.⁶⁶ The Settlement offers significant monetary relief to the Settlement Class Members and PAGA Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class

⁶⁴ Simpluris Decl., ¶ 12; see n.5, *supra*.

⁶⁵ *Id.*, ¶ 12; see n.27, *supra*.

⁶⁶ *Id.*, ¶ 12.

Counsel took on the cases without knowing whether any recovery would be obtained. Class Counsel has invested 536.60 hours of time to obtain relief on behalf of Plaintiff, Class Members, PAGA Members, and the State of California.⁶⁷ Class Counsel has also incurred litigation costs and expenses in the amount of \$34,700.47.⁶⁸

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 is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷⁰ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

In determining the reasonableness of attorneys' fees in a class action settlement, whether or not representation is provided on a contingency basis is an important factor:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Cates v. Chiang (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class Counsel litigated the cases on a contingent basis with all the concomitant risk factors inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel has devoted to litigating the cases would have been for naught and would not have produced any fee or any reimbursement of costs or expenses.

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to or opted out of the Settlement.⁷¹

⁶⁷ Aiwasian Decl., ¶ 11, Exh. A.

⁶⁸ See Part VII, *infra*.

⁶⁹ Aiwasian Decl., ¶ 19.

⁷⁰ See *id.*, ¶¶ 15-18.

⁷¹ Simpluris Decl., ¶¶ 13 & 14.

The court in *Camden* noted that, “a key element of the common fund case is that fees are [...] taken from the fund [...] and a common fund is itself the measure of success ... [and] represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768, fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8, 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

Here, the results achieved and obtained in the matter are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Total Settlement Amount of \$275,000.00.⁷² The Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The average Individual Settlement Share is currently estimated to be \$193.77 and the highest Individual Settlement Share is currently estimated to be \$999.79.⁷³ The average estimated Individual PAGA Payment is \$37.99, the highest estimated Individual PAGA Payment is \$1,002.77.⁷⁴

6. The Reputation and Ability of the Attorneys.

Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’ knowledge, skills, and experience in bringing these cases to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁷⁵

D. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Has Performed Work That Is of Significant Value Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*,

⁷² Aiwasian Decl., ¶¶ 5-8.

⁷³ Simpluris Decl., ¶ 12; see n.27, *supra*.

⁷⁴ *Id.*, ¶ 12.

⁷⁵ Aiwasian Decl., ¶¶ 15-18.

290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” of the settlement amount and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

1. The Number of Hours Spent on the Litigation was Reasonable.

The reasonableness of hours is assessed by “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

As discussed above, the matter was highly contested and required a significant amount of time and labor. Defendants made it clear very early on that they disputed all of the allegations of the cases and disputed that the matter was appropriate for class or representative treatment. Defendants raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendants but also from the Class Members. The handling of the cases involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the matter moved toward certification and trial, including taking and defending additional depositions of Defendants’ Person Most Knowledgeable designees, percipient witnesses, and experts, propounding discovery requests and conducting additional document production, and engaging in extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter through settlement negotiations.

Class Counsel had to bring together a large volume of data and documents that were produced by Defendants and obtained from Plaintiff and Class Members and through other

sources. Class Counsel conducted extensive review and analysis of these documents and data to strategize the action and to prepare for and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff, the Class, PAGA Members, and the State of California, and the time required for completing those tasks.⁷⁶ The chart demonstrates that Class Counsel has spent a total of 536.60 hours litigating the matter and finalizing the Settlement.⁷⁷ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiff, Class Members, PAGA Members, and the State of California, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

2. The Attorneys' Fees Requested Represents a Reasonable Hourly Rate of Compensation in Light of Class Counsel's Efforts and Experience.

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this action. See *Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." See *id.*

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$275,000.00.

⁷⁶ See Aiwazian Decl., Exh. A.

⁷⁷ Aiwazian Decl., ¶ 11.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$675 per hour for services provided by Class Counsel.⁷⁸ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$675 for legal service performed, by courts of this state.⁷⁹ While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of Class Members justify the requested Attorneys' Fees.

Applying the rate of \$675 per hour to 536.60 hours would place a reasonable value of \$362,205.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$96,250.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See Ketchum, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency

⁷⁸ Aiwarzian Decl., ¶ 12.

⁷⁹ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved an hourly rate of \$845.64. Aiwarzian Decl., ¶ 12.

cases.” *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, supra, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, supra, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher.”); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); Chavez, supra, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys’ fees in the amount of \$96,250.00 to Class Counsel.

VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for reimbursement of litigation costs and expenses of up to \$35,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$34,700.47 in litigation costs and expenses.⁸⁰ This amount was reasonable and necessary in the prosecution of the cases and to obtain the Settlement.⁸¹ The cost savings of \$299.53 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸² Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$34,700.47 to Class Counsel.

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⁸⁰ Aiwazian Decl., ¶ 19.

⁸¹ Ibid.

⁸² Ibid.

VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$10,000.00.⁸³ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Notice to the Class Members; performing skip-trace searches on Notices returned as undeliverable; re-mailing the Notices to any updated addresses located by skip-trace search; handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and preparing the associated tax forms; and transmitting payments, among other things.⁸⁴

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$10,000.00.

IX. THE REQUESTED ENHANCEMENT PAYMENT ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for Enhancement Payment in the amount of \$7,500.00 Plaintiff Nathan Pool to compensate him for the time and effort he expended on behalf of the Class, PAGA Members, and the State of California. The requested Enhancement Payment is both common and reasonable and should be awarded.

In determining whether to award the Enhancement Payment, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 Enhancement Payment to a single class representative).

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⁸³ Simpluris Decl., ¶ 16.

⁸⁴ Aiwasian Decl., ¶ 2.

The requested Enhancement Payment is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁸⁵ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information that would benefit the pursuit of the class and PAGA claims.⁸⁶ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendants, and gathering and reviewing documents.⁸⁷ These services merit the requested Enhancement Payment to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members, PAGA Members, and State of California to date.⁸⁸

The requested Enhancement Payment was fully disclosed in the Notice that was mailed to the Class Members. No Notices of Objection were made with regards to the requested Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Nathan Pool to receive \$7,500.00 as a reasonable Enhancement Payment, in addition to his individual settlement payments, for his services on behalf of the Class, PAGA Members, and the State of California.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, and allocation for the PAGA Penalties, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: November 3, 2022

LAWYERS for JUSTICE, PC

By:


Edwin Aiwanian
Attorneys for Plaintiff and the Class

⁸⁵ Aiwanian Decl., ¶ 20; Declaration of Nathan Pool ("Pool Decl."), ¶¶ 3-5.

⁸⁶ Aiwanian Decl., ¶ 20; Pool Decl., ¶¶ 3-5.

⁸⁷ Aiwanian Decl., ¶ 20; Pool Decl., ¶¶ 2-6.

⁸⁸ Pool Decl., ¶ 8.