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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JASON BEINBRECH, individually, and on
behalf of other members of the general public
similarly situated, and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiff,

vs.

MATTHEWS INTERNATIONAL
CORPORATION, an unknown business
entity; and DOES 1 through 100, inclusive,

Defendants.

Case No. CIVSB2226992

**CLASS ACTION UNDER CAL. CIV.
PROC. CODE § 382, ET SEQ. & PAGA
ACTION UNDER CALIFORNIA
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LAB. CODE § 2698, ET SEQ.**

Honorable Joseph T. Ortiz
Department S17

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

[Declaration of Class Counsel
(Joanna Ghosh); Declaration of Class
Representative (Jason Beinbrech);
Declaration of Settlement Administrator
(Lisa Pavlik); and [Proposed] Final Approval
Order and Judgment filed concurrently
herein]

Date: September 26, 2024
Time: 1:30 p.m.
Department: S17

Complaint Filed: November 30, 2022
Trial Date: None Set

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

1 **PLEASE TAKE NOTICE** that on September 26, 2024, at 1:30 p.m., in Department S17
2 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415,
3 Plaintiff Jason Beinbrech (“Plaintiff” or “Class Representative”) will and hereby does move for an
4 order granting final approval of:

5 1. The Class Action and PAGA Settlement Agreement (“Original Agreement”) and
6 Amendment No.1 to Class Action and PAGA Settlement Agreement (“Amendment No.1”) (together,
7 the Original Agreement and Amendment No.1 are the “Settlement,” “Agreement,” or
8 “Settlement Agreement”) on the grounds that the Settlement is fair, adequate, and reasonable
9 because:

- 10 • A Net Settlement Amount of approximately **\$649,862.25** will be fully distributed to all
11 Class Members who do not submit a timely and valid Opt Out (“Settlement Class
12 Members”);
13 • **No written Objections or Opt Outs** were submitted to the settlement administrator,
14 Simpluris, Inc. (“Simpluris” or “Settlement Administrator”);

15 2. Payment in the amount of **\$366,666.67** to Lawyers *for* Justice, PC (“Class
16 Counsel”), representing one-third (1/3) of the Gross Settlement Amount, for the Attorneys’ Fees,
17 which is reasonable and justified on a percentage-basis;

18 3. Payment in the amount of **\$23,471.08** to Class Counsel for reimbursement of
19 litigation costs and expenses;

20 4. Payment in the amount of **\$10,000.00** to the Settlement Administrator for
21 Settlement Administration Costs;

22 5. Payment in the amount of **\$10,000.00** to Plaintiff Jason Beinbrech as an
23 Enhancement Award; and

24 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
25 California Labor Code section 2698, *et seq.*, in the amount of **\$40,000.00** (“PAGA Payment”), of
26 which seventy-five percent (75%), or **\$30,000.00**, will be paid to the California Labor and
27 Workforce Development Agency (“LWDA”) (“LWDA Payment”) and twenty-five percent (25%),
28 or **\$10,000.00** will be distributed to PAGA Employees on a *pro rata* basis, based on PAGA

Workweeks during the PAGA Period (“PAGA Payment Share(s)”).

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda, and California Labor Code section 2699(l)(2), which requires approval by the Court of a PAGA settlement. Unless otherwise specified, all citations and references to the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) that are contained within this motion and supporting papers are to the version of the PAGA statute prior to the recent amendment effective July 1, 2024; the amended PAGA statute does not apply to the above-captioned action and the Settlement pursuant to California Labor Code section 2699, subd. (v)(1), as amended, because the above-captioned action was filed prior to June 19, 2024.

This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Joanna Ghosh), Class Representative (Jason Beinbrech), Settlement Administrator (Lisa Pavlik of Simpluris, Inc.) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: September 12, 2024

LAWYERS for JUSTICE, PC

By: _____



Joanna Ghosh
Attorney for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jason Beinbrech (“Plaintiff” or “Class Representative”) seeks final approval of: (1) the Gross Settlement Amount of \$1,100,000.00¹; (2) attorneys’ fees in the amount of \$366,666.67 which is one-third (1/3) of the Gross Settlement Amount², and reimbursement of litigation costs and expenses in the amount of \$23,471.08 (together, referred to as the “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$10,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Award in the amount of \$10,000.00 to Plaintiff Jason Beinbrech; and (5) allocation of \$40,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

Plaintiff seeks relief on behalf of a class consisting of the following individuals:

All current and former non-exempt California employees of Matthews International Corporation, Matthews International Corporation’s wholly-owned subsidiary Matthews Gibraltar and Mausoleum & Construction Company, Matthews International Corporation’s wholly-owned subsidiary The York Group, Inc., and The York Group, Inc.’s wholly-owned subdivision Matthews Granite Company, who were paid wages by Defendant at any time during the Class Period (i.e., the time period May 29, 2016 to April 26, 2024) (“Class” or “Class Members”).

Matthews International Corporation, Matthews Gibraltar and Mausoleum & Construction Company, The York Group, Inc., and Matthews Granite Company are referred to as “Covered Entities.”

Defendant has represented that it directly owns the following three companies that have operations in California: Matthews Gibraltar and Mausoleum & Construction Company, The York Group, Inc., and Schawk USA Inc.. Defendant further represents that, during the period May 29, 2016 to April 26, 2024, after January 2021, The York Group, Inc. acquired and came to own Sannipoli Corporation dba Whited Cemetery Services. The Class excludes employees of Schawk USA Inc. and Sannipoli Corporation (together, “Excluded Entities”); in the event that individuals were employed by Covered Entities as well as Excluded Entities during the Class Period, then said individuals are only included in the Class and will be bound to the Class Settlement (if they do not opt out) in their capacities as current or former employees of Covered Entities and are not included in the Class (and will

¹ Class Action and PAGA Settlement Agreement (“Original Agreement”) and Amendment No. 1 to Class Action and PAGA Settlement Agreement (“Amendment No.1”) (collectively “Settlement,” “Agreement,” or “Settlement Agreement”), ¶ 17.

² *Id.*, ¶ 93; Declaration of Joanna Ghosh in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement, Attorneys’ Fees and Costs, and Enhancement Award (“Ghosh MFA Decl.”), ¶ 15.

not be included in the Class Settlement) with regard to any employment by Excluded Entities.³

This matter involved ongoing investigations, meaningful initial disclosures (while this matter was pending in Federal Court) and informal discovery, as well as review and analysis of a volume of information, documents, and data in the course of litigation and mediation and settlement negotiations (which involved two (2) separate mediations conducted by the late Jeffrey Krivis, Esq.).⁴ This matter has required 364.60 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represents one-third (1/3) of the Gross 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.⁵

Plaintiff moves for final approval of the Enhancement Award in the amount of \$10,000.00 to Plaintiff Jason Beinbrech, to compensate Plaintiff for his broader individual waiver and release of claims (with a California Civil Code Section 1542 waiver) and for the significant efforts and work to spearhead the pursuit of this matter. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$10,000.00 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of \$40,000.00 for the PAGA Payment, of which seventy-five percent (75%), i.e., \$30,000.00, will be paid to the California Labor Workforce and Development Agency ("LWDA") for its portion of the PAGA Payment ("LWDA Payment"), and twenty-five percent (25%), i.e., \$10,000.00, will be distributed to the aggrieved employees, consisting of the following individuals:

All current and former non-exempt California employees of Matthews International Corporation, Matthews International Corporation's wholly-owned subsidiary Matthews Gibraltar and Mausoleum & Construction Company, Matthews International Corporation's wholly-owned subsidiary The York Group, Inc., and The York Group, Inc.'s wholly-owned subdivision Matthews Granite Company, who were paid wages by Defendant at any time during the PAGA Period (i.e., the time period March 29, 2016 to April 26, 2024) ("PAGA Employees").

³ Amendment No.1, ¶ A; "Class Period" is defined as the period from May 29, 2016, through April 26, 2024. Settlement Agreement, ¶ 5; Ghosh MFA Decl., ¶ 5.

⁴ Ghosh MFA Decl., ¶¶ 10 & 14.

⁵ Applying a modest multiplier of 1.26, the total enhanced lodestar fees are \$367,516.80, and Class Counsel seeks an attorneys' fees award of \$366,666.67 (equal to 1/3 of the Gross Settlement Amount).

Parties agree that the PAGA Employees exclude employees of Schawk USA Inc. and Sannipoli Corporation. In the event that individuals were employed by Covered Entities as well as Excluded Entities during the time period March 29, 2016 to April 26, 2024, then said individuals are only included as PAGA Employees and will be bound to the PAGA Settlement in their capacities as current or former employees of Covered Entities and are not bound to the PAGA Settlement with regard to any employment by Excluded Entities.

The requests for Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, and the allocation for PAGA Payment were fully disclosed in the Court-approved Notice of Class Action and PAGA Settlement ("Notice") that was mailed to the Class Members. Most importantly, as of the date of this motion, *not a single Class Member has objected to any aspect of the Class Settlement, including the requested Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, or the PAGA Payment.*

The Settlement is fair, adequate, and reasonable, and is the product of arm's-length, good-faith negotiations by experienced counsel presided over by a highly-regarded mediator who was experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should grant final approval of the Settlement, and award Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, and the PAGA Payment in the amounts as fully disclosed to the Class and as requested herein.

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant operates, and conducts business in, the Cemetery and Crematories Industries, and is a global provider of brand solutions, memorialization products, and industrial technologies in those industries. Plaintiff Jason Beinbrech is a former employee of Defendant. Defendant directly employed non-exempt employees in California during the period from May 19, 2016 to present, and during this period it has also owned the following three companies that have

operations in California (and employ non-exempt employees in California): Matthews Gibraltar and Mausoleum & Construction Company, The York Group, Inc., and Schawk USA Inc. One of Defendant's subsidiaries, The York Group, Inc., acquired Sannipoli Corporation (d/b/a Whited Cemetery Services) in January 2021, and The York Group, Inc. did not assume full oversight and operations of Sannipoli Corporation until December 2022 (after the Parties reached the Settlement in the above-captioned action).⁶

By way of the above-captioned action, Plaintiff asserts ten (10) putative class causes of action for violations of the California Labor Code and California Business and Professions Code and one (1) representative PAGA cause of action for civil penalties for violations of the California Labor Code. Specifically, Plaintiff asserts the following causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (Failure to Pay Overtime Wages); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Failure to Provide Compliant Meal Periods and Associated Premiums); (3) Violation of California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods and Associated Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Failure to Pay Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code § 17200, *et seq.*; and (11) Violation of California Labor Code § 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004).

Plaintiff's core allegation is that Defendant and Covered Entities have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, the Class Members, and the PAGA Employees of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay,

⁶ Declaration of Joanna Ghosh in Support of Motion for Preliminary Approval of Class Action Settlement ("Ghosh MPA Decl.") ¶ 4.

1 failing to timely pay wages during employment and upon termination of employment, failing to
2 provide compliant wage statements, failing to maintain requisite payroll records, and failing to
3 reimburse necessary business expenses, and thereby engaged in unfair business practices in
4 violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives
5 rise to penalties pursuant to PAGA. Plaintiff contends that he, and the Class Members and
6 Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to,
7 penalties pursuant to PAGA), and attorneys' fees.

8 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
9 associated with any of the allegations in this matter, and further denies that this matter is
10 appropriate for class treatment or representative adjudication for any purpose other than settlement.

11 The Parties have actively litigated this matter since the lawsuit was initially commenced
12 by the initial complaint on May 29, 2020. On May 5, 2021 and December 20, 2021, the Parties
13 participated in two formal mediations conducted by the late Jeffrey Krivis, Esq., who was a well-
14 regarded mediator experienced in mediating complex labor and employment matters. With the aid
15 of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to
16 resolve this matter in its entirety.

17 On November 17, 2023, Plaintiff filed a Motion for Preliminary Approval of Class Action
18 Settlement and supporting documents ("Motion for Preliminary Approval").⁷

19 On March 15, 2024, the Parties appeared at a hearing regarding Plaintiff's Motion for
20 Preliminary Approval. At the hearing, the Court raised multiple issues and questions regarding
21 the above-captioned action and the Settlement, requested supplemental papers addressing the
22 issues and questions raised by the Court, and continued the hearing to April 26, 2024 at 1:30 pm.⁸
23 Thereafter, the Declaration of Joanna Ghosh in Support of Plaintiff's Motion for Preliminary
24 Approval of Class Action Settlement was filed April 22, 2024, providing the information sought
25 by the Court and addressing the issues raised by the Court, and also providing a detailed account
26 of how Plaintiff's counsel met and conferred with the Department of Industrial Relations ("DIR")

27
28 ⁷ Ghosh MFA Decl., ¶ 2.

⁸ Ghosh MPA Decl., ¶ 34.

regarding this matter and the Settlement and provided extensive information and documents to the DIR.⁹

On April 26, 2024, the hearing on the Motion for Preliminary Approval occurred, and the Court issued an Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of the Settlement, the Notice, and the proposed administration procedures and associated deadlines.¹⁰

Plaintiff now moves for final approval of Attorneys’ Fees and Costs, Enhancement Award, Settlement Administration Costs, and the 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 Gross Settlement Amount of \$1,100,000.00 by making a one-time deposit, along with Employer Taxes, into a settlement account to be established by the Settlement Administrator.¹¹ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Attorneys’ Fees and Costs, consisting of attorneys’ fees in the amount of \$366,666.67 and reimbursement of litigation costs and expenses in the amount of \$23,471.08, to Class Counsel; (2) Enhancement Award in the amount of \$10,000.00 to Plaintiff Jason Beinbrech; (3) Settlement Administration Costs in the amount of \$10,000.00 to Simpluris; and (4) PAGA Payment in the amount of \$40,000.00.¹² The Net Settlement Amount, which is estimated to be \$649,862.25, will be distributed to Settlement Class Members in accordance with the Settlement Agreement.¹³ The PAGA Payment of \$40,000.00 will be distributed to the Labor and Workforce Development Agency (in the amount of \$30,000.00) and the PAGA Employees (in

⁹ Ghosh MFA Decl., ¶ 3.

¹⁰ *Id.*, ¶¶ 5 & 6.

¹¹ Settlement Agreement, ¶ 17.

¹² *Id.*, ¶¶ 19, 25, 86, 92, and 93. Ghosh MFA Decl., ¶¶ 15, 24, and 25.

¹³ Simpluris, Inc. (“Simpluris”) Decl., ¶ 17. This amount is higher than the amount stated in Paragraph 17 of Simpluris’ Declaration because the Settlement Administrator’s calculation assumes that Class Counsel will obtain attorneys’ fees in the maximum amount of \$385,000.00 and reimbursement of litigation costs and expenses in the maximum amount of \$32,000.00, which are allocated under the Settlement. However, Class Counsel only seeks attorneys’ fees in the amount \$366,666.67 (i.e., \$18,333.33 less than the maximum allocation) and reimbursement of litigation costs and expenses in the amount of \$23,471.08 (i.e., \$8,528.92 less than the maximum allocation), and the total difference of \$26,862.25 will remain a part of the Net Settlement Amount for distribution to Settlement Class Members. As a result, the actual estimated low, average, and high payments to the Settlement Class Members will be higher than the amounts stated in Paragraph 18 of Simpluris’ Declaration.

the amount of \$10,000.000) in accordance with the Settlement Agreement. Defendant will pay the full Gross Settlement Amount without any reversion.

The Settlement Administrator will determine each Settlement Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment(s)"), according to the following methodology: the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members during the Class Period to yield the "Workweek Payment Rate," and multiply each Settlement Class Member's individual Workweeks during the Class Period by the Workweek Payment Rate to yield the gross amount of his or her Individual Settlement Payment.¹⁴

The Settlement Administrator will determine each PAGA Employee's *pro rata* share of 25% the PAGA Payment ("PAGA Payment Share(s)"), according to the following methodology: the Settlement Administrator will divide the 25% portion of the PAGA Payment that is allocated to PAGA Employees, i.e., \$10,000.00, by the total number of PAGA Workweeks for all PAGA Employees during the PAGA Period. The result of this division shall yield the "PAGA Workweek Payment Rate." The gross amount of each PAGA Employee's PAGA Payment Share shall be calculated by multiplying the number of PAGA Workweeks applicable to that PAGA Employee by the PAGA Workweek Payment Rate.¹⁵

Class Members had sixty (60) calendar days from the initial mailing of the Notice ("Response Deadline") to submit an Opt Out to be excluded from the Class Settlement, a written Objection to the Class Settlement, and/or a Dispute Regarding Workweeks and/or PAGA Workweeks through a Proof of Work.¹⁶ The Response Deadline was August 9, 2024 and the extended Response Deadline for Class Members who were re-mailed Notices was August 19, 2024.¹⁷ ***As of the date of this motion, the Settlement Administrator has not received any written objections to the Class Settlement or opt outs from the Class Settlement from Class Members.***¹⁸

¹⁴ Settlement Agreement, ¶ 77.

¹⁵ *Id.*, ¶¶ 78.

¹⁶ *Id.*, ¶ 37.

¹⁷ Simpluris, Inc. ("Simpluris") Decl., ¶ 12.

¹⁸ *Id.*, ¶¶ 12 & 13.

Each gross Individual Settlement Payment will be allocated as follows: fifty percent (50%) as wages, which will be reported on an IRS Form W-2; and the remaining fifty percent (50%) as non-wages penalties, interest, and damages, which will be reported on an IRS Form 1099.¹⁹ The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the gross Individual Settlement Payments, and issue checks to Settlement Class Members for their Individual Settlement Payments net of the applicable taxes and withholdings.²⁰ The Employer Taxes will be paid by Defendant in addition to the Gross Settlement Amount.²¹ PAGA Payment Shares will be allocated as one hundred percent (100%) penalties, and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.²²

Individual Settlement Payment and PAGA Payment Share checks will be valid and negotiable for one-hundred eighty (180) calendar days from the date the checks are mailed, and thereafter, shall be canceled.²³ Thereafter, the checks shall be void and the Settlement Administrator shall transmit the funds represented by such un-redeemed checks to the California State Controller's Office as unclaimed property pursuant to the California Unclaimed Property Law, in the name of the individuals to whom the checks had originally been issued.²⁴ All Settlement Class Members and PAGA Employees shall be bound by the terms and conditions of this Settlement Agreement regardless of whether or not they cash or otherwise negotiate their Individual Settlement Payment check and/or Individual PAGA Payment check.²⁵

IV. THE SETTLEMENT ADMINISTRATION PROCESS

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

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¹⁹ Settlement Agreement, ¶ 82.

²⁰ Settlement Agreement, ¶¶ 81 & 96.

²¹ *Id.*, ¶ 82.

²² *Ibid.*

²³ *Id.*, ¶ 84.

²⁴ *Ibid.*

²⁵ *Ibid.*

On May 28, 2024, Defendant’s counsel provided Simpluris the Class Data containing each Class Member’s and PAGA Employees’ full name, last known mailing address, email address, telephone number, Social Security Numbers, number of Workweeks during the Class Period, number of PAGA Workweeks during the PAGA Period, and the number of Workweeks during May 29, 2016 through March 20, 2022 (collectively, “Class Data”).²⁶ The Class Data contained data for three hundred and twenty three (323) individuals identified as Class Members with a total of 38,904 Workweeks credited to them for the Class Period; of the three hundred and twenty-three Class Members, two hundred and thirty five (235) individuals were identified as PAGA Employees with a total of twenty three thousand two hundred and thirty four (23,234) PAGA Workweeks credited to them for the PAGA Period.²⁷ The mailing addresses contained in the Class Data were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service.²⁸

On June 10, 2024, Simpluris mailed the Notice via U.S. First Class Mail in both English and Spanish, to all three hundred and twenty three (323) individuals identified as Class Members and two hundred and thirty five (235) individuals identified as PAGA Employees in the Class Data.²⁹ On June 20, 2024, a shortened email version of the Notice that contained a link to a full version of the Notice (“Email Notice”) was sent to two hundred eighty five (285) Class Members, for whom a last known email address had been included in the Class Data provided by Defendant to Simpluris.³⁰

A total of twenty-four (24) Notices were returned to Simpluris.³¹ Of these, none were returned with a forwarding address.³² For each of the Notices that were returned by the USPS as undeliverable and without a forwarding address, Simpluris performed an advanced address search (i.e. skip trace) on all of the addresses by using Accurint, a reputable research tool owned by Lexis-Nexis.³³ Simpluris used the Class Member’s name and previous address to search for a current

²⁶ Simpluris Decl., ¶ 6.

²⁷ *Ibid.*

²⁸ *Id.*, ¶ 8.

²⁹ *Id.*, ¶ 9.

³⁰ *Id.*, ¶ 10.

³¹ *Id.*, ¶ 11.

³² *Ibid.*

³³ *Ibid.*

1 address.³⁴ Through the advanced address searches, Simpluris was able to locate twenty (20)
2 updated addresses and Simpluris promptly re-mailed the Notices to those updated addresses.³⁵
3 There are mailed Notices that remain undeliverable.³⁶ Of the four (4) undeliverable mailed Notice,
4 all four (4) were sent an Email Notice. Of these (4) Email Notices, one (1) Email Notice was
5 returned as undeliverable.³⁷ Therefore, there are one (1) Notice that remains undeliverable, when
6 taking into account the undeliverable Email Notices.³⁸

7 The Settlement Administrator did not receive any Notices of Objection or Opt Outs from
8 Class Members, by the Response Deadline of August 9, 2024 or the extended Response Deadline
9 of August 19, 2024 for those Notices that were re-mailed.³⁹

10 To date, there are three hundred and twenty three (323) Class Members who did not submit
11 a timely and valid Opt Out (“Settlement Class Members”), and who will be paid their portion of
12 the Net Settlement Amount.⁴⁰ Pursuant to the terms of the Settlement, the Net Settlement Amount
13 of approximately \$649,862.25 will be distributed to Settlement Class Members and the PAGA
14 Payment of \$40,000.00 will be distributed to the LWDA and PAGA Employees, in accordance
15 with the terms of the Settlement.⁴¹ The highest gross Individual Settlement Payment is currently
16 estimated to be at least \$6,613.69 and the average gross Individual Settlement Payment is currently
17 estimated to be at least \$1,928.79.⁴² The highest Individual PAGA Payment Share is currently
18 estimated to be \$114.92 and the average Individual PAGA Payment is currently estimated to be
19 \$42.55.⁴³

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24 ³⁴ Simpluris Decl., ¶ 11.

25 ³⁵ *Ibid.*

26 ³⁶ *Ibid.*

27 ³⁷ Simpluris Decl., ¶ 11.

28 ³⁸ *Ibid.*

³⁹ *Id.*, ¶¶ 12–14.

⁴⁰ *Id.*, ¶ 15.

⁴¹ *Id.*, ¶ 17; See Footnote 13, *infra*.

⁴² *Id.*, ¶ 18. See Footnote 13, *infra*.

⁴³ *Id.*, ¶ 19.

V. **THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION
AND PAGA 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, 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

1 because the public interest may indeed be served by a voluntary settlement in which each side
2 gives ground in the interest of avoiding prolonged litigation. *Id.*

3 **A. The Settlement Resulted from Arm's-Length Negotiations Based Upon**
4 **Extensive Investigation and Informal Discovery.**

5 The Parties actively litigated this matter since the initial complaint was filed on May 29,
6 2020. Class Counsel conducted significant investigation, meaningful initial disclosures (while this
7 matter was pending in Federal Court), and extensive informal discovery into the facts of the case,
8 to assess the veracity, strength, and scope of the claims, and was preparing for class certification
9 and trial prior to reaching the Settlement.⁴⁴

10 The Parties informally exchanged a volume of information, documents, and data
11 throughout the course of the litigation and in connection with the mediations and settlement
12 negotiations.⁴⁵ The volume of information, data, and documents reviewed and analyzed by Class
13 Counsel included, and were not limited to: employment records of Plaintiff, a detailed sampling
14 of Class Members' time and pay records, job descriptions, the employer's internal memoranda and
15 relevant policies (including, but not limited to policies regarding: timekeeping, clocking in and
16 out, tardiness, California meal and rest periods, off-premises meals and rest breaks, company
17 sponsored events, and overtime), and various agreements (including, *inter alia*, waivers and
18 arbitration agreements), among other information and documents.⁴⁶ Class Counsel had the
19 opportunity to interview Plaintiff and other percipient witnesses.⁴⁷ Class Counsel developed
20 liability, damages, and penalties valuation models in the course of litigation and in connection with
21 the mediations and settlement negotiations, and met and conferred with Defendant's counsel on
22 numerous occasions, e.g., to discuss issues relating to the pleadings, case management, the
23 production of information, documents, and data in the course of litigation and in connection with
24 the mediations and settlement negotiations.⁴⁸ Class Counsel reviewed and analyzed information,

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27 ⁴⁴ Ghosh MFA Decl., ¶ 12.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

documents, and data obtained from Plaintiff, Defendant, and other sources.⁴⁹ Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related papers, mediation briefing and supporting materials, and settlement-related papers; and preparing for and attending court proceedings, settlement negotiations, and the mediations, among other tasks.⁵⁰

The Parties participated in two formal, mediations conducted by the late Jeffrey Krivis, Esq., who was a well-regarded mediator experienced in mediating complex labor and employment matters.⁵¹ In the course of mediations and settlement negotiations, the Parties exchanged extensive information, documents, and data, and discussed all aspects of the case, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and trial, the law relating to class certification, off-the-clock theory, rounding, meal and rest periods, representative PAGA claims, joint employer and alter ego theories, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁵² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁵³ Arriving at a settlement that was acceptable to the Parties was not easy.⁵⁴ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to avoid class certification.⁵⁵ Defendant and its counsel felt strongly about Defendant's ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁵⁶ After conducting meaningful initial disclosures, significant informal discovery and investigations, and extensive settlement negotiations, with the aid of the mediator's evaluation, the Parties agreed that this matter was well-

⁴⁹ Ghosh MFA Decl., ¶ 12.

⁵⁰ *Ibid.*

⁵¹ *Id.*, ¶ 14.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

1 suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the
2 costs and risks to the Parties that would attend further litigation.⁵⁷

3 The Settlement takes into account the strengths and weaknesses of each side's position and
4 the uncertainty of how this matter might have concluded at certification, trial, and/or appeals. Class
5 Counsel analyzed a large volume of information, documents, and data obtained from Plaintiff,
6 Defendant, and other sources, and performed research regarding applicable law, which is evolving
7 as it relates to certification, off-the-clock theory, rounding, meal and rest periods, representative
8 PAGA claims, joint employer and alter ego theories, wage-and-hour enforcement, Plaintiff's
9 claims, and Defendant's defenses thereto, as well as facts discovered.⁵⁸ The Settlement was based
10 on this large volume of facts, evidence, and investigation.⁵⁹ Additionally, Class Counsel have
11 extensive experience in handling complex wage-and-hour actions, including significant experience
12 in employment class action litigation.⁶⁰

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

15 The Settlement, which provides for a Gross Settlement Amount of \$1,100,000.00,
16 represents a fair, adequate, and reasonable resolution of this matter, given the risks inherent in
17 litigating class and representative claims through certification proceedings, trial, and/or appeals.⁶¹
18 The Settlement was calculated using information and data uncovered through extensive case
19 investigation, informal discovery, and the exchange of information in the context of litigation
20 (including and not limited to, during the initial disclosure process in Federal Court), two
21 mediations, and ongoing settlement negotiations.⁶² Had the action not settled, Defendant would
22 have vigorously challenged class certification, manageability of representative adjudication, and
23 liability. Defendant contended that individualized questions of fact predominated over any
24 common issues, and these issues would pose challenges to certification and representative
25 adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were

26 ⁵⁷ Ghosh MFA Decl., ¶ 14.

27 ⁵⁸ *Id.*, ¶ 13.

28 ⁵⁹ *Id.*, ¶¶ 12, 13, and 14.

⁶⁰ Ghosh MFA Decl., ¶¶ 19–23.

⁶¹ *Id.*, ¶¶ 16 and 26.

⁶² *Id.*, ¶¶ 12–16.

not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

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

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

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

2 The Settlement, which provides for a Gross Settlement Amount of \$1,100,000.00,
3 represents a fair, reasonable, and adequate resolution of this matter. The Settlement was calculated
4 using information and data uncovered through extensive case investigation, initial disclosures,
5 informal discovery, and the exchange of information in the context of litigation and preparing for
6 mediation and conducting ongoing settlement negotiations. The Settlement takes into account the
7 potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,
8 considering all of the facts in this matter, the Gross Settlement Amount represents a considerable
9 recovery.

10 Even after deducting Attorneys' Fees in the amount of \$366,666.67, reimbursement of
11 litigation costs and expenses in the amount of \$23,471.08, Enhancement Award in the amount of
12 \$10,000.00, Settlement Administration Costs in the amount of \$10,000.00, and the allocation of
13 PAGA Payment of \$40,000.00 from the Gross Settlement Amount of \$1,110,000.00, the Net
14 Settlement Amount is currently estimated to be \$649,862.25.⁶³ Under the Settlement Agreement,
15 the Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement.
16 As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of
17 the Net Settlement Amount, based on the number of Workweeks credited to him or her during the
18 Class Period, and each PAGA Employee will be paid a *pro rata* share of 25% of the PAGA
19 Payment, based on the number of PAGA Workweeks credited to PAGA Employees during the
20 PAGA Period.⁶⁴ To date, there are three hundred and twenty-three (323) Settlement Class
21 Members.⁶⁵ The highest gross Individual Settlement Payment is currently estimated to be at least
22 \$6,613.69 and the average gross Individual Settlement Payment is currently estimated to be at least
23 \$1,928.79.⁶⁶ The highest Individual PAGA Payment Share is currently estimated to be \$114.92
24 and the average Individual PAGA Payment Share is currently estimated to be \$42.55.⁶⁷ These are
25 significant recoveries, particularly in light of the risks of litigation.

26 ⁶³ Simpluris Decl., ¶ 17; See Footnote 13, *infra*.

27 ⁶⁴ Settlement Agreement, ¶¶ 26 & 78.

28 ⁶⁵ Simpluris Decl., ¶ 15.

⁶⁶ *Id.*, ¶ 18, See Footnote 13, *infra*. The actual estimated low, average, and high payments to the Settlement Class Members will be higher than the amounts stated in Paragraph 18 of Simpluris' Declaration.

⁶⁷ *Id.*, ¶ 20.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount that is payable to the Settlement Class Members and 25% of the PAGA Payment that is payable to the PAGA Employees. 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, PAGA Employees, and the State of California.⁶⁸ 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.⁶⁹ 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.⁷⁰ 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 lawsuit and in the context of a private, consensual settlement agreement.

E. There Are No Written Objections to the Class Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Class Settlement.*⁷¹ Specifically, no written objections have been made as to the Gross Settlement Amount or requested Attorneys’ Fees and Costs, Enhancement Award, Settlement Administration Costs, or the allocation for PAGA Payment. California courts have consistently

⁶⁸ Ghosh MFA Decl., ¶ 26.

⁶⁹ Ghosh MFA Decl., ¶¶ 19–23.

⁷⁰ *Ibid.*

⁷¹ Simpluris Decl., ¶ 13.

found that a small number of objectors indicates 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).

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 ATTORNEYS' FEES REQUESTED 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. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v.*

Priest (1977) 20 Cal.3d 25, 34.⁷² The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. See *Vincent*, *supra*, 557 F.2d at 769.

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

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.

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⁷² 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.

When this matter 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 Gross Settlement Amount of \$1,100,000.00. The requested attorneys’ fees are one-third (1/3) of the total value of the monetary settlement. In light of Class Counsel’s successful prosecution and resolution of this matter, 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 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. The named plaintiff’s agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel’s work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of at least one-third (1/3) of the recovery.⁷³

⁷³ Ghosh MFA Decl., ¶ 15.

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

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 Plaintiff, the Class, PAGA Employees, and the State of California, 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 Plaintiff and Class Counsel. Thus, the requested attorneys’ fees are appropriate.

C. The Attorneys’ Fees Requested 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 Attorneys' Fees in the amount of \$366,666.67 (which is 1/3 of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to this matter, the contingent nature of Class Counsel's fee and the risks taken in commencing this matter, the skill and determination required, the results that Class Counsel have achieved, and the value of the settlement that Class Counsel have 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, PAGA Employees, and the State of California. Moreover, as demonstrated in the supporting declarations relating to this motion as well as the Motion for Preliminary Approval, Class Counsel have extensive experience in the handling of class actions and complex litigation cases.⁷⁴

As outlined in the Declaration of Joanna Ghosh, Class Counsel has fully and actively participated in litigation of this matter.⁷⁵ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and Defendant's and Covered Entities' organizational structure and operations and employment policies, practices, and procedures.⁷⁶ During the litigation of this matter, Class Counsel had the opportunity to interview Plaintiff and other percipient witnesses; reviewed and analyzed a volume of pages of information, documents and data obtained from Plaintiff, Defendant, and other sources; and prepared liability, damages, penalties, and valuation calculations.⁷⁷ Class Counsel also met and conferred with Defendant's counsel over the issues

⁷⁴ Ghosh MFA Decl., ¶¶ 19–23.

⁷⁵ Ghosh MFA Decl., Exh. A.

⁷⁶ *Id.*, ¶ 13.

⁷⁷ *Id.*, ¶¶ 12 & 13.

relating to pleadings, discovery, and the production of information, documents and data, among other things; engaged in two mediations with Defendant's counsel; and prepared for and attended court proceedings, mediations, and settlement negotiations.⁷⁸

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Attorney Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Joanna Ghosh, sets forth in detail the hours that Lawyers for Justice, PC has spent performing tasks on behalf of Plaintiff, the Class, and PAGA Employees.⁷⁹ The Attorney 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 364.60 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, the PAGA Employees, and the State of California.⁸⁰ 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 matter, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate this matter is evident not only in the results achieved, but in the steps necessary to reach those results. 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. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to commencing this matter, during the litigation, and prior to and during the mediations and settlement negotiations. Class Counsel took steps to prepare the matter for class certification and

⁷⁸ Ghosh MFA Decl., ¶ 12.

⁷⁹ Ghosh MFA Decl., Exh. A.

⁸⁰ Ghosh MFA Decl., ¶ 17.

representative adjudication and had every intention of taking this matter 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 Joanna Ghosh, 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.⁸¹

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

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

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

As a result of this litigation and settlement negotiations, Defendant agreed to pay a Gross Settlement Amount of \$1,100,000.00 to settle the matter. After deducting the Attorneys' Fees (\$366,666.67.), reimbursement of litigation costs and expenses (\$23,471.08), Enhancement Award (\$10,000.00), Settlement Administration Costs (\$10,000.00), and the PAGA Payment (\$40,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$649,862.25.⁸² The Net Settlement Amount and PAGA Payment will be

⁸¹ Ghosh MFA Decl.

⁸² Simpluris Decl., ¶ 17. See Footnote 13, *infra*. Ghosh MFA Decl., ¶ 15.

1 fully distributed in accordance with the terms of the Settlement. The highest gross Individual
2 Settlement Payment is currently estimated to be at least \$6,613.69 and the average gross Individual
3 Settlement Payment is currently estimated to be \$1,928.79.⁸³ The highest Individual PAGA
4 Payment is currently estimated to be \$114.92 and the average Individual PAGA Payment is
5 currently estimated to be \$42.55.⁸⁴ The Settlement offers significant monetary relief to the
6 Settlement Class Members, the PAGA Employees, and the State of California.

7 **4. Whether the Fee Is Fixed or Contingent.**

8 Plaintiff entered into a contingency fee agreement with Class Counsel, and the
9 representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel
10 took on representation in this matter without knowing whether any recovery would be obtained.
11 Class Counsel has invested 364.60 hours of time to obtain relief on behalf of Plaintiff, Class
12 Members, PAGA Employees, and the State of California.⁸⁵ Class Counsel has also incurred
13 litigation costs and expenses in the amount of \$23,471.08.⁸⁶

14 Class Counsel has borne all of the risks and costs of litigation and will not receive any
15 compensation until recovery is obtained.⁸⁷ Class Counsel is well-experienced in wage-and-hour
16 class action and complex litigation and used that experience to obtain a great result.⁸⁸ The skill
17 and determination that Class Counsel has shown, along with the results obtained, justify the
18 requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed,
19 and the risks incurred, the requested fees and costs are reasonable and should be awarded.

20 In determining the reasonableness of a fee award in a class action settlement, whether or
21 not representation is provided on a contingency basis is an important factor:

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. A lawyer who both bears the
25 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.

26 ⁸³ Simpluris Decl., ¶ 18. See Footnote 13, *infra*. The actual estimated low, average, and high payments to the Settlement Class
Members will be higher than the amounts stated in Paragraph 18 of Simpluris' Declaration.

27 ⁸⁴ *Id.*, ¶ 20.

⁸⁵ Ghosh MFA Decl., ¶¶ 17, Exh. A.

28 ⁸⁶ *Id.*, ¶ 24.

⁸⁷ *Ibid.*

⁸⁸ *Id.*, ¶¶ 19–23.

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

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

7 The results achieved, in light of the difficulties inherent in similar cases and the specific
8 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
9 from the Class Members—no Class Members objected to the Class Settlement.⁸⁹

10 The court in *Camden* noted that, “a key element of the common fund case is that fees are
11 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
12 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
13 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
14 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

15 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
16 in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted
17 in a settlement that provides for a Gross Settlement Amount of \$1,100,000.00.⁹⁰ The Gross
18 Settlement Amount will be fully paid out, in accordance with the terms of the Settlement
19 Agreement. The highest gross Individual Settlement Payment is currently estimated to be
20 \$6,613.69 and the average gross Individual Settlement Payment is currently estimated to be
21 \$1,928.79.⁹¹ The highest Individual PAGA Payment is currently estimated to be \$114.92 and the
22 average Individual PAGA Payment is currently estimated to be \$42.55.⁹²

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

24 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
25 knowledge, skills, and experience in bringing this matter to a successful conclusion. Class Counsel
26

27 ⁸⁹ Simpluris Decl., ¶ 13.

⁹⁰ Ghosh MFA Decl., ¶ 15.

⁹¹ Simpluris Decl., ¶ 18. See Footnote 13, *infra*. The actual estimated low, average, and high payments to the Settlement Class Members will be higher than the amounts stated in Paragraph 18 of Simpluris’ Declaration.

⁹² Simpluris Decl., ¶ 20.

has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁹³

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, this matter 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 lawsuit and disputed that the matter was appropriate for class certification or representative adjudication. Defendant raised affirmative defenses and denied liability, and the pursuit of this

⁹³ Ghosh MFA Decl., ¶¶ 19–22.

1 matter involved gathering and analyzing extensive information, data, documents from multiple
2 sources. The handling of this matter involved a great amount of effort, and also required and
3 involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive
4 experience in employment class actions and complex wage-and-hour litigation. Long and difficult
5 battles would have followed as this matter moved toward class certification and trial, including
6 taking and defending depositions of Defendant's Person Most Knowledgeable designees,
7 percipient witnesses, and experts, propounding discovery requests and conducting additional
8 document production, and engaging in extensive motion practice. As Class Counsel geared up for
9 these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter
10 through mediations and settlement negotiations.

11 Class Counsel had to bring together a large volume of information, documents, and data
12 that were obtained from Plaintiff, Defendant, and other sources. Class Counsel conducted
13 extensive review and analysis of the information, documents and data to strategize the action and
14 to prepare for mediation and engage in settlement discussions.

15 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Joanna Ghosh is
16 an Attorney Task and Time chart that sets forth in detail the numerous tasks that Class Counsel
17 performed on behalf of Plaintiff, the Class, the PAGA Employees, and the State of California, and
18 the time required for completing those tasks.⁹⁴ The chart demonstrates that Class Counsel has spent
19 a total of 364.60 hours litigating this matter and finalizing the Settlement.⁹⁵ In light of the facts
20 and circumstances of this matter, as well as the results that Class Counsel has achieved in this
21 matter, Class Counsel has spent a reasonable number of hours performing work on this matter. In
22 addition, Class Counsel will continue to perform work on this matter through the date of final
23 approval and in connection with the implementation of the Settlement.

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28 ⁹⁴ Ghosh MFA Decl. ¶ 17, Exh. A.

⁹⁵ *Ibid.*

**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 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 matter, 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 \$1,100,000.00.

As set forth in the Declaration of Joanna Ghosh, the professional backgrounds and experience of Class Counsel support reasonable rates of compensation at least \$800 per hour for services provided by Class Counsel.⁹⁶ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$800 per hour for legal service performed, by courts of this state.⁹⁷ While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel in this matter justify the requested attorneys' fees.

**3. The Risks Involved, Skill Required, Complexity of the Matter, and Results
Obtained Warrant Upward Enhancement of the Lodestar.**

Even when courts have opted to award fees in Total Settlement Amount cases based on time reasonably expended on the action, courts have generally awarded these fees based on the actual time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v.*

⁹⁶ Ghosh MFA Decl., ¶¶ 18-23.

⁹⁷ *Ibid.*

1 *Screen Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this case.

2 Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved,
3 the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham*
4 *v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee enhancers
5 [...] is for contingency risk.”). A court may apply a multiplier in consideration for risk, efficiency,
6 and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See
7 *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate
8 contingency fee attorneys at a fair market rate). Such an enhancement “mirrors the established
9 practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by
10 paying them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*,
11 290 F.3d at 1051; *accord Ketchum, supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves
12 to bring the financial incentives for enforcing important rights “into line with incentives [attorneys]
13 have to undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal.4th
14 at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g.,
15 *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without
16 remand); *Wershba, supra*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even
17 higher.”); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a
18 2.52 multiplier on a lodestar cross-check); *Chavez v. Netflix, Inc., supra*, 162 Cal.App.4th at 66
19 (applying a 2.5 multiplier in a consumer class action).

20 In determining whether or not to enhance the lodestar, California courts take into account
21 multiple factors, many of which were specifically addressed above. See, *Cates v. Chiang*, at 822-
22 823. Multiple factors warrant enhancement in this case, including the following:

- 23 • The time and labor required
- 24 • The skill requisite to perform the legal services properly
- 25 • The preclusion of other employment by the attorney due to the acceptance of the case
- 26 • The contingent nature of the fee
- 27 • The amount involved and results obtained
- 28 • The experience, reputation, and ability of the attorney
- Awards in similar cases

Ketchum at 1134.

Adjustment of the base lodestar figure to compute an award of attorneys' fees for a claim under the California Labor Code is appropriate. See *Id.*, at 1135-1136; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. "The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at 1131-1132. The lodestar figure is the "basic fee for comparable legal services in the community" based upon the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Id.*, at 1132-1133 (quotation marks and citation omitted).

As discussed above, this was a highly contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, and the case involved gathering, analyzing, and considering a significant volume of information, documents, and data. The handling of this matter involved a great amount of effort, and required the exercise of high-level of skill, which Class Counsel has as a result of extensive experience in employment class actions and wage-and-hour litigation. Class Counsel has been actively involved in the prosecution of this matter, prior to its commencement and Class Counsel's work has continued all the way up to the present. Class Counsel's dedication to the representation of Plaintiff, the Class, PAGA Employees, and State of California has precluded other employment. All services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class Counsel was successful in achieving substantial results in the form of a settlement of \$1,100,000.00.

Class Counsel seeks attorneys' fees in the amount of \$366,666.67, which is one-third (1/3) of the total recovery, and importantly, which is less than the amount of attorneys' fees provided for by the Settlement Agreement. Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. Applying the rate of \$800 per hour to 364.60 hours for services provided by Class Counsel results in a base lodestar value of \$291,680.00 for the work performed by Class Counsel, and applying a modest multiplier of 1.26, the total enhanced lodestar fees are \$367,516.80. Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving multiplier of **2.5**); *Vizcaino*, 290 F.3d at 1051 (approving multiplier of **3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving multiplier of **3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding multiplier of **5.2** and referring to other cases with cross-check multipliers ranging from **4.5 to 19.6**).

The nature of the work performed, skill exercised, and the outcome in this matter—which involves an outstanding monetary recovery involving a Gross Settlement Amount of \$1,100,000.00 (with a Net Settlement Amount of approximately at least \$649,862.25 to be paid to Settlement Class Members (with gross Individual Settlement Payments averaging approximately more than \$1,928.79), payment of \$10,000.00 to PAGA Employees, and payment of \$30,000.00 to the State of California)—support the percentage fee sought and the application of a lodestar multiplier.

Therefore, application of a modest multiplier of 1.26 is warranted, and the lodestar method as a cross-check to the percentage award sought herein, 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 \$366,666.67 to Class Counsel.

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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 \$32,000.00. As set forth in the Declaration of Joanna Ghosh, Class Counsel seeks reimbursement of \$23,471.08 in litigation costs and expenses incurred in this matter.⁹⁸ This amount was reasonable and necessary in the prosecution of this matter and to obtain the Settlement.⁹⁹ The cost savings of \$8,528.92 will be part of the Net Settlement Amount, which will be distributed to Settlement Class Members in accordance with the Settlement.¹⁰⁰ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$23,471.08 to Class Counsel.

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

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$10,000.00.¹⁰¹ The costs incurred and to be incurred include, but are not limited to, (a) establishing and maintaining a settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments; (d) printing and mailing the Notice of Class Action and PAGA Settlement to Class Members in English and Spanish; (e) distributing the Email Notice; (f) receiving and validating Opt Outs, Objections, or Disputes Regarding Workweeks submitted by Class Members; (g) calculating Employer Taxes and providing appropriate forms and calculations to Defendant; (h) printing settlement checks, (i) providing counsel with weekly reports; and (j) other tasks as the Parties mutually agree or the Court orders Simpluris to perform.¹⁰²

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

⁹⁸ Ghosh MFA Decl., ¶ 24.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Simpluris Decl., ¶ 21.

¹⁰² *Id.*, ¶ 3.

1 **IX. THE REQUESTED ENHANCEMENT AWARD IS FAIR AND REASONABLE**
2 **AND SHOULD BE APPROVED.**

3 The Settlement provides for an Enhancement Award in the amount of \$10,000.00 to
4 Plaintiff Jason Beinbrech for his efforts and work spearheading the prosecution of this matter and
5 serving as the Class Representative, as well as his broader individual waiver and release of claims
6 with a California Civil Code Section 1542 waiver. The requested Enhancement Award is both
7 common and reasonable and should be awarded.

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

15 The requested Enhancement Award is fair and appropriate because Plaintiff spent a
16 substantial amount of time and effort providing the facts and evidence to support the prosecution
17 of the claims.¹⁰³ Plaintiff was available whenever Class Counsel needed him and actively tried to
18 obtain, and gave, information to support the pursuit of the claims in this matter.¹⁰⁴

19 Accordingly, it is appropriate and just for Plaintiff Jason Beinbrech to receive \$10,000.00,
20 as a reasonable Enhancement Award, in addition to his individual settlement payment(s).

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28 ¹⁰³ Ghosh MFA Decl., ¶ 25; Declaration of Jason Beinbrech ("Beinbrech Decl."), ¶¶ 2–6.

¹⁰⁴ Ghosh MFA Decl., ¶ 25; Beinbrech Decl., ¶¶ 2–6.

X. CONCLUSION

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

Dated: September 12, 2024

LAWYERS for JUSTICE, PC



By: _____

Joanna Ghosh
Attorney for Plaintiff and the Class