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

KEVIN BIHAN-POUDEC, TAYLOR
EDWARDS, individually, and on behalf of
other members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,

vs.

FARFETCH.COM US LLC, a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 19STCV00800

Honorable Daniel J. Buckley
Department SSC1

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Declaration of Class Counsel
(Edwin Aiwazian); Declarations of Class
Representatives (Kevin Bihan-Poudec and
Taylor Edwards); Declaration of Settlement
Administrator (Zachary Cooley); and
[Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: April 6, 2022
Time: 10:30 a.m.
Department: SSC1

Complaint Filed: January 7, 2019
FAC Filed: February 14, 2019
SAC Filed: December 7, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 6, 2022 at 10:30 a.m., in Department SSC1 of
2 the above-entitled Court, located at Spring Street Courthouse, 312 North Spring Street, Los
3 Angeles, California 90012, Plaintiffs Kevin Bihan-Poudec and Taylor Edwards (“Plaintiffs”)
4 will and hereby do move for an order granting final approval of:

5 1. The First Amended Class Action and PAGA Settlement Agreement and Release
6 (together, “Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the
7 Settlement is fair, adequate, and reasonable because:

- 8 • A Net Distribution Fund of approximately **\$458,026.49** will be fully distributed to the
9 Class Members who did not timely request exclusion from the Settlement
10 (“Settlement Class Member”);
- 11 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
12 (“Settlement Administrator”);
- 13 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$297,500.00** to Lawyers for Justice, PC (“Class
15 Counsel”), representing thirty-five percent (35%) of the Total Settlement Amount, for attorneys’
16 fees, which is reasonable and justified on a percentage-basis;

17 3. Payment in the amount of **\$16,473.51** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$13,000.00** to the Settlement Administrator, Simpluris,
20 Inc. (“Simpluris”), for Settlement Administration Expenses;

21 5. Payments in the amount of **\$7,500.00** each to Plaintiffs Kevin Bihan-Poudec and
22 Taylor Edwards, as Service Awards, for their time and effort in representing the Class; and

23 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
24 California Labor Code section 2698, *et seq.*, in the amount of **\$66,666.67**, of which seventy-five
25 percent (75%), or \$50,000.00, will be paid to the California Labor and Workforce Development
26 Agency and twenty-five percent (25%), or \$16,666.67, will be part of the Net Distribution Fund
27 for distribution to the Settlement Class Members.
28

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

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declaration of Class Counsel (Edwin Aiwanian), Class Representatives (Kevin Bihan-Poudec
6 and Taylor Edwards), and Settlement Administrator (Zachary Cooley of Simpluris) in support
7 thereof; the pleadings and other records on file with the Court in this matter; and such evidence
8 and oral argument as may be presented at the hearing on this Motion.

9 Dated: March 14, 2022

LAWYERS for JUSTICE, PC

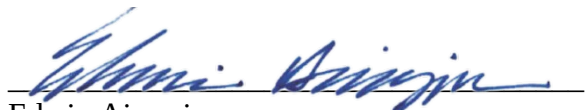
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11 By: 
12 Edwin Aiwanian
13 Attorneys for Plaintiffs and the Class
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26

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Kevin Bihan-Poudec and Taylor Edwards (“Plaintiffs”) seek final approval of: (1) the Total Settlement Amount of \$850,000.00; (2) attorneys’ fees in the amount of \$297,500.00, which is thirty-five percent (35%) of the Total Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$16,473.51 (together, “Class Counsel Award”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Expenses in the amount of \$13,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Service Awards in the amount of \$7,500.00 each to Plaintiffs Kevin Bihan-Poudec and Taylor Edwards, for a combined amount of \$15,000; and (5) allocation of \$66,666.67 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

Plaintiffs seek relief on behalf of the following Class:

All hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time from January 7, 2015 through December 31, 2019 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by Deborah Crandall Saxe, Esq., and extensive settlement negotiations. This matter has required 539.30 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for 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. The requested attorneys’ fees are also supported under the lodestar cross-check method.

Plaintiffs move for final approval of the Service Awards in the amount of \$7,500.00 to each of them, to compensate Plaintiffs for the time and effort that they expended spearheading this lawsuit on behalf of the Class. Plaintiffs also move for final approval of the payment to the Settlement Administrator in the amount of \$13,000.00 for Settlement Administration Expenses.

¹ Class Action and PAGA Settlement Agreement and Release (“Settlement Agreement”), Exh. 1, § 2.1.

1 Plaintiffs also move for final approval of the allocation of \$66,666.67 for the PAGA Payment,
2 of which seventy-five percent (75%), or \$50,000.00, will be paid to the California Labor
3 Workforce and Development Agency (“LWDA”) for its portion of the PAGA Payment
4 (“LWDA Payment”), and twenty-five percent (25%), or \$16,666.67 will be divided and
5 distributed on a *pro rata* basis amongst Class Members (individually these payments are referred
6 to as “Individual PAGA Payment(s)” and collectively these payments, i.e., the entire 25%
7 portion of the PAGA Payment) is referred to as “Employee PAGA Amount”).

8 The requests for Class Counsel Award, Service Awards, Settlement Administration
9 Expenses, and allocation for the PAGA Payment were fully disclosed in the Notice of Class
10 Action Settlement (“Class Notice”) that was mailed to the Class Members. Most importantly,
11 as of the date of this Motion, *not a single Class Member has objected to any aspect of the*
12 *Settlement, including the requested Class Counsel Award, Service Awards, Settlement*
13 *Administration Expenses, or allocation for PAGA Payment.*

14 The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length,
15 good-faith negotiations by experienced counsel presided over by a highly-regarded mediator
16 who is experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court
17 should grant final approval of the Settlement, and award Class Counsel Award, Service Awards,
18 Settlement Administration Expenses, and PAGA Payment in the amounts as fully disclosed to
19 the Class and as requested herein.

20 In order to efficiently present the Court with adequate information to determine whether
21 to grant final approval of the Settlement and award Class Counsel Award, Service Awards,
22 Settlement Administration Expenses, and PAGA Payment, Plaintiffs also move for an order
23 permitting the filing of this single consolidated memorandum, although it exceeds the page limit
24 established by California Rules of Court, Rule 3.1113(d), instead of filing several separate
25 motions.

26 ///

27 ///

28 ///

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

2 Defendant Farfetch.com US LLC (“Defendant”) (together with Plaintiffs, the “Parties”)
3 is an online luxury fashion retail platform with one location in Los Angeles. Plaintiffs Kevin
4 Bihan-Poudec and Taylor Edwards are former employees of Defendant.

5 On January 7, 2019, Plaintiff Bihan-Poudec filed a Class Action Complaint for Damages
6 in Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned
7 lawsuit (“Action”). On February 14, 2019, Plaintiffs Bihan-Poudec and Edwards filed the First
8 Amended Class Action Complaint for Damages. On December 7, 2020, pursuant to a Court
9 order granting the Parties’ joint stipulation, Plaintiffs filed the Second Amended Class Action
10 Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor
11 Code § 2698 Et Seq. (“Operative Complaint”).

12 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by
13 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
14 of, *inter alia*, failing to pay minimum and overtime wages, failing to provide compliant meal
15 and rest periods and associated premium pay, failing to timely pay wages during employment
16 and upon termination of employment, failing to maintain accurate payroll records, failing to
17 provide compliant wage statements, and failing to reimburse necessary business-related
18 expenses, and thereby engaged in unfair business practices under the California Business and
19 Professions Code 17200, *et seq.* and conduct that gives to penalties recoverable under the Private
20 Attorneys General Act of 2004 California Labor Code sections 2698, *et seq.* (“PAGA”).
21 Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages,
22 penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

23 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
24 associated with any of the allegations in the case, and further denies that the case is appropriate
25 for class or representative treatment for any purpose other than for settlement purposes only.

26 The parties have actively litigated the matter since it was commenced January 7, 2019.
27 The parties conducted significant informal discovery, and exchanged thousands of pages of
28 documents and data. On August 20, 2019, the Parties participated in a formal, full-day

mediation conducted by Deborah Crandall Saxe, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. After conducting significant informal discovery, exchange of information, and investigation into the facts of the case, and with the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the case in its entirety.

On April 8, 2021, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On June 27, 2021, the Court issued a minute order regarding Plaintiffs' Motion for Preliminary Approval, in which the Court raised certain points of inquiry. On September 30, 2021, Plaintiffs filed supplemental papers in support of the Motion for Preliminary Approval. On October 13, 2021, the Court entered an Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of the Settlement, Class Counsel Award, Service Awards, Settlement Administration Expenses, and allocation for PAGA Payment.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Total Settlement Amount of \$850,000.00 on a non-reversionary basis.² Subject to approval by the Court, the Net Distribution Fund will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Class Counsel Award, consisting of attorneys' fees in the amount of \$297,500.00 and reimbursement of litigation costs and expenses in the amount of \$16,473.51, to Class Counsel; (2) Service Awards in the amount of \$7,500.00 each to Plaintiffs Kevin Bihan-Poudec and Taylor Edwards, for a combined amount of \$15,000; (3) Settlement Administration Expenses in the amount of \$15,000.00 to Simpluris; and (4) the PAGA Amount in the amount of \$66,666.67.³ The Net Distribution Fund, which is estimated to be \$458,026.49,

² Settlement Agreement; § 4.1.

³ *Id.*, §§ 4.5, 4.4, 4.6 & 2.16.

will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁴

The Settlement Administrator will calculate each Settlement Class Member's share of the Net Distribution Fund ("Individual Settlement Share"), by dividing the Net Distribution Fund by all Workweeks worked by all Settlement Class Members to determine the value of each Workweek ("Workweek Value"), and multiplying the Workweek Value by the number of Workweeks of the individual Settlement Class Member.⁵

The Settlement Administrator will calculate each Class Member's share of the Employee PAGA Amount ("Individual PAGA Payment"), by dividing the Employee PAGA Amount by all Pay Periods worked by all Class Members to determine the value of each Pay Period ("Pay Period Value"), and multiplying the Pay Period Value by the number of Pay Periods of the individual Class Member. Class Members shall receive an Individual PAGA Payment and be bound to the settlement and release of their PAGA Claims ("PAGA Settlement") irrespective of whether they exercise their option to opt out of the settlement and release of Class Claims ("Class Settlement").⁶

Class Members had sixty (60) calendar days after the initial mailing of the Class Notice to Class Members to dispute the number of Workweeks credited to each of them, opt out of the Class Settlement, and/or object to the Settlement ("Response Deadline").⁷ The Response Deadline was extended an additional fifteen (15) calendar days for re-mailed Class Notices. The Response Deadline was February 22, 2022.⁸ The Settlement Administrator has not received any written requests for exclusion from the Settlement ("Requests for Exclusion") or objections to the Settlement ("Objections") from Class Members.⁹

⁴ This amount is higher than the amount stated in Paragraph 18 of the accompanying Declaration of Zachary Cooley 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 \$20,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$16,473.51 for reimbursement of litigation costs and expenses, and the difference of \$3,526.49 will remain part of the Net Distribution Fund.

⁵ Settlement Agreement, § 4.8.

⁶ *Id.*, § 4.9.

⁷ *Id.*, § 2.23.

⁸ Simpluris Decl., ¶¶ 12, 13, 14, 15, 16 and 17, Exh. A.

⁹ *Id.*, ¶¶ 14, 15, 16 and 17.

Individual Settlement Shares will be allocated as one-third (1/3) wages, to be reported on IRS Form W-2; and two-third percent (2/3) penalties, interest and non-wage damages, to be reported on IRS Form 1099 (if applicable).¹⁰ Individual Settlement Shares will be paid out to Settlement Class Members subject to reduction for the employee's share of taxes, withholdings, and contribution with respect to the wages portion of the Individual Settlement Shares, and the net payment is referred to as "Individual Settlement Payment".¹¹ Defendant shall pay the employer's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares separately and in addition to the Total Settlement Amount.

Any and all Individual Settlement Payment and Individual PAGA Payment checks issued to Class Members will remain valid for one hundred eighty (180) calendar days from the date of mailing.¹² Thereafter, Individual Settlement Payment and Individual PAGA Payment checks that are not negotiated within the 180-day period will be void, and the funds associated with such cancelled checks shall be transmitted to California State Controller's Office's Unclaimed Property Fund division, in the name of the Settlement Class Member whose check is cancelled and in the respective amount of the cancelled check.¹³

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 October 13, 2021 Preliminary Approval Order.

On December 1, 2021, Simpluris received the Court-approved text for the Class Notice.¹⁴

On December 6, 2021, Simpluris received a mailing list from Defendant's counsel that contained each Class Member's full name, last known address, Social Security number, and dates of employment as a non-exempt employee ("Class Data").¹⁵ The Class Data List contained information for three hundred forty-three (343) individuals identified as Class Members.¹⁶

¹⁰ Settlement Agreement, § 4.8.

¹¹ Ibid.

¹² *Id.*, § 11.3.

¹³ Ibid.

¹⁴ Simpluris Decl., ¶ 7.

¹⁵ *Id.*, ¶ 3.

¹⁶ Ibid.

Simpluris processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class Data with any updated addresses located.¹⁷

On December 23, 2021, Simpluris mailed the Class Notice via first class mail to the 343 individuals identified as Class Members in the Class Data.¹⁸

On February 4, 2022, Simpluris received an updated mailing list from Defendant’s counsel containing the full names, last known addresses, Social Security numbers, and dates of employment as non-exempt employees for seven (7) additional Class Members.¹⁹ On February 16, 2022, Simpluris caused the Class Notice to be mailed via first class mail to the additional seven (7) Class Members.²⁰

As of the date of this Motion, three (3) Class Notices were returned as undeliverable with forwarding addresses, and Simpluris promptly re-mailed the Class Notice to the forwarding addresses.²¹ Forty-one (41) Class Notices were returned as undeliverable without forwarding addresses.²² Simpluris performed a skip-trace search on the forty-one (41) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for thirty-nine (39) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²³ No Class Notices were returned to Simpluris as undeliverable a second time.²⁴ Ultimately, two (2) Class Notices remain undeliverable because an updated address was not located through skip-tracing.²⁵

As of the date of this Motion, the Settlement Administrator has not received any disputes, Objections or Requests for Exclusion from Class Members.²⁶

To date, there are 350 Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁷ Pursuant to the terms

¹⁷ Simpluris Decl., ¶ 6.

¹⁸ *Id.*, ¶ 8.

¹⁹ *Id.*, ¶ 4.

²⁰ *Id.*, ¶ 9.

²¹ *Id.*, ¶ 10.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Ibid.*

²⁶ *Id.*, ¶¶ 12, 13, 14, 15, 16 & 17.

²⁷ *Id.*, ¶ 15.

of the Settlement, the Net Distribution Fund of approximately \$458,026.49 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁸ The highest Individual Settlement Share is currently estimated to be \$5,475.76 and the average Individual Settlement Share is currently estimated to be \$1,300.84.²⁹ The highest Individual PAGA Payment is currently estimated to be \$206.43 and the average Individual PAGA Payment is currently estimated to be \$48.59.³⁰

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*,

²⁸ Simpluris Decl., ¶ 18; see also, n.4, *supra*.

²⁹ *Id.*, ¶ 19. The actual average and highest Individual Settlement Shares will be larger than the amounts stated in the Simpluris Declaration because the Net Distribution Fund is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$20,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$3,526.49, will be part of the Net Distribution Fund). See n.4, *supra*.

³⁰ *Id.*, ¶ 20.

supra, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the case since it was commenced on January 7, 2019. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for class certification, representative adjudication, and trial.³¹ The parties conducted significant informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation.³² Class Counsel also interviewed and obtained information from Plaintiffs and Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed thousands of pages of documents and data produced by Defendant and obtained through other sources.³³ The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiffs and other Class Members’ employment records, a detailed sampling of Class Members’ time and pay data (such as Pay Statements, Earning Statements, and Timecard Reports), company policy acknowledgments, internal memoranda,

³¹ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

³² *Ibid.*

³³ *Ibid.*

1 New Hire Checklists, Defendant's operations and employment practices, forms (such as
2 Employment Change in Status, Employee Separation, and Employee Warning Notice),
3 procedures, and policies (such as Attendance Policy, Non-Exempt Employee Meal and Break
4 Policy, Non-Exempt Employee Paid Time Off (PTO) Policy, Travel and Expenses Policy, Open
5 Door Policy, and Non-Exempt Employee Paid Time Off Policy), among other documents and
6 data.³⁴ Class Counsel researched applicable law, developed damages/valuation models in
7 preparation for mediation, and met and conferred with Defendant's counsel on numerous
8 occasions, e.g., to discuss issues relating to the pleadings and production of various documents
9 and data prior to mediation.³⁵

10 After conducting significant informal discovery and investigation into the facts of the
11 case, the parties participated in a formal, full-day mediation conducted by Deborah Crandall
12 Saxe, Esq., a well-regarded mediator experienced in mediating complex labor and employment
13 matters.³⁶ Prior to and during mediation and settlement discussions, the parties exchanged
14 information and data, and discussed various aspects of the case, including and not limited to, the
15 risks and delays of further litigation, the risks and expenses to the parties of proceeding with
16 class certification, representative adjudication, and trial, the law relating to off-the-clock theory,
17 meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the
18 evidence produced and analyzed, and the possibility of appeals, among other things.³⁷ During
19 all settlement discussions, the parties conducted their negotiations at arm's length in an
20 adversarial position.³⁸ Arriving at a settlement that was acceptable to the parties was not easy.³⁹
21 Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits
22 and to obtain a denial of class certification, while Plaintiffs and Class Counsel believed that
23 class certification would be obtained and Plaintiffs would prevail at trial.⁴⁰ After conducting
24 significant informal discovery and investigations, extensive settlement negotiations, and with
25

26 ³⁴ Aiwazian Decl., ¶ 6.

27 ³⁵ Ibid.

28 ³⁶ *Id.*, ¶ 8.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the parties that would attend further litigation.⁴¹

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel interviewed, and obtained information from Plaintiffs and other Class Members.⁴² Class Counsel also reviewed and analyzed thousands of pages of documents produced by Defendant 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 enforcement, Plaintiffs' claims, and Defendant's defenses, as well as facts discovered.⁴³ The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁴ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴⁵

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

The Settlement, which provides for a Total Settlement Amount of \$850,000.00, 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.⁴⁶ The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation.⁴⁷ Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely

⁴¹ Aiwazian Decl., ¶ 8.

⁴² *Id.*, ¶ 6.

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 6 & 8.

⁴⁵ *Id.*, ¶¶ 15-18.

⁴⁶ *Id.*, ¶¶ 9 & 21.

⁴⁷ *Id.*, ¶¶ 5-8.

1 argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide and/or
2 representative adjudication. On the other hand, Defendant also faced the risk of the Court
3 certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or
4 representative basis. Additionally, preparation for trial would have been expensive for all
5 parties.

6 It is preferable to reach an early resolution of a dispute because such resolutions save
7 time and money that would otherwise go to litigation. If this matter had settled after further
8 litigation, the settlement amount would have taken into account the additional costs incurred,
9 and there might have been less money available for Class Members after all was said and done.
10 This is not just an abstract contention. The risks and expenses of further litigation outweighed
11 any benefit that might have been gained otherwise. These risks of further litigation include a
12 determination that the claims were unsuitable for class treatment and/or representative
13 adjudication, failure to obtain certification, class de-certification after certification of a class,
14 allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery
15 after years of litigation. Additionally, the parties were moving into the phase of the litigation
16 where they would have to conduct a significant amount of discovery, including and not limited
17 to, depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and
18 percipient witnesses, such as managers, supervisors, and other current and former employees
19 throughout the State of California. Discovery would have certainly arisen, which would have
20 cost the parties additional time and money. In contrast, the Settlement provides real and
21 significant benefits for the Class here and now, while avoiding the further expenses, risks, and
22 delay of prolonged litigation with only the possibility of recovery.

23 It would be grossly inefficient for such a large class of current and former employees to
24 bring individual actions to recover from Defendant for the alleged violations of wage-and-hour
25 laws. Moreover, the potential individual recovery that could be obtained by a Class Member
26 would not be significant enough to provide him or her with the incentive to sue. By granting
27 final approval of the Settlement, the Court can approve a resolution that provides a certain and
28 substantial recovery for Class Members.

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

2 The Settlement, which provides for a Total Settlement Amount of \$850,000.00,
3 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
4 using information and data uncovered through extensive case investigation, informal discovery,
5 and the exchange of information in the context of mediation. The Settlement takes into account
6 the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,
7 considering all of the facts in the case, the Total Settlement Amount represents a considerable
8 recovery.

9 Even after deducting attorneys' fees in the amount of \$297,500.00, litigation costs and
10 expenses in the amount of \$16,473.51, Service Awards in the combined amount of \$15,000.00,
11 Settlement Administration Expenses in the amount of \$15,000.00, and LWDA Payment in the
12 amount of \$50,000.00 from the Total Settlement Amount of \$850,000.00, the Net Distribution
13 Fund is currently estimated to be \$458,026.49.⁴⁸ Under the Settlement Agreement, the Total
14 Settlement Amount will be fully paid out without any reversion to Defendant, in accordance
15 with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class
16 Member will be paid a *pro rata* share of the Net Distribution Fund, based on the number of
17 Workweeks credited to him or her and each Class Member will be paid a *pro rata* share of the
18 Employee PAGA Amount, based on the number of Pay Periods credited to him or her. To date,
19 there are 350 Class Members, representing 100% of the Class Members.⁴⁹ The highest
20 Individual Settlement Share to a Settlement Class Member is currently estimated to be \$5,475.76
21 and the average Individual Settlement Share is currently estimated to be \$1,300.84.⁵⁰ The
22 highest Individual PAGA Payment is currently estimated to be \$206.43 and the average
23 Individual PAGA Payment is currently estimated to be \$48.59.⁵¹ These are significant individual
24 recoveries, particularly in light of the risks of litigation.

25 At the final approval stage, "[a]n allocation formula need only have a reasonable, rational
26 basis [to warrant approval], particularly if recommended by experienced and competent class

27 ⁴⁸ Simpluris Decl., ¶ 18; see n.4, *supra*.

28 ⁴⁹ *Id.*

⁵⁰ *Id.*, ¶ 19; see n.30, *supra*.

⁵¹ *Id.*, ¶ 20.

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 Distribution Fund and Employee PAGA 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.⁵² 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.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁵³ Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁵⁴ Both parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to or opted out of the Settlement.*⁵⁵ Specifically, no objections have been made as to the Total Settlement Amount or requested Class Counsel Award, Service Awards, Settlement Administration Expenses, or the allocation for the PAGA Payment. California courts have consistently found that a small number of objectors indicates the class’ support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

⁵² Aiwazian Decl., ¶ 21.

⁵³ *Id.*, ¶¶ 15-18.

⁵⁴ *Ibid.*

⁵⁵ Simpluris Decl., ¶¶ 12 & 13.

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

VI. THE CLASS COUNSEL AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

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

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The “experienced trial judge is the best judge of the value of professional services rendered in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49.

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

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

Historically, courts have awarded 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 class action attorneys’ fees awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also 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 the award of attorneys’ fees 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. Graulity* (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, 34.⁵⁶ The purpose of this equitable doctrine is to spread litigation

⁵⁶ 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.

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.

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

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

When the case was originally filed, not only was it inescapably contingent, but the prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial economic loss if the results were not successful. This substantial risk is the reason

that the courts approve the use of the percentage method when a settlement is obtained by the efforts of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing the risks of engaging in litigation without certainty of compensation).

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of \$850,000.00 on a non-reversionary basis. The requested attorneys' fees are thirty-five percent (35%) of the total value of the monetary settlement. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

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 satisfy 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. Named plaintiffs' 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 plaintiffs'. If the named plaintiffs' have 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 plaintiffs'. In this case, Plaintiffs have agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁵⁷

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

⁵⁷ Aiwazian Decl., ¶ 9.

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”).

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiffs and the Class, and the results achieved justify an attorneys’ fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiffs and Class Counsel. Thus, the requested attorneys’ fees are appropriate.

C. The Attorneys’ Fees Award Requested by Class Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.

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

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$297,500.00 (which is 35% of the Total Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the 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 the 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. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁵⁸

As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively participated in litigation of this case.⁵⁹ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁶⁰ During the litigation of the action, Class Counsel interviewed Plaintiffs and other Class Members;; reviewed and analyzed thousands of pages of pages of documents and data produced by Defendant and obtained through other sources; and prepared damages/valuation calculations.⁶¹ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings and production of various documents and data, among other things; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁶²

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

⁵⁸ Aiwasian Decl., ¶¶ 15-18.

⁵⁹ *Id.*, Exh. A.

⁶⁰ *Id.*, ¶ 6 & Exh. A.

⁶¹ *Id.*, ¶ 6.

⁶² *Ibid.*

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 Plaintiffs and the Class.⁶³ The Task and Time Chart is thorough and comprehensive, and was prepared so 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 **539.30** hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs and the Class.⁶⁴ 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 are fair, adequate, and reasonable.

2. *The Skill Required to Perform Legal Services Properly.*

The skill required to properly litigate the case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiffs 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 mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant 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 Aiwarzian, 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.⁶⁵

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⁶³ *Id.*, Exh. A.

⁶⁴ Aiwarzian Decl., ¶ 11.

⁶⁵ *Id.*, ¶¶ 15-18.

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

2 The Settlement represents an excellent resolution of the action, given the risks inherent
3 in litigating the case through certification proceedings, trial, and/or appeals. Had the case not
4 settled, Defendant would have vigorously challenged certifiability, manageability of
5 representative adjudication, and liability. Defendant, however, faced risks if the Court certified
6 a class and allowed a jury to decide the claims. Additionally, preparing the case for trial would
7 have been expensive for the parties.

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

16 As a result of this litigation and extensive settlement negotiations, Defendant agreed to
17 pay a Total Settlement Amount of \$850,000.00 to settle the matter. After deducting the
18 attorneys' fees (\$297,500.00), litigation costs and expenses (\$16,473.51), Service Awards
19 (combined, \$15,000.00), Settlement Administration Expenses (\$13,000.00), LWDA Payment
20 (\$50,000.00), and Employee PAGA Amount (\$16,666.67) from the Total Settlement Amount,
21 it is currently estimated that the Net Distribution Fund is approximately \$458,026.49.⁶⁶ The Net
22 Distribution Fund will be fully distributed in accordance with the terms of the Settlement. The
23 highest Individual Settlement Share to a Settlement Class Member is currently estimated to be
24 \$5,475.76 and the average Individual Settlement Share is currently estimated to be \$1,300.84.⁶⁷
25 The highest Individual PAGA Payment to Class Members is currently estimated to be \$206.43
26
27

28 ⁶⁶ Simpluris Decl., ¶ 18; see n.4, *supra*.

⁶⁷ *Id.*, ¶ 19; see n.30, *supra*.

and the average Individual PAGA Payment is currently estimated to be \$48.59.⁶⁸ The Settlement offers significant monetary relief to the Settlement Class Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into contingency fee agreements with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 539.30 hours of time to obtain relief on behalf of Plaintiffs and the Class.⁶⁹ Class Counsel has also incurred litigation costs and expenses in the amount of \$16,473.51.⁷⁰

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷² The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel Award. 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 a fee award 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 case on a contingent basis with all of 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 case would have been for naught, and would not have produced any fee or any reimbursement of costs or expenses.

⁶⁸ Simpluris Decl., ¶ 20.

⁶⁹ Aiwasian Decl., ¶ 11, Exh. A.

⁷⁰ See Part VII, *infra*.

⁷¹ Aiwasian Decl., ¶ 19.

⁷² See *id.*, ¶¶ 15-18.

1 **5. *The Amount Involved and the Results Achieved.***

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
4 from the Class Members—no Class Members objected to or opted out of the Settlement.⁷³

5 The court in *Camden* noted that, “a key element of the common fund case is that fees are
6 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
7 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
8 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
9 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

10 Here, the results achieved and obtained on behalf of Plaintiffs and the Class are
11 reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts
12 have resulted in a settlement that provides for a Total Settlement Amount of \$850,000.00.⁷⁴ The
13 Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement
14 Agreement. The highest Individual Settlement Share to a Settlement Class Member is currently
15 estimated to be \$5,475.76 and the average Individual Settlement Share is currently estimated to
16 be \$1,300.84.⁷⁵ The highest Individual PAGA Payment to Class Members is currently estimated
17 to be \$206.43 and the average Individual PAGA Payment is currently estimated to be \$48.59.⁷⁶

18 **6. *The Reputation and Ability of the Attorneys.***

19 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
20 knowledge, skills, and experience in bringing this case to a successful conclusion. Class
21 Counsel has years of complex and class action litigation experience, has recovered millions of
22 dollars on behalf of thousands of individuals in California, and has successfully handled
23 numerous significant wage-and-hour class action and complex cases.⁷⁷

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26 _____
27 ⁷³ Simpluris Decl., ¶¶ 12, 13, 14, 15, 16 and 17.

⁷⁴ Aiwasian Decl., ¶¶ 5-8.

⁷⁵ Simpluris Decl., ¶ 19; see n.30, *supra*.

⁷⁶ *Id.*, ¶ 20.

⁷⁷ Aiwasian Decl., ¶¶ 15-18.

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*, 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 case was highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the case 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 case moved toward certification and trial, including taking and defending depositions of Defendant's 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 mediation.

Class Counsel had to bring together a large volume of data and documents that were produced by Defendant and obtained from Plaintiffs 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 attend mediation and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwasian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁷⁸ The chart demonstrates that Class Counsel has spent a total of 539.30 hours litigating the case and finalizing the Settlement.⁷⁹ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiffs and the Class Members, 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 Fees Requested Represent 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

⁷⁸ See Aiwasian Decl., Exh. A.

⁷⁹ Aiwasian Decl., ¶ 11.

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 \$850,000.00.

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$650 per hour for services provided by Class Counsel.⁸⁰ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$650 for legal service performed, by courts of this state.⁸¹ While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

Applying the rate of \$650 per hour to 539.30 hours would place a reasonable value of \$350,545.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$297,500.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

⁸⁰ Aiwazian Decl., ¶ 12.

⁸¹ For example, final approval of the class and representative 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 \$764.8; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved a higher 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 a higher 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 a higher hourly rate of \$780.77; 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 a higher hourly rate of \$845.64 Aiwazian Decl., ¶ 12.

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 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 \$297,500.00 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 \$20,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$16,473.51 in litigation costs and expenses.⁸² This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁸³ The cost savings of \$3,526.49 will be part of the Net Distribution Fund, which will be distributed to the Settlement Class Members

⁸² Aiwazian Decl., ¶ 19.

⁸³ *Ibid*.

in accordance with the Settlement.⁸⁴ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$16,473.51 to Class Counsel.

VIII. THE SETTLEMENT ADMINISTRATION EXPENSES 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 \$13,000.00.⁸⁵ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members in English; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing requests for exclusion, objections, and workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and Individual PAGA Payments and preparing the associated tax forms; and transmitting payments, among other things.⁸⁶

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 \$13,000.00.

IX. THE REQUESTED SERVICE AWARDS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for Service Awards in the amount of \$7,500.00 each to Plaintiffs Kevin Bihan-Poudec and Taylor Edwards to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Service Awards are both common and reasonable and should be awarded.

In determining whether to make service payments, 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

⁸⁴ Aiwazian Decl., ¶ 19.

⁸⁵ Simpluris Decl., ¶ 16.

⁸⁶ Ibid.

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 participation award to a single class representative).

The requested Service Awards are fair and appropriate because Plaintiffs 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.⁸⁷ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that would benefit the Class.⁸⁸ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.⁸⁹ These services merit the requested Service Awards to Plaintiffs, who have not received any compensation for their efforts on behalf of the Class Members to date.⁹⁰

The requested Service Awards were fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Service Awards. Accordingly, it is appropriate and just for Plaintiffs Kevin Bihan-Poudec and Taylor Edwards to each receive \$7,500.00 as reasonable Service Awards, in addition to their Individual Settlement Payments and Individual PAGA Payments, for their services on behalf of the Class.

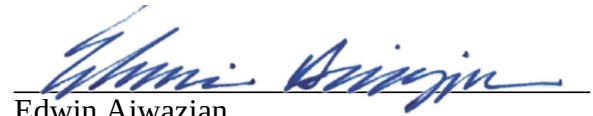
X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Class Counsel Award, Service Awards, Settlement Administration Expenses, and allocation for the PAGA Payment, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: March 14, 2022

LAWYERS for JUSTICE, PC

By:


Edwin Aiwanian
Attorneys for Plaintiffs and the Class

⁸⁷ Aiwanian Decl., ¶ 20; Declaration of Kevin Bihan-Poudec (“Bihan-Poudec Decl.”), ¶¶ 3-5; Declaration of Taylor Edwards (“Edwards Decl.”), ¶¶ 3-5.

⁸⁸ Aiwanian Decl., ¶ 20; Bihan-Poudec Decl., ¶¶ 3-5; Edwards Decl., ¶¶ 3-5.

⁸⁹ Aiwanian Decl., ¶ 20; Bihan-Poudec Decl., ¶¶ 2-5; Edwards Decl., ¶¶ 2-5.

⁹⁰ Bihan-Poudec Decl., ¶ 6; Edwards Decl., ¶ 6.