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

KENNETH GUNTHER, 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.

NORTH COAST COOPERATIVE, INC., a
California corporation; NORTH COAST
COOP, an unknown business entity; and
DOES 1 through 100, inclusive,

Defendants.

Case No. CV2000307

Honorable Timothy A. Canning
Department 4

CLASS ACTION

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

Date: October 25, 2024
Time: 10:30 a.m.
Department: 4

Complaint Filed: February 25, 2020
FAC Filed: April 26, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 25, 2024, at 10:30 a.m., in Department 4 of
2 the above-entitled Court, located at 825 5th St, Eureka, California 95501, Plaintiff Kenneth
3 Gunther (“Plaintiff” or “Class Representative”) will and hereby does move for an order granting
4 final approval of:

5 1. The Class Action and PAGA Settlement Agreement (“Agreement,” “Settlement”
6 or “Settlement Agreement”) on the grounds that the Settlement Agreement is fair, adequate, and
7 reasonable because a **Net Settlement Amount** of approximately **\$463,023.48** will be fully
8 distributed to all members of the Class Members who did not submit a timely and valid Request
9 for Exclusion (“Settlement Class Members”), and **no Objections or Requests for Exclusion** were
10 submitted to the settlement administrator, Simpluris, Inc. (“Settlement Administrator”);

11 2. Payment in the amount of **\$306,250.00** to Lawyers for Justice, PC (“Class
12 Counsel”), representing 35% of the Gross Settlement Amount, for the Attorneys’ Fees and Costs,
13 which is reasonable and justified on a percentage of the common fund basis;

14 3. Payment in the amount of **\$12,626.52** to Class Counsel for reimbursement of
15 litigation costs incurred;

16 4. Payment in the amount of **\$10,600.00** to the Settlement Administrator for
17 Settlement Administration Costs;

18 5. Payment in the amount of **\$7,500.00** to Plaintiff as an Enhancement Award, for his
19 time and effort in representing the Class; and

20 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
21 California Labor Code section 2698, *et seq.*, in the amount of **\$100,000.00** (“PAGA Penalties”),
22 of which seventy-five percent (75%), or **\$75,000.00**, will be paid to the California Labor and
23 Workforce Development Agency (“LWDA”) (“LWDA Payment”) and twenty-five percent (25%),
24 or **\$25,000.00**, will be distributed to Settlement Class Members as part of the Net Settlement
25 Amount.

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

1 This motion is based upon the following Memorandum of Points and Authorities; the
2 Declarations of Class Counsel (Elizabeth Parker-Fawley), Class Representative (Kenneth
3 Gunther) and Settlement Administrator (Jennifer Beliveau of Simpluris, Inc.) in support thereof;
4 the pleadings and other records on file with the Court in this matter; and such evidence and oral
5 argument as may be presented at the hearing on this Motion.

6
7 Dated: October 3, 2024

LAWYERS for JUSTICE, PC

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9 By: 
10 Elizabeth Parker-Fawley
11 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Kenneth Gunther (“Plaintiff” or “Class Representative”) seeks final approval of: (1) the Gross Settlement Amount of \$875,000.00¹; (2) attorneys’ fees in the amount of \$306,250.00, which is 35% of the Gross Settlement Amount², and reimbursement of litigation costs in the amount of \$12,626.52 (together, referred to as the “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$10,600.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Award in the amount of \$7,500.00 to Plaintiff; and (5) allocation of \$100,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiff seeks relief on behalf of the following Class: All current and former hourly-paid or non-exempt individuals employed by Defendant within the State of California at any time during the Class Period, except that persons who have signed individual settlement agreements with Defendant in connection with the Action will not be included in the Class (“Class Members”).³

Plaintiff moves for final approval of the Attorneys’ Fees and Costs. This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during the formal mediation, and settlement negotiations thereafter. This matter has required 368 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents 35% of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. The requested attorneys’ fees are also supported under the lodestar cross-check method.⁴

Plaintiff moves for final approval of the Enhancement Award in the amount of \$7,500.00, to compensate Plaintiff for the time and effort that he expended spearheading the lawsuit on behalf

¹ Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶ I(U)

² *Id.*, ¶ XIV.

³ *Id.*, ¶ I(C) “Class Period” means the period from July 23, 2017 through June 25, 2022. *See id.*, ¶ I(F)

⁴ Applying a reasonable rate of \$850 to 368 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$312,800.00 on Class Counsel’s services, and Class Counsel seeks an attorneys’ fees award of \$306,250.00.

of the Class and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$10,600.00 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of \$100,000.00 for the PAGA Penalties, of which seventy-five percent (75%), i.e., \$75,000.00, will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA Penalties (“LWDA Payment”), and twenty-five percent (25%), i.e., \$25,000.00, will be distributed to the Settlement Class Members as part of the Net Settlement Amount .

The requests for Attorneys’ Fees and Costs, Enhancement Award, Settlement Administration Costs, and PAGA Penalties were fully disclosed in the Court Approved Notice of Class Action Settlement (“Class Notice”) that was mailed to the Class Members. 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 PAGA Penalties.*

The Settlement Agreement 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 is 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 PAGA Penalties in the amounts as fully disclosed to the Class Members 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 PAGA Penalties, 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 is a certified organic grocer, operating two locations within California. Plaintiff Kenneth Gunther is a former employee of Defendant.

1 On February 25, 2020, Plaintiff filed a Class Action Complaint for Damages in the
2 Humboldt County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
3 (“Action”).

4 Defendant filed a Notice of Removal on April 6, 2020. Plaintiff filed his Motion to Remand
5 on May 6, 2020, which was granted on June 19, 2020.

6 On May 29, 2020, Plaintiff submitted notice to the California Labor & Workforce
7 Development Agency (“LWDA”) and Defendant of his intent to pursue civil penalties under the
8 Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.* And, on September 9, 2021,
9 Plaintiff provided a follow-up notice to the LWDA.

10 Beginning in July 2020 and continuing throughout the settlement negotiation process,
11 Plaintiff and Defendant served multiple formal discovery requests on one another, responded to
12 said discovery requests, and met and conferred regarding the sufficiency of those responses.⁵

13 On August 25, 2021, the Parties participated in a formal, full-day mediation conducted by
14 Jeffrey A. Ross, Esq., a well-regarded mediator experienced in mediating complex labor and
15 employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the
16 Agreement described herein to resolve the Action in its entirety.

17 On April 26, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages
18 & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*
19 (“First Amended Complaint,” or “Operative Complaint”).

20 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
21 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of,
22 *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and
23 rest periods and associated premium pay, failing to timely pay wages during employment and upon
24 termination of employment, failing to provide compliant wage statements, failing to maintain
25 requisite payroll records, and failing to reimburse necessary business expenses, and thereby
26 engaged in unfair business practices in violation of California Business and Professions Code
27 section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends
28

⁵ Parker-Fawley Decl., ¶ 6.

that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On March 28, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents ("Motion for Preliminary Approval"). On April 26, 2024, the Hearing on the Motion for Preliminary Approval occurred, and the Court issued a minute order granting the motion. On May 29, 2024, the Court filed an Order Granting Preliminary Approval of Class Action and PAGA Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement Agreement, the Class Notice, and the proposed administration procedures and associated deadlines. Plaintiff now moves for final approval of Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, and PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to make a deposit of the Gross Settlement Amount of \$875,000.00 plus an amount sufficient to pay Employer Taxes into an interest-bearing account established by the Settlement Administrator within 21 calendar days of the Final Effective Date.⁶ 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 \$306,250.00 and reimbursement of litigation costs and expenses in the amount of \$12,626.52, to Class Counsel; (2) Enhancement Award in the amount of \$7,5000.00 to Plaintiff; (3) Settlement Administration Costs in the amount of \$10,600.00 to Simpluris, Inc.; and (4) LWDA Payment in the amount of \$75,000.00.⁷ The Net Settlement Amount, which is estimated to be \$463,023.48, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁸

⁶ Settlement Agreement, ¶ 1.16.

⁷ Settlement Agreement, ¶¶ 5-8

⁸ Settlement Agreement, ¶ 4. This amount is higher than the amount stated in Paragraph 16 of the accompanying Declaration of Jennifer Beliveau Regarding Notice and Settlement Administration ("Simpluris Declaration" or Simpluris Decl.") because the Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$20,000.00 allocated under the Settlement Agreement. However, Class Counsel seeks the amount of \$12,626.52 for litigation costs and expenses, and the difference of \$7,373.48 will be in the Net Settlement Amount.

The Settlement Administrator will calculate each Settlement Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment"), as follows: the Settlement Administrator will divide the final Net Settlement Amount by the total number of Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Payment.⁹

Class Members had 45 calendar days from the initial mailing of the Class Notice ("Response Deadline") to submit a Request for Exclusion, Objection and/or Workweeks Dispute.¹⁰ The Response Deadline was July 27, 2024.¹¹ **The Settlement Administrator has not received any Objection, Workweeks Dispute, or Requests for Exclusion from Class Members.**¹²

Each Individual Settlement Share will be allocated as follows: fifteen percent (15%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty-five percent (85%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹³ Settlement Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion.¹⁴ Defendant will pay all employer-side taxes in connection with the wages portion of the Individual Settlement Payment in addition to the Gross Settlement Amount.¹⁵

Individual Settlement Payment checks will be negotiable for one-hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled.¹⁶ The funds associated with such canceled checks will be paid to Legal Aid at Work in accordance with California Code of Civil Procedure section 384(b), *et seq.*¹⁷

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Simpluris, Inc., has taken all necessary

⁹ Settlement Agreement, ¶ 9.2(b).

¹⁰ *Id.*, ¶ 1.28.

¹¹ Simpluris Decl., ¶ 11.

¹² Simpluris Decl., ¶¶ 12-14.

¹³ Settlement Agreement, ¶ 10.1.

¹⁴ Settlement Agreement, ¶ 9.3.

¹⁵ *Id.*, ¶ 4.

¹⁶ *Id.*, ¶ 9.8.

¹⁷ *Ibid.*

steps to effectuate the notice and settlement administration process, as set forth in the Court's Preliminary Approval Order.

On May 17, 2024, Defendant's counsel provided Simpluris the Class Data List containing each Class Member's last known full name, last known mailing address, last known telephone number, Social Security Number, the start and end dates of employment as an hourly-paid or non-exempt employee of Defendant in California during the Class Period, and such other such information as was necessary for Simpluris to calculate Workweeks during the Class Period ("Class Data List").¹⁸ The Class Data List contained data for 629 individuals identified as Class Members who worked 26,463 Workweeks.¹⁹ The mailing addresses contained in the Class Data List were processed and updated utilizing the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service.²⁰ The NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Class Notice.²¹

On June 12, 2024, Simpluris mailed the Class Notice via U.S. First Class Mail to all 629 individuals identified as Class Members in the Class Data List.²² A total of 190 Class Notices were returned to Simpluris, Inc.²³ Simpluris performed an advanced address search (i.e. skip trace) on all of these addresses by using a reputable research tool owned by Lexis-Nexis. Through the advanced address searches, Simpluris, Inc. was able to locate 177 updated addresses, and Simpluris promptly re-mailed a Class Notice to those updated addresses.²⁴ Ultimately, there are 13 Class Notices that remain undeliverable.²⁵

The Administrator has not received any Objections, Workweeks Disputes or Requests for Exclusion from Class Members.²⁶ Thus, there are 629 Class Members who did not submit a timely

¹⁸ Simpluris Decl., ¶ 6.

¹⁹ *Id.*, ¶¶ 18 & 10.

²⁰ *Id.*, ¶ 7.

²¹ *Ibid.*

²² *Id.*, ¶ 8.

²³ *Id.*, ¶ 9.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Id.*, ¶¶ 12-14.

and valid Request for Exclusion (“Settlement Class Members”), and who will be paid their portion of the Net Settlement Amount.²⁷ Pursuant to the terms of the Settlement Agreement, the Net Settlement Amount of approximately \$463,023.48 will be distributed to Settlement Class Members in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment is currently estimated to be \$5,165.51 and the average Individual Settlement Payment is currently estimated to be \$724.40.²⁸

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 plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and 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*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 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*, 48

²⁷ *Id.*, ¶ 15.

²⁸ *Id.*, ¶ 17. The actual average and highest Individual Settlement Payment will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel’s request for reimbursement of litigation costs and expenses in an amount that is less than \$20,000 (the difference between the amount sought and the amount authorized under the Settlement, \$7,373.48, will be part of the Net Settlement Amount). See n.8, *supra*.

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*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the cases 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 Formal and Informal Discovery.**

The Parties actively litigated the case since the Action commenced on February 25, 2020. Class Counsel conducted significant investigation and formal and informal discovery into the facts of the cases, to assess the veracity, strength, and scope of the claims, and was preparing for class certification and trial prior to reaching the Settlement Agreement.²⁹

The Parties exchanged a large volume of information, documents, and data in connection with the mediation and settlement negotiations.³⁰ On July 14, 2020, Class Counsel propounded multiple sets of written discovery requests on both North Coast Cooperative, Inc. and North Coast Coop (including Form Interrogatories—General (Set One), Special Interrogatories (Sets One and Two), Requests for Production of Documents (Set One)) and noticed depositions of both North Coast Cooperative, Inc. and North Coast Coop’s person(s) most knowledgeable along with accompanying requests for production of documents. On September 3, 2020, Defendant provided responses to Plaintiff’s discovery. After counsel met and conferred regarding the sufficiency of Defendant’s responses to Plaintiff’s discovery, Defendant provided amended responses on November 6, 2020. On November 2, 2020, Defendant served its Demand for Inspection (Set One),

²⁹ Parker-Fawley Decl., ¶ 6.

³⁰ *Ibid.*

Form Interrogatories—Employment Law (Set One), Form Interrogatories—General (Set One) and Special Interrogatories (Set One) on Plaintiff. On December 18, 2020, Plaintiff responded to Defendant’s discovery requests. The large volume of information, documents, and data reviewed and analyzed by Class Counsel included, and was not limited to: Plaintiff’s employment records, approximately 30% sampling of Class Members’ time data and pay records, Settlement Agreement and General Releases, Employee Declarations, Collective Bargaining Agreements, and Defendant’s operations and employment practices, forms, procedures, and policies (including, and not limited to, Employee Handbook, Job Descriptions, and Time and Attendance Policy), among other information and documents.³¹ Class Counsel had the opportunity to interview and obtain information from Plaintiff and other Class Members, and reviewed and analyzed a large volume of information, data, and documents obtained from Plaintiff, Defendant, and other sources. Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with the mediations and settlement negotiations, and met and conferred with Defendant’s counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, and the production of information, documents, and data in the course of mediation and settlement negotiations.³² Class Counsel reviewed and analyzed information, documents, and data obtained from Plaintiff, Defendant, and other sources.³³ 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 brief, and settlement-related papers; and preparing for and attending court proceedings, settlement negotiations, and the mediations, among other tasks.³⁴

After conducting formal and informal discovery and investigation into the facts of the cases, the Parties participated in a formal mediation session conducted by Jeffrey A. Ross, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.³⁵ In the course of the mediation and settlement negotiations, the Parties exchanged class information,

³¹ Ibid.

³² Parker-Fawley Decl., ¶ 6.

³³ *Id.*, ¶¶ 6 & 7.

³⁴ *Id.*, ¶ 6.

³⁵ *Id.*, ¶ 8.

documents, and data, and discussed all aspects of the cases, 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, meal and rest periods, representative PAGA claims, the impact of collective bargaining agreements, the enforceability of individual settlement and release agreements, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁶ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³⁷ Arriving at a settlement that was acceptable to the Parties was not easy. Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to avoid class certification.³⁸ 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.³⁹ After conducting significant formal and informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the case was well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the Parties that would attend further litigation.⁴⁰

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

The Settlement accounts for the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴¹ The Agreement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information, data, and documents in the context of mediation and settlement negotiations.⁴² Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Parker-Fawley Decl., ¶ 8.

⁴¹ *Id.*, ¶¶ 8, 9 & 21.

⁴² *Id.*, ¶¶ 6-8.

1 contended that individualized questions of fact predominated over any common issues, and these
2 issues would pose challenges to certification and representative adjudication. Defendant would
3 have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide
4 and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court
5 certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative
6 basis. Additionally, preparation for trial would have been expensive for all parties.

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

23 It would be grossly inefficient for class of 629 current and former employees to bring
24 individual actions to recover from Defendant for the alleged violations of wage-and-hour laws.
25 Moreover, the potential individual recovery that could be obtained by a Class Member would not
26 be significant enough to provide him or her with the incentive to sue. By granting final approval
27 of the Settlement Agreement, the Court can approve a resolution that provides a certain and
28 substantial recovery for Class Members.

The Settlement Agreement represents a fair, reasonable, and adequate resolution of the cases. The Agreement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations. The Agreement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Gross Settlement Amount represents a considerable recovery.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Agreement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members and the State of California.⁴⁷ 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*

⁴⁷ Parker-Fawley Decl., ¶ 21.

on *Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement Agreement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation. 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.⁴⁸ Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement Agreement 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 Agreement has been well received by the Class – *not a single Class Member objected to the Class Settlement.*⁴⁹ Specifically, no objections have been made as to the Gross Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, or PAGA Penalties. California courts have consistently found that a small number of objectors indicates support for a settlement and strongly favors final approval. *Wershba*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *Seven Owners*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement Agreement in its entirety. *Dunk*, 48 Cal.App.4th at 1802.

VI. THE ATTORNEYS' FEES AND COSTS REQUESTED ARE 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

⁴⁸ Parker-Fawley Decl., ¶¶ 13-17.

⁴⁹ Simpluris Decl., ¶ 13.

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

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

17 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
18 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
19 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th
20 1253, 1270). It is not an abuse of discretion to choose one method over another as long as the
21 method chosen is applied consistently using percentage figures and/or rates that accurately reflect
22 the marketplace. In cases where class members present claims against a settlement amount and the
23 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of
24 the same, use of that percentage method is appropriate. *Lealao*, 82 Cal.App.4th at 32.

25 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
26 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
27 Ed., 2002) § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
28 (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. Grauly* (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, 34.⁵⁰ 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*, 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*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that while "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he percentage [...] method survives in California." *Id.* (internal quotes omitted). In *Lealao*, the Court of Appeal 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*, 82 Cal.App.4th at 51; *see also Boeing*, 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

⁵⁰ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

6 When the case was originally filed, not only was a recovery inescapably contingent, but
7 the prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was
8 almost a certainty. By taking on this “battle” on a contingency basis, Class Counsel risked
9 substantial economic loss if the results were not successful. This substantial risk is the reason that
10 the courts approve the use of the percentage method when a settlement is obtained by the efforts
11 of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing the
12 risks of engaging in litigation without certainty of compensation).

13 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
14 Amount of \$875,000.00 on a non-reversionary basis. The requested attorneys’ fees are 35% of the
15 total value of the monetary settlement. Class Counsel has obtained a substantial recovery on behalf
16 of Plaintiff, the Class, and the State of California, and the results achieved justify an attorneys’
17 fees award that is the equivalent of the standard market fee and that is consistent with the
18 contingency-fee agreement entered into by and between Plaintiff and Class Counsel. In light of
19 Class Counsel’s successful prosecution and resolution of the case, the requested attorneys’ fees
20 are appropriate and reasonable.

21 **C. The Attorneys’ Fees Requested Is Reasonable Based on the Factors**
22 **Considered in Determination of Fee Awards.**

23 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
24 to be considered in determining whether fee awards are reasonable: (1) the time and labor required;
25 (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal
26 services properly; (4) the preclusion of other employment by the attorney due to the acceptance of
27 the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation
28 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 \$306,250.00 (which is 35% of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the cases, the contingent nature of Class Counsel's fee and the risks taken in commencing the cases, 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. As outlined in the Declaration of Elizabeth Parker-Fawley, Class Counsel has fully and actively participated in litigation of the Action.⁵¹ Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation cases.⁵²

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Elizabeth Parker-Fawley, sets forth in detail the hours that Lawyers for Justice, PC has spent performing tasks on behalf of Plaintiff and the Class.⁵³ 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 368 hours performing tasks and to obtain a significant recovery

⁵¹ Parker-Fawley Decl, ¶ 5.

⁵² Parker-Fawley Decl., ¶¶ 13-18.

⁵³ *Id.*, Exh. A.

on behalf of Plaintiff, the Class, and the State of California.⁵⁴ 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 cases 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. 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 filing this case, during the litigation, and prior to the 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 Elizabeth Parker-Fawley, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Agreement with maximum efficiency.⁵⁵

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

The Settlement Agreement represents an excellent resolution of the actions, given the risks inherent in litigating the cases through certification proceedings, trial, and/or appeals. Had the cases 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 the cases for trial would have been expensive for the Parties.

The Settlement Agreement 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

⁵⁴ *Id.*, ¶¶ 11 & 12.

⁵⁵ Parker-Fawley Decl., ¶¶ 13-17.

further litigation outweighed any benefit that might have been gained otherwise. The Settlement Agreement 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 Net Settlement Amount is approximately \$463,023.48.⁵⁶ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment is currently estimated to be \$5,165.51 and the average Individual Settlement Payment is currently estimated to be \$724.40.⁵⁷ The Settlement Agreement offers significant monetary relief to the Settlement Class Members and the State of California.

4. Whether the Fee Is Fixed or Contingent.

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). Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 368 hours of time to obtain relief on behalf of Plaintiff, Class Members and the State of California.⁵⁸ Class Counsel has also incurred litigation costs and expenses in the amount of \$12,626.52.⁵⁹

Class Counsel has borne all the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁰ Considering the work performed and the risks incurred, the requested fees and costs are reasonable and should be awarded.

⁵⁶ Simpluris Decl., ¶ 16.

⁵⁷ *Id.*, ¶ 17.

⁵⁸ Parker-Fawley Decl., ¶ 11, Exh. A.

⁵⁹ *Id.*, ¶ 19, Exh. B.

⁶⁰ *Id.*, ¶ 19.

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

The court in *Camden* noted that, “a key element of the common fund case is that fees are [...] taken from the fund [...] and a common fund is itself the measure of success ... [and] represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768, fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8, 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)). The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement Agreement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.⁶¹

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

Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’ knowledge, skills, and experience in bringing this matter to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁶²

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*, 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*, 1 Cal.5th at 505.

⁶¹ Simpluris Decl., ¶ 13.

⁶² Parker-Fawley Decl., ¶¶ 13-17.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum*, 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 case involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the cases involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the cases moved toward certification and trial, including taking and defending depositions of Defendant’s Person Most Knowledgeable designees, percipient witnesses, and experts, propounding additional 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 mediations.

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Elizabeth Parker-Fawley is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁶³

⁶³ Parker-Fawley Decl., Exh. A.

The chart demonstrates that Class Counsel has spent a total of 368 hours litigating the cases and finalizing the Settlement Agreement.⁶⁴ In light of the facts and circumstances of the cases, as well as the results that Class Counsel has achieved in these cases, 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*, 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 these cases 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 \$875,000.00.

As set forth in the Declaration of Elizabeth Parker-Fawley, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of at least \$850 per hour for services provided by Class Counsel.⁶⁵ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$850 per hour for legal service performed, by courts throughout this state.⁶⁶ While the circumstances of every case are unique, the

⁶⁴ *Id.*, ¶¶ 11 & Exh. A.

⁶⁵ Parker-Fawley Decl, ¶ 12.

⁶⁶ *Ibid.*

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 \$850 per hour to 368 hours for services provided by Class Counsel would place a reasonable value of \$312,800.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$306,250.00, which is 35% of the total recovery, as provided for by the Settlement Agreement.

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 \$306,250.00 to Class Counsel.

VII. LITIGATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement Agreement provides for a Litigation Costs of up to \$20,000.00. As set forth in the Declaration of Elizabeth Parker-Fawley, Class Counsel seeks reimbursement of \$12,626.52 in litigation costs and expenses incurred in this case.⁶⁷ This amount was reasonable and necessary in the prosecution of the cases and to obtain the Agreement.⁶⁸ The cost savings of \$7,373.48, will be part of the Net Settlement Amount, which will be distributed to Settlement Class Members in accordance with the Agreement.⁶⁹ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$12,626.52 to Class Counsel.

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

As set forth in the accompanying Simpluris, Inc. Declaration, the total costs incurred and to be incurred by Simpluris, Inc. for the notice and settlement administration process are \$10,600.00.⁷⁰ The costs incurred and to be incurred include, but are not limited to, (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiff,

⁶⁷ Parker-Fawley Decl., ¶¶ 19, Exh. B.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Simpluris Decl., ¶ 18.

Class Counsel, and Settlement Class Members; (d) printing and mailing the Class Notice to Class Members; (e) receiving and validating Requests for Exclusion, Objections, and disputes to Workweeks submitted by Class Members; (f) calculating the Employer Taxes and providing appropriate forms and calculations to Defendant; (g) mailing Individual Settlement Payment checks to Settlement Class Members, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders Simpluris, Inc. to perform.⁷¹

Accordingly, the Court should grant final approval of payment to Simpluris, Inc., a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of \$10,600.00.

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

The Settlement Agreement provides for Enhancement Award in the amount of \$7,500.00 to Plaintiff to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Enhancement Award is 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 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 Enhancement Award is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence to support the prosecution of the claims.⁷² Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information to support the pursuit of the cases.⁷³

⁷¹ Simpluris Decl., ¶ 3.

⁷² Parker-Fawley Decl., ¶ 20; Declaration of Kenneth Gunther (“Gunther Decl.”) ¶¶ 3-5.

⁷³ Parker-Fawley Decl., ¶ 20; Gunther Decl., ¶¶ 3-5;

Accordingly, it is appropriate and just for Plaintiff to receive \$7,500.00 as a reasonable Enhancement Award in addition to his Individual Settlement Payment.

X. CONCLUSION

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

Dated: October 3, 2024

LAWYERS for JUSTICE, PC

By: 
Elizabeth Parker-Fawley
Attorneys for Plaintiff