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Attorneys for Plaintiff, EDUARDO RIVERA
on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

EDUARDO RIVERA on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

ALLCOM ELECTRIC, INC., a California
corporation, and DOES 1 through 50,
inclusive,

Defendant.

Case No. 30-2020-01123366-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. Peter Wilson
DEPT.: CX102

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: November 3, 2022
Time: 2:00 p.m.
Dept.: CX102

PLEASE TAKE NOTICE THAT on November 3, 2022, at 2:00 p.m. in Department
CX102 of the above-entitled court located at 751 W. Santa Ana Blvd, CA 92701, Plaintiff
Eduardo Rivera (“Plaintiff”) will and hereby does move the Court for final approval of the class
action and PAGA settlement and all agreed-upon terms therein. This Motion, unopposed by
Defendant Allcom Electric, Inc., seeks final approval of: (1) the Joint Stipulation of Class and
PAGA Settlement Agreement and Release of Claims and Amendments thereto; (2) the Gross
Settlement Amount of Four Hundred Forty-Nine Thousand Four Hundred Seventeen Dollars and
Seventy-Three Cents (\$449,417.73); (3) all settlement payments to individual Class Members; (4)
the Class Representative enhancement payment in the amount of Six Thousand Dollars (\$6,000)

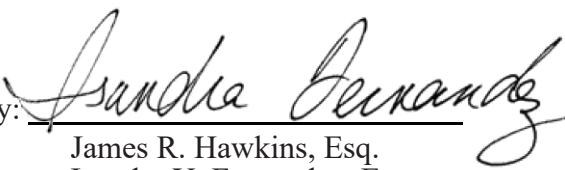
1 to the named Plaintiff Eduardo Rivera; (3) Twenty-Five Thousand Dollars (\$25,000) in PAGA
2 penalties; (4) costs of administering the Settlement paid to the Settlement Administrator,
3 Simpluris, Inc. in the amount of Seven Thousand Six Hundred Dollars (\$7,600); (5) an award of
4 One Hundred Forty-Nine Thousand Seven Hundred Ninety Dollars and Ninety-Two Cents
5 (\$149,790.92) in attorneys' fees (i.e., 33.33% of the Gross Settlement Amount) in attorneys' fees
6 to Class Counsel, James Hawkins, APLC, and costs of Four Thousand Eight Hundred Seventy-
7 Eight Dollars and Twenty-Eight Cents (\$4,878.28)

8 This Motion is made pursuant to California Rules of Court Rule 3.769, which requires
9 court approval of the settlement of a putative class action. Further, this Motion will be based on
10 the following: Memorandum of Points and Authorities set forth herein; the Joint Stipulation of
11 Class and PAGA Settlement Agreement and Release of Claims and all Amendments thereto
12 attached to the Declaration of James R. Hawkins as Exhibit 1; the Declarations of James R.
13 Hawkins, Eduardo Rivera, and Denise Islas; Declarations of James R. Hawkins filed in support of
14 Plaintiff's Motion for Preliminary Approval and any supplements thereto and such evidence or
15 oral argument as may be presented at the hearing, and on the complete records and file herein.

16 DATED: October 12, 2022

JAMES HAWKINS, APLC

17
18 By:


James R. Hawkins, Esq.
Isandra Y. Fernandez, Esq.
Lance Dacre, Esq.
Attorneys for Plaintiff
Eduardo Rivera

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this unopposed motion, Plaintiff Eduardo Rivera (“Plaintiff” or “Class
4 Representative”), on behalf of a putative class (“Class” or “Class Members”), seeks final approval
5 of the the Joint Stipulation of Class and PAGA Settlement Agreement and Release of Claims and
6 any Amendments thereto (“Settlement”) reached with Defendant Allcom Electric, Inc.
7 (“Defendant” and/or “Allcom”).

8 On June 24, 2022, this Court preliminarily approved the settlement amount of Four
9 Hundred Forty-Nine Thousand Four Hundred Seventeen Dollars and Seventy-Three Cents
10 (\$449,417.73) as being fair, adequate, and reasonable. Further, this Court preliminarily appointed
11 Plaintiff’s counsel, James Hawkins and Isandra Fernandez of James Hawkins APLC as class
12 counsel, the named Plaintiff Eduardo Rivera as Class Representative, and provisionally certified
13 the Settlement Class which consists of: all persons who are or were employed by Defendant as
14 non-exempt, hourly-paid employees in California from January 13, 2016, through preliminary
15 approval, which was June 24, 2022 (the “Class Period”) (“Class Members”). The Court also
16 preliminarily approved Simpluris, Inc. (Simpluris) as the Settlement Administrator.

17 On July 22, 2022, the parties notified the Class Members about the settlement through the
18 Settlement Administrator, Simpluris (Declaration of Denise Islas (“Islas Decl.”) ¶ 6). The
19 deadline for requests for exclusions from and objections to the Settlement expired September 5,
20 2022, 45 days after the July 22, 2022, mailing (Settlement Agreement p. 3, ¶ 32; Islas Decl. ¶ 6,)
21 The benefits conferred to the Settlement Class, as a result of this Settlement, are extremely
22 favorable. Specifically, as previously set forth in Plaintiff’s Motion for Preliminary Approval
23 (“Preliminary Approval Motion”), this is a cash settlement with no reversionary aspect. Every
24 Class Member who has not opted out of the Settlement will automatically be mailed an individual
25 settlement payment. There is no claims filing process, and Class Members do not have to file a
26 claim to be mailed a payment. Moreover, out of the 137 class members there are only two (2)
27 requests for exclusion, no disputes, and no objections to the settlement. (Islas Decl. ¶¶ 5, 6, 9).

28 Additionally, in the event the Court approves the requested fees, costs and enhancements,

1 the estimated *highest* settlement share to be paid is Eight Thousand Forty-Two Dollars and Forty-
2 Two Cents (\$8,042.42), the *lowest* estimated settlement share to be paid is approximately
3 Twenty-Four Dollars and Eighty-Seven Cents (\$24.87), and the *average* estimated settlement
4 share to be paid is One Thousand Eight Hundred Ninety-Eight Dollars and Fourteen Cents
5 (\$1,898.14) (Islas Decl. ¶ 15).

6 In sum, the proposed Settlement, which is the product of diligent advocacy and
7 negotiations by Class Counsel, provides significant benefits to the Class and has been well
8 received as a favorable outcome. The Settlement of this action is fair, reasonable, and adequate,
9 and in the best interest of the Class. Accordingly, final approval of the Settlement should be
10 granted.

11 **II. LITIGATION AND SETTLEMENT**

12 **A. Pleadings**

13 On January 13, 2020, Plaintiff Eduardo Rivera initiated this action in the Superior Court
14 for the County of Orange on behalf of himself and all others similarly situated, styled *Eduardo*
15 *Rivera v. Allcom Electric, Inc.*, Case no. 30-2020-01123366-CU-OE-CXC. The Complaint asserts
16 causes of action for; (1) failure to pay lawful wages including overtime wages; (2) failure to
17 provide lawful meal periods or compensation in lieu thereof; (3) failure to provide lawful rest
18 periods or compensation in lieu thereof; (4) failure to pay timely wages; (5) failure to indemnify
19 employee expenses (6) knowing and intentional failure to comply with itemized employee wage
20 statement provisions; and (7) violations of the unfair competition law (Bus. & Prof. Code § 17200
21 *et seq.*) (the “Action”) (See Declaration of James R. Hawkins “Hawkins Decl.” ¶ 2).

22 On January 14, 2020, Eduardo Rivera provided notice to the Labor and Workforce
23 Development Agency (“LWDA”) of his intent to add one additional cause of action for violations
24 of the Labor Code Private Attorney General Act (“PAGA”) (Hawkins Decl. ¶ 2). On April 17,
25 2020, Rivera filed a First Amended Complaint, which included one additional cause of action for
26 violations under PAGA (*Id.*).

27 **B. Discovery and Mediation**

28 Through informal discovery, Plaintiff and Allcom have exchanged documents and

1 information related to the claims asserted. Defendant has produced timecard records and wage
2 reports and also provided Plaintiff with class data and samples of time records, wage statements,
3 information regarding the number of non-exempt employees during the relevant time period
4 (Hawkins Decl. ¶ 3.)

5 After conducting thorough informal discovery, exchanging relevant information and
6 engaging in numerous discussions regarding the claims alleged, on July 14, 2021, the parties
7 participated in a private mediation with Hon. Steven Vartabedian (Ret.). (Hawkins Decl. ¶ 4.)
8 During the course of the mediation, the parties exchanged further information and documentation
9 concerning Plaintiff's claims and Allcom's defenses thereto, and aggressively advocated for their
10 respective positions (*Id.*).

11 At the conclusion of the mediation, the parties reached a settlement of this Action for a
12 maximum settlement amount of Four Hundred Forty-Nine Thousand Four Hundred Seventeen
13 Dollars and Seventy-Three Cents (\$449,417.73). (Hawkins Decl. ¶ 5.) Following the mediation,
14 the parties exchanged various drafts of the Memorandum of Understanding ("MOU") (*Id.*) The
15 MOU was executed by the Parties on or about September 15, 2021 (*Id.*). Thereafter, the Parties
16 exchanged multiple drafts of the proposed settlement agreement and class notice documents and
17 engaged in communications regarding the settlement terms (*Id.*) The final terms and provisions of
18 the settlement agreement were approved and executed by all the parties on or about March 2,
19 2022 (Hawkins Decl. ¶ 6; Exhibit 1- Settlement Agreement and amendments thereto).

20 **C. The Preliminarily Approved Settlement**

21 On March 2, 2022, Plaintiff filed the Motion for Preliminary Approval of Class Action
22 Settlement ("Preliminary Approval Motion") and on May 17, 2022, and June 14, 2022, filed
23 Supplements to the Preliminary Approval Motion. On June 24, 2022, the Court entered the Order
24 granting preliminary approval and appointing class counsel (James R. Hawkins and Isandra
25 Fernandez of James Hawkins APLC), the class representative (Eduardo Rivera), and the
26 Settlement Administrator (Simpluris, Inc.). The Court also approved the proposed Notice of Class
27 Action and PAGA Settlement and amendments thereto and the Exclusion and Objection Forms
28 ("Notice Packet"). Now that administration has been completed, subject to the Court's final

1 approval, the fees and expenses will be paid from the Gross Settlement Amount (GSA) of Four
2 Hundred Forty-Nine Thousand Four Hundred Seventeen Dollars and Seventy-Three Cents
3 (\$449,417.73) as follows:

4 1. Subject to Court approval, the law firm of James Hawkins, APLC shall be
5 paid \$149,790.92 in attorneys' fees (33.33% of the GSA) and litigation costs of \$15,000
6 (Settlement Agreement pp.10-11, ¶ 53 (d)(i)).

7 2. Subject to Court approval \$6,000 shall be paid to the named Plaintiff,
8 Eduardo Rivera, for his time and effort pursuing the Action on behalf of the Class (Settlement
9 Agreement p.10, ¶ 53 (c)(i-ii)).

10 3. Subject to Court approval, Settlement Administration Costs shall be
11 deducted from the GSA and are not to exceed \$7,600 (Settlement Agreement p.11, ¶ 53 (f)).

12 4. Subject to Court approval, \$25,000 will be allocated to the settlement of
13 claims arising under PAGA, of which 75% (\$18,750) will go to the California Labor and
14 workforce Development Agency (the "LWDA Payment"), and 25% (\$6,250) remain part of the
15 Net Settlement Amount and be distributed to Aggrieved Employees. Plaintiff will take all actions
16 required by California Labor Code §2699 (Settlement Agreement p.11, ¶ 53(e)).

17 5. Payment to Class Members shall be made based on a percentage of the Net
18 Settlement Amount ("NSA") which is the amount remaining after deducting amounts set forth in
19 paragraphs 1-4 above from the GSA. "Net Settlement Amount" means the Gross Settlement
20 Amount less all of the following as approved by the Court: (a) Service Award to Plaintiff; (b)
21 Attorneys' Fees to Class Counsel; (c) Litigation Costs to Class Counsel; (d) Settlement
22 Administration Costs to Settlement Administrator; and (e) PAGA Settlement Amount to the
23 LWDA and (Settlement Agreement p. 2, ¶ 19).

24 6. Settlement Payments shall be allocated as follows for tax purposes: one
25 third (1/3) shall be attributed to wages, one third (1/3) to interest, and one third (1/3) as penalties.
26 The Settlement Administrator shall calculate, withhold, and remit to applicable governmental
27 agencies sufficient amounts as may be owed for employees' share of taxes due on the portion of
28 the Individual Settlement Payment allocated to wages that will be reported on an IRS Form W2

1 basis. These amounts shall be paid from the Net Settlement Amount. The Settlement
2 Administrator shall also report those portions of the Individual Settlement Payments allocated to
3 interest and penalties on an IRS Form 1099 basis as required by law (Settlement Agreement p. 9,
4 ¶ 53.b.)

5 7. This is a non-reversionary settlement with no reversion of funds to Allcom.
6 Any checks issued to Settlement Class Members that remain uncashed after 180 day after the date
7 they are issued, will be cancelled, and associated funds shall be distributed according to *Labor*
8 *Code* §384 (Settlement Agreement p. 10, 53.b.iv.).

9 **D. Dissemination of Class Notice**

10 On July 8, 2022 and July 13, 2022, *Simpluris* received the mailing list containing the
11 Class Members' names, most recent mailing address and telephone numbers, social security
12 numbers, and pertinent employment information for each Class Member during the Class Period
13 ("Class List") The Class List contained data for one hundred thirty-seven (137) Class Members
14 (Islas Decl. ¶ 5). The mailing addresses contained in the Class List were processed and updated
15 and the Notice Packets were mailed via First Class Mail to the 137 Class Members on July 22,
16 2022 (Islas Decl. ¶ 6). For the Notice Packets returned from the post office without a forwarding
17 address, *Simpluris* performed an advanced address search (i.e. skip trace) on all of these
18 addresses. To date, only two Notice Packets remain undeliverable (Islas Decl. ¶ 8).

19 **E. The Settlement Provides Reasonable Compensation to the Class Members**

20 Even without the presumption of fairness and reasonableness, the Settlement clearly is
21 within the range of reasonableness. Subject to Court approval, the total potential Net Settlement
22 Fund is approximately \$262,498.53 (Islas Decl. ¶ 12). All Settlement Class Members will be paid
23 their portion of the Net Settlement Amount. The estimated *highest* settlement share to be paid is
24 Eight Thousand Forty-Two Dollars and Forty-Two Cents (\$8,042.42), the *lowest* estimated
25 settlement share to be paid is approximately Twenty-Four Dollars and Eighty-Seven Cents
26 (\$24.87), and the *average* estimated settlement share to be paid is One Thousand Eight Hundred
27 Ninety-Eight Dollars and Fourteen Cents (\$1,898.14) (Islas Decl. ¶ 15).

28 The predominant claims in this action arise from alleged violations of California law with

1 respect to meal and rest breaks. Specifically, Plaintiff alleges that due to the workload
2 requirements, he and class members were frequently not provided a minimum, uninterrupted 30
3 minutes meal break before the end of the fifth hour of their work shift (Hawkins Decl. ¶ 7).
4 Plaintiff also alleges that he and Class Members were not provided a second 30-minute meal
5 period when he worked shifts in excess of 10 hours (*Id.*). Similarly, with respect to the rest break
6 claim, Plaintiff alleges that due to the workload requirements, he and class members were unable
7 to take a minimum ten-minute rest break for every four hours or major fraction thereof worked
8 during their shifts (*Id.*).

9 Allcom adamantly denies Plaintiff's allegations and maintains that Plaintiff and class
10 members were provided with the opportunity to take all meal and rest periods to which they were
11 entitled. Defendant disputed that any of the claims had merit based upon its written policies
12 (Hawkins Decl. ¶ 8). Defendant also disputed the propriety of certification in this case and
13 contends that its policies and practices concerning the claims asserted in this lawsuit are
14 compliant with California law. Further, Defendant contends that Plaintiff and putative class
15 members were paid meal break premiums during the class period when, do the demands of the
16 work shift, they were unable to take compliant meal breaks. Defendant has also denied and
17 continues to deny that the lawsuit is appropriate for class treatment for any purpose other than for
18 settlement purposes only (*Id.*).

19 As thoroughly discussed in Plaintiff's motion for preliminary approval, Plaintiff's counsel
20 estimated the maximum potential liability of \$1,633,1676 that may be owed to the putative class,
21 assuming Plaintiff and the Class were able to obtain an order certifying the class and were also
22 able to prove their claims (Hawkins Decl. ¶ 9).

23 Through his counsel, Plaintiff took into consideration the significant risk that class
24 certification could be denied on the central claims, or that a merits decision on the central claims
25 would not favor the Class (Hawkins Decl. ¶ 10). Plaintiff considered the expense and length of
26 continued proceedings necessary to continue the Action against Defendant through trial and any
27 possible appeals along with Defendant's financial position (*Id.*). Thus, the settlement for
28

1 Settlement Class members is fair, reasonable, and adequate, given the inherent risk of litigation,
2 the risk relative to class certification and the costs of pursuing such litigation (*Id.*).

3 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

4 The law favors settlement, particularly in class actions and other complex cases in which
5 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
6 *City of Seattle* 955 F.2d at 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
7 592, 602-603.; 4 NEWBERG §11.41. When faced with a motion for final approval of a class
8 action settlement under *Code of Civil Procedure* §382, a court inquires whether the settlement is
9 “fair, adequate, and reasonable.” See e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
10 (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
11 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.

12 **A. This Court Preliminarily Found This Settlement to be Fair, Adequate and** 13 **Reasonable and Nothing Has Changed to Disturb That.**

14 Before granting preliminary approval of a class action settlement, courts must determine
15 that the proposed settlement is fair, reasonable, and adequate — and not a product of fraud,
16 overreaching, or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor*
17 *Co.*, *supra*, 48 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable, and
18 adequate, and thus appropriate for preliminary approval when the following three factors are
19 satisfied: (1) the parties reached settlement after arms-length negotiations; (2) counsel conducted
20 sufficient investigation and discovery to allow themselves and the court to act intelligently; and
21 (3) counsel is experienced in similar litigation *Id.* at 1802. See also *7-Eleven Owners for Fair*
22 *Franchising v. Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed
23 below, although not determinative, courts consider the percentage of objectors in determining
24 whether a presumption of fairness exists. *Id.* There is no question that these factors are satisfied
25 here. The parties conducted a sufficient amount of discovery and participated in a private
26 mediation and numerous conferences of counsel that ultimately led to an arms-length settlement
27 that provides for substantial recovery. Moreover, out of 137 class members presumed to have
28 received the Notice Packets, there were only two requests for exclusion from, no disputes with, or

1 objections to, the Settlement (Islas Decl. ¶¶ 9-11)¹.

2 **1. The Settlement Resulted From Non-Collusive, Arms Length**
3 **Negotiations.**

4 There certainly is no collusion between the parties. The involvement of a neutral third-
5 party mediator is a factor that favors approval and evidences the presumptive fairness of the arms
6 length negotiations. Indeed, courts should give considerable weight to the competency and
7 integrity of counsel and the involvement of a neutral mediator in assuring themselves that a
8 settlement agreement represents an arms-length transaction entered without self-dealing or other
9 potential misconduct *Kullar v. Foot Locker, supra*, 168 Cal. App. 4th at 129. Here, the parties
10 engaged in a mediation session with a knowledgeable wage and hour mediator Hon. Steven
11 Vertabedian (Hawkins Decl. ¶¶ 4-5.)

12 **2. The Settlement is Supported by Substantial Investigative and**
13 **Discovery Efforts.**

14 As discussed in the preliminary approval papers, supporting declaration and herein, Class
15 Counsel analyzed a significant amount of information that Defendant produced in response to
16 informal discovery requests and requests in preparation for mediation (Hawkins Decl. ¶¶ 3-6).
17 The parties have conducted significant investigation of the facts and law during the prosecution of
18 the Action. Class Counsel's research enabled them to pinpoint the relevant issues and claims and
19 to assess potential liability and damages. These efforts resulted in the parties having a clear view
20 of the strengths and weaknesses of their respective cases and achieving a resolution on favorable
21 terms, as was evidenced during mediation and negotiations leading to Settlement (Hawkins Decl.
22 ¶¶ 7-9).

23 **3. Class Counsel is Experienced in Similar Litigation**

24 The endorsement of qualified and well-informed counsel of the settlement as fair is
25 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the
26 preliminary approval papers and set forth in the declaration of Class Counsel, Class Counsel have
27 represented, mediated, and settled other employee class actions in wage and hour litigation and

28 ¹ Out of 137 class members to whom the Notice Packets were mailed, two remain undeliverable. (Islas Decl.¶ 8.)

1 have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits
2 of the proposed settlement under the circumstances of the case. (Hawkins Decl. ¶¶ 12-16). Class
3 Counsel contends that the Settlement is fair, adequate, reasonable, and in the best interests of the
4 Class as a whole.

5 **4. The Class Members’ Positive Reaction to the Settlement Favors Final**
6 **Approval.**

7 Finally, courts look at the reaction of class members to determine if a settlement that
8 directly affects their interests should be approved as fair, adequate, and reasonable. As already
9 discussed herein, out of 137 class members presumed to have received the Notice Packets, there
10 are no disputes and no objections to the Settlement (Islas Decl. ¶¶ 10, 11.) Further, a court may
11 appropriately infer that a class action settlement is fair, adequate, and reasonable even when class
12 members object to it. Indeed, a court may approve a class action settlement as fair, adequate, and
13 reasonable even over the objections of a significant percentage of class members. *See Boyd v.*
14 *Betchel Corp.*, (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors* (5th Cir. 1983)
15 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F.
16 Supp. 1379, 1394. There are no objections to the Settlement which the Court should construe as a
17 further indication of Class Members’ support for the Settlement as fair, adequate, and reasonable
18 (Islas Decl. ¶ 11.)

19 **IV. CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE**

20 The settlement provides for a service award to be paid to the Class Representative. The
21 purpose is to provide an additional incentive payment, taking into consideration the risks, time
22 and effort in coming forward to fulfill all the duties associated with being a class representative.
23 Awarding incentive awards to compensate named plaintiffs in class actions has been specifically
24 recognized. See, e.g. *Clark v. American Residential Services, LLC*, (2009) 175 Cal App 4th 785,
25 804 (incentive awards to named plaintiff appropriate for participation in class action); *Bell v*
26 *Farmers Ins. Exchange*, (2004) 115 Cal App 4th 715, 726 (upholding “service payments” to
27 named plaintiffs for their efforts in bringing class case).

1 As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive
2 awards are "intended to compensate class representatives for work done on behalf of the class, to
3 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
4 recognize their willingness to act as a private attorney general." *Cellphone Termination Fee*
5 *Cases*, (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000).

6 The class representative enhancement payment is intended to compensate named Plaintiff
7 Eduardo Rivera as the class representative for his willingness to accept the responsibility of
8 representing the interests of all class members. The purpose is to provide an incentive payment,
9 taking into consideration the risks, time, and effort expended by him in coming forward to
10 provide invaluable information and to litigate this matter on behalf of all Class Members. The
11 enhancement payment is also in consideration for executing a general release of all his claims
12 against Allcom (Hawkins Decl. ¶ 11) (Declaration of Eduardo Rivera ("Rivera Decl.") ¶ 10).

13 Plaintiff also risked potential judgment against him if this case had been unsuccessful. In
14 class action losses, class representatives are deemed the losing party that is liable for the
15 prevailing party's costs *Earley v. Superior Court*, (2000) 79 Cal. App. 4th 1420, 1433-1434.
16 Finally, Plaintiff also risked this lawsuit having a negative impact on future employment
17 opportunities, as prospective employers may be less inclined to hire an employee who has served
18 as a class representative (Rivera Decl. ¶¶ 7, 9.) *See, e.g. Staton v. Boeing*, 327 F.3d 938, 977 (9th
19 Cir. 2003). As such, Plaintiff respectfully requests that this Court approve the Class
20 Representative enhancement payment in the amount of \$6,000.

21 **V. CLASS COUNSELS' REQUEST FOR ATTORNEYS FEE AWARD IS**
22 **REASONABLE**

23 Subject to court approval, this settlement amount of \$449,417.73 includes Class Counsel's
24 attorneys' fees of \$149,790.92. Plaintiff and class members are entitled to recover their attorneys'
25 fees and costs. (Labor Code §2802; Code Civ. Proc. §1021.5(a); *Earley v. Super. Ct.*, (2000) 79
26 Cal.App.4th 1420. A fee award is justified when class benefits are obtained via settlement. *Maria*
27 *P. v. Riles*, (1987) 43 Cal.3d 1281, 1290-91; *Westside Cmty. for Indep. Living, Inc. v. Obledo*,
28 (1983) 33 Cal.3d 348, 352-53.

1 Fee awards may be based on (1) the percentage-of-the-benefit method; or (2) the lodestar
2 plus multiplier method. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254;
3 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27. Both methods are proper in
4 California, with courts often only using a lodestar-multiplier method as a check against the
5 reasonableness of a percentage fee award. (*See, e.g., Serrano v. Priest (Serano III)*, (1977) 20
6 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of Transportation v. Yuki*, 31 (1995)Cal. App. 4th
7 1754, 1769-1772; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, (1985)172 Cal. App. 3d
8 914, 954.

9 **A. Class Counsels' Requested Fees Are Reasonable Under the**
10 **Lodestar/Multiplier Method.**

11 The lodestar-multiplier method begins with a calculation of time spent and reasonable
12 hourly compensation of each attorney and paralegal who worked on the case. Then to compensate
13 counsel for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar in
14 awarding attorneys' fees. California courts often increase the base lodestar with a multiplier after
15 considering: (1) the continuing obligation of plaintiff's counsel to devote time and effort to the
16 litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3)
17 the contingent nature of the fee agreement, both from the point of view of eventual success on the
18 merits and securing an award; (4) the experience, reputation, and ability of the attorneys who
19 performed the services, and the skill they displayed in litigation; (5) the amount involved and the
20 results obtained on behalf of the class by plaintiff's counsel; and (6) the reaction of the class
21 members. *See, e.g. Serrano, supra*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co., supra*, 48 Cal.
22 App. 4th at 1810 n.21. However, no rigid formula applies, and each factor should be considered
23 only "where appropriate." *See Dept. of Transp. v. Yuki*, (1995) 31 Cal. App. 4th 1754, 1771; *See*
24 *also Serrano, supra*, 20 Cal.3d at 49.

25 **1. Time and Effort.**

26 Class Counsel, who are experienced wage and hour class action attorneys, have put a
27 significant number of hours in this case. Class Counsel had to conduct substantial investigation,
28 research numerous issues, review and analyze policies, independently analyze time records, and

1 wage statements, as well as dedicate substantial time to analyze data, time records and payroll
2 records and discuss with class members (Hawkins Decl. ¶¶ 3-5, 10, 17). Those efforts, along with
3 negotiating the settlement, attempting to obtain preliminary approval, preparing and filing the
4 final approval papers, required a significant amount of time and labor. (*Id.*) Since on or about
5 June 2019, prior to the inception of the filing of this lawsuit on January 13, 2020, the total amount
6 of attorney time and paralegal time estimated to have been expended, and also estimated to be
7 expended in finalizing this matter, is 289.3. Class Counsels' base lodestar total equates to attorney
8 fees of \$217,905 (Hawkins Decl. ¶¶ 18).

9 **2. Extent Litigation Precluded Other Employment.**

10 Inherent to class action litigation is the amount of time and labor required to properly
11 adjudicate the case. From start to Settlement, judgment or verdict, class action litigation
12 commands commitment, an extensive amount of time, labor and resources to successfully litigate.
13 Although this litigation did not conclusively preclude other employment it did impact Class
14 Counsels' ability to take on other class action cases. Class Counsel is a boutique law firm with
15 few attorneys and staff (Hawkins Decl. ¶ 15, 17).

16 **3. Contingent Nature of the Agreement.**

17 In *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132, the court noted, the economic
18 rationale for contingency cases has been explained as follows: "A contingent fee must be higher
19 than a fee for the same legal services paid as they are performed. As discussed further below, the
20 contingent fee compensates the lawyer not only for the legal services he renders but also for the
21 loan of those services. The implicit interest rate on such a loan is higher because the risk of
22 default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher
23 than that of conventional loans." (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534,
24 567.) "A lawyer who both bears the risk of not being paid and provides legal services is not
25 receiving the fair market value of his work if he is paid only for the second of these functions. If
26 he is paid no more, competent counsel will be reluctant to accept fee award cases." *Id.* Here,
27 Class Counsel took the matter on a contingent basis (Hawkins Decl. ¶ 19).

1 **4. Experience, Reputation, and Ability of Plaintiff's Counsel.**

2 As also set forth in the Declaration of James R. Hawkins submitted in support of the
3 Preliminary Approval Motion and discussed herein, Class Counsels' skill and experience in
4 litigating wage and hour class actions, in state and federal forums, contributed to the results
5 obtained on behalf of the putative class members (Hawkins Decl. ¶¶ 12-16).

6 **5. Results Obtained on Behalf of the Class by Plaintiff's Counsel.**

7 The award of attorney fees should reflect the successful outcome of the case *Hensley v.*
8 *Eckerhart*, (1983) 461 U.S. 424,440. As already discussed herein and in the preliminary approval
9 motion, this case involves numerous and difficult issues largely precluding a clear-cut outcome as
10 to liability. There also were significant class certification issues concerning whether individual
11 issues predominate and whether class member declarations and statistical samplings can support
12 certification. Defendants recognized the uncertainty of Plaintiff's claims and vigorously disputed
13 liability, Class Counsels' ability to obtain certification, and the amount of damages. Nevertheless,
14 despite the obstacles as already discussed in the preliminary approval motion and herein, Class
15 Counsel obtained significant financial compensation for the class members. All class members
16 who did not opt out of the Settlement will receive payments. The estimated *highest* settlement
17 share to be paid is Eight Thousand Forty-Two Dollars and Forty-Two Cents (\$8,042.42), the
18 *lowest* estimated settlement share to be paid is approximately Twenty-Four Dollars and Eighty-
19 Seven Cents (\$24.87), and the *average* estimated settlement share to be paid is One Thousand
20 Eight Hundred Ninety-Eight Dollars and Fourteen Cents (\$1,898.14) (Islas Decl. ¶ 15). These are
21 not nominal sums; they are excellent.

22 Further, as also discussed, Plaintiff would have faced significant legal and factual
23 obstacles in demonstrating that Class certification was appropriate. Despite the complexity of the
24 case, Class Counsel have, through the investment of substantial effort, and the resources of their
25 boutique law firm, been able to secure an outstanding Settlement on behalf of the Class Members.

26 **6. Reaction of Putative Class Members.**

27 As already discussed herein, the reaction of the Class Members has been positive.
28 Specifically, not one of the Class Members objected to Class Counsel's request for attorneys'

1 fees, nor did anyone request exclusion, or dispute the Settlement, which also provides compelling
2 evidence that the request is fair, adequate, and reasonable.

3 In sum, based on the six factors discussed above, Class Counsels' lodestar in this action
4 should be enhanced by application of a multiplier. Additionally, by settling this case prior to trial
5 rather than continuing to litigate issues that remain somewhat unsettled, counsel obtained
6 exceptional results for the class at far less expense to the parties, the counsel and to this Court.
7 Accordingly, a positive multiplier of Class Counsels' lodestar is further warranted. "Considering
8 that our Supreme Court has placed an extraordinarily high value on settlement, it would seem
9 counsel should be rewarded, not punished, for helping to achieve that goal." *Lealao, supra*, 82
10 Cal. App. 4th at 52. Multipliers of two to four are commonplace in California class actions and
11 can range even higher. *Wershba, supra*, 91 Cal. App. 4th at 255; *In re California Indirect*
12 *Purchases* (October 22, 1998) WL1031494 at * 10, fn 5. In this case, a lodestar multiplier is not
13 required to reach the agreed upon class counsel fee of \$149,790.92.

14 **B. Class Counsels' Requested Fees Are Reasonable Under the Percentage of the**
15 **Benefit Method.**

16 **1. Attorney's Fees Should be Based Upon the Total Benefit to the Class.**

17 The primary benefit of the percentage method is that it focuses on the benefit conferred on
18 the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a
19 percentage of the recovery has the advantages of eliminating the incentive for attorneys to
20 increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial
21 resources otherwise used to monitor attorneys' billable hours. See *In re Activision Sec. Litig.*,
22 (N.D. Cal. 1989) 723 F. Supp. 1373, 1378-79; *MANUAL FOR COMPLEX LITIGATION* 4th ed.
23 §14.121 (2004) ("in practice, the lodestar method is difficult to apply, time consuming to
24 administer, inconsistent in result. . . capable of manipulation,... [and] creates inherent incentive to
25 prolong the litigation"); See also *In re Quantum Health Resources, Inc.* (C.D.Cal. 1997) 962
26 F.Supp. 1254, 1256 (noting that lodestar "creates an incentive to keep litigation going in order to
27 maximize the number of hours included in the court's lodestar calculation").
28

1 The percentage of the fund method survives in California class action cases. *Laffitte v*
2 *Robert Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506.[See also. *Chavez v. Netflix, Inc.*, (2008) 162
3 Cal. App. 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*,
4 (2005) 127 Cal. App. 4th 387, 397 [the common fund doctrine is “frequently applied in class
5 actions when the efforts of the attorney for the named class representatives produce monetary
6 benefits for the entire class”]; *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at 254.

7 **2. The Contingent Nature of Class Counsel’s Representation Supports**
8 **the Requested Fees Based on 33.33% of the GSA.**

9 Further, the contingent nature of Class Counsel’s representation also warrants the
10 requested attorney fees based on the percentage of the common fund. The risks in taking on any
11 class action are enormous especially in regards to wage-and-hour class actions because the wage
12 laws are still developing and a change in the law could wipe out a plaintiff's recovery. Litigating a
13 class action through trial takes years and requires the investment of hundreds of thousands of
14 dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated
15 by the California Supreme Court in *Graham v. Daimler Chrysler Corp.*, (2008) 34 Cal. 4th 553,
16 579-580, counsel should be awarded a fee enhancer for taking on contingent cases because a
17 "contingent fee compensates the lawyer not only for the legal services he renders but for the loan
18 of those services. The implicit interest rate on such a loan is higher because the risk of default (the
19 loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of
20 conventional loans."

21 As the California Supreme Court specifically explained:

22 A contingent fee must be higher than a fee for the same legal services paid as they
23 are performed. The contingent fee compensates the lawyer not only for the legal
24 services he renders but for the loan of those services. The implicit interest rate on
25 such a loan is higher because the risk of default (the loss of the case, which cancels
26 the debt of the client to the lawyer) is much higher than that of conventional loans.
27 A lawyer who both bears the risk of not being paid and provides legal services is
28 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.

Id. at 580.(citing *Ketchum v. Moses*,(2001) 24 Cal. 4th 1122, 1132-33).

1 In the legal marketplace, an attorney whose compensation is entirely dependent on success
2 – who takes a significant risk – should and does expect a significantly higher fee than an attorney
3 who is paid a market rate as the case goes along, win or lose. *See, e.g., Rader v. Thrasher*, (1962)
4 57 Cal. 2d 244, 253 (“[a] contingent fee contract, since it involves a gamble on the result, may
5 properly provide for a larger compensation than would otherwise be reasonable” (citation
6 omitted); *Salton Bay Marina v. Imperial Irrig. Dist.*, (1985) 172 Cal. App. 3d 914, 955
7 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee
8 award).

9 Class Counsel represented the class members in this matter and has borne the entire risk
10 and costs of litigation on a pure contingency basis. To date, Class Counsel has not received any
11 compensation and expended litigation costs on behalf of the class. Class action contingency cases
12 are inherently risky. Upon retention, Class Counsel makes a commitment to litigate the case
13 through trial. These types of cases can take years, hundreds of hours of work and cost an
14 enormous amount of money; these risks are known upon retention. The risks involved coupled
15 with the contingency basis of this case further support Class Counsel’s request for attorneys’ fees
16 and costs (Hawkins Decl. ¶ 19.)

17 **3. Additional Factors re: Contingency Market Rate Justify the**
18 **Requested Fee Award.**

19 Further, important public policies underlie a court's determination of a motion for
20 attorneys' fees in class actions. Employees who are wronged by an employer’s violation of state
21 and federal labor laws should have access to counsel with the ability and resources necessary to
22 litigate complex cases. *See e.g. Say-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal. 4th
23 319, 340 (enforcement of labor laws and class action device both matters of public policy); Our
24 legal system places unique reliance on private litigants to enforce substantive provisions of
25 employment law through class actions. *See e.g. Gentry v. Superior Court*, 42 Cal. 4th 443, 450-6
26 (2007) (confirming the public importance of private enforcement of overtime laws through class
27 actions); *Lealao*, 82 Cal. App. 4th (legal system relies on private litigants to enforce substantive
28 provisions of law through class and derivative actions; attorneys providing the essential

1 enforcement services must be provided incentives roughly comparable to those negotiated in the
2 private bargaining that takes place in the legal marketplace).

3 As the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank, supra*, 92
4 Cal. App. 4th at 839: "Adequate fee awards are perhaps the most effective means of achieving
5 [the] salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be
6 indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of
7 such fees." *See also Lealao*, 82 Cal.App.4th at 53 (cautioning against fee awards that are too
8 small and therefore "chill the private enforcement essential to vindication of many rights..."). At a
9 minimum, attorneys providing these substantial benefits should be paid an award equal to the
10 amount negotiated in private bargaining that take place in the legal marketplace. *Deposit*
11 *Guaranty Nat. Bank, Jackson, Miss. v. Roper*, (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal. App. 4th
12 at 49-50.

13 4. **Class Counsels' Requested Fee Award is Well Within California's**
14 **Benchmark Awards and Thus Reasonable Under the Percentge of the**
Benefit Method.

15 Class Counsel's request for 33.33% of the monetary fund recovered is California's
16 standard benchmark and well within the range customarily approved by the California courts in
17 comparable class actions and other class actions as well as with contingency contracts negotiated
18 by plaintiffs and their counsel. "Empirical studies also show that regardless of whether the
19 percentage method or the lodestar method is used, fee awards in class actions average around
20 one-third of the recovery." *See e.g. Chavez v. Netflix, Inc., supra* 162 Cal. App. 4th at 66 fn.11; *In*
21 *re California Indirect Purchases* (October 22, 1998) WL1031494 at * 9(citing to *In re Milk*
22 *Antitrust Litigation* (L.A. Sup. Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re*
23 *Facsimile Paper Antitrust Litigation* (San Francisco Sup. Ct. 1997) Civ. Case No. BC0070061
24 (33 1/3% award) *In re Liquid Carbon Dioxide Cases* (San Diego Sup.Ct.1996) J.C.C.P. 3012 (33
25 1/3% award); *Romero v Producers Dairy Food, Inc.* (E.D. Cal. Nov. 14, 2007) WL 3492841 at *
26 4 ("fee awards in class actions average around one-third of the recovery." (quoting *Newberg on*
27 *Class Actions* § 14.6 (4th ed.2007)).
28

Moreover, the percentage should be measured against the full fund established by the settlement and not upon the total value of the net settlement fund. *Williams v. MGM-Pathe Communications Co.*, (9th Cir. 1997) 129 F.3d 1026, 1027. This method recognizes that the efforts of class counsel established the entire settlement, including non-monetary benefits, for the benefit of the class. *Id.* In the Ninth Circuit's decision in *Williams*, the parties settled class action claims in favor of the class for a total settlement fund of \$4.5 million, and the district court awarded class counsel attorneys' fees based upon "the class members' claims against that fund. *Williams*, 129 F.3d at 1027. The class counsel in *Williams* contended that the district court erred and should have calculated their fee as one-third of the entire \$4.5 million settlement fund. *Id.* The Ninth Circuit agreed with class counsel and determined that the district court's award of a fee based solely upon the claims against the settlement fund was an abuse of its discretion.

Ninth Circuit courts have applied *Williams* in a variety of contexts, including claims made settlements without a minimum or maximum recovery. *See, e.g., Browning v. Yahoo! Inc.*, (N.D. Cal. Nov. 16, 2007) WL 4105971 at *13–14 (claims-made settlement with no minimum or maximum recovery); *Young v. Polo Retail*, (N.D. Cal. Mar. 28, 2007) WL 951821 at *14–24 (same); *Lopez v. Youngblood*, (E.D. Cal. Sept. 1, 2011) WL 10483569 at *32–43 (reversionary common fund with maximum recovery only). *Hopson v. Hanesbrands Inc.*, (N.D. Cal. Apr. 3, 2009) 09 WL 928133 at *11; *Glass v. UBS Financial Services*, (N.D. Cal. Jan. 26, 2007) WL 221862 at *16) (same). In sum, Class Counsels' request for an award of attorney's fees in the amount of 33.33 % of the maximum settlement amount is reasonable.

VI. CLASS COUNSEL'S REQUESTED COSTS ARE REASONABLE

Class Counsel has not only expended substantial time in diligently prosecuting this Action, but they have also expended considerable resources during litigation with no guarantee that their costs would be reimbursed. The Settlement provides for reasonable actual costs of up to \$20,000.00. (Settlement Agreement p. 10, ¶ 53.d.i) The attorney cost amount incurred is \$4,878.28, thus Class Counsel respectfully requests that the Court approve the incurred amount as per the Settlement Agreement (Hawkins Decl. ¶ 20, Exh. 3).

1 **VII. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE**
2 **REASONABLE**

3 Simpluris was retained to administer the notice and claims process. Simpluris's duties
4 included, among other things: a) preparing, printing and mailing of the class notice packets and b)
5 receiving and reviewing claims and exclusion requests. (Islas Decl. ¶ 3). In the preliminary
6 moving papers, Plaintiff requested that, as per the Settlement Agreement, the Settlement
7 Administrator be awarded costs of administering the settlement in an amount not to exceed
8 \$7,600. As per Simpluris, the costs of administering the settlement are \$7,500.00 and should be
9 awarded (Islas Decl. ¶ 17).

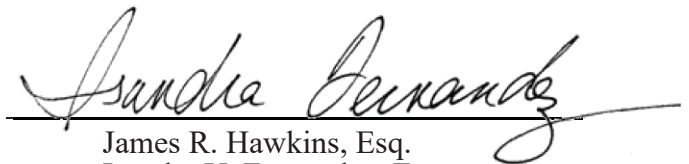
10 **VIII. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff requests that the Court (1) grant final approval of
12 this Settlement and approve distribution to the Settlement Class Members, (2) approve payment
13 of \$25,000 in payment of PAGA penalties, (3) approve Settlement Administrator costs in the
14 amount of \$7,500 (4) approve Class Counsel's request for an award of \$149,790.92 in attorneys'
15 fees and \$4,878.28 in costs, and (5) approve the request for \$6,000 enhancement payment to the
16 named plaintiff and class representative Eduardo Rivera. Finally, Plaintiff requests that the
17 Court enter the [Proposed] Judgment and Final Order Approving Class Action and PAGA
18 Settlement, submitted concurrently herewith.

19
20 **Respectfully Submitted,**

21 **JAMES HAWKINS, APLC**

22 Dated: October 12, 2022

23 

24 James R. Hawkins, Esq.
25 Isandra Y. Fernandez, Esq.
26 Lance Dacre, Esq.
27 Attorneys for Plaintiff
28 Eduardo Rivera

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On October 12, 2022, I served on the interested parties in this action the following document(s) entitled:

- [XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Nicole@jameshawkinsapl.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

See Attached Service List

Executed on October 12, 2022, at Irvine, California

PROOF OF SERVICE

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<http://www.dir.ca.gov/Private-Attorneys-General-Act>

California Labor and Workforce
Development Agency
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Oakland, CA 94612

(via LWDA Website)