

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff and the Class

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

REX TULLIO, 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.

DACM INC. dba DEL AMO
MOTORSPORTS, a California corporation;
TOO FAST, INC. a California corporation;
CALIFORNIA MOTORCYCLE
ASSESSORIES, INC., a California
corporation; DAMLA, INC., a California
corporation; DAMLA, INC., a California
corporation; and DOES 5 through 100,
inclusive,

Defendants.

Case No.: 30-2020-01147256-CU-OE-CXC

Honorable William D. Cluster
Department CX104

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Rex Tullio); Declaration of
Settlement Administrator (Lindsay Kline);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: October 28, 2022
Time: 9:00 a.m.
Department: CX104

Complaint Filed: July 8, 2020
FAC Filed: October 6, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 28, 2022 at 9:00 a.m., in Department CX104
2 of the above-entitled Court, located at 751 West Santa Ana Boulevard, Santa Ana, California
3 97201, Plaintiff Rex Tullio (“Plaintiff”) will and hereby does move for an order granting final
4 approval of:

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

- 8 • A Net Settlement Amount of approximately **\$1,618,848.59** will be fully distributed to
9 the Class Members who do not submit a timely and valid request to be excluded from
10 the Class Settlement (“Settlement Class Members”);
11 • **No Notices of Objection** were submitted to the settlement administrator, Simpluris,
12 Inc. (“Settlement Administrator”);
13 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$1,066,666.67** to Lawyers for Justice, PC (“Class
15 Counsel”), representing one-third (33.33%) of the Total Settlement Amount, for attorneys’ fees,
16 which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check
17 with a multiplier of 2;

18 3. Payment in the amount of **\$14,984.74** to Class Counsel for reimbursement of
19 litigation costs and expenses;

20 4. Payment in the amount of **\$12,000.00** to the Settlement Administrator, Simpluris,
21 Inc. (“Simpluris”), for Settlement Administration Costs;

22 5. Payment in the amount of **\$7,500.00** to Plaintiff Rex Tullio, as an Enhancement
23 Payment, for his time and effort in representing the Class; 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 **\$480,000.00**, of which seventy-five
26 percent (75%), or \$360,000.00, will be paid to the California Labor and Workforce Development
27 Agency and twenty-five percent (25%), or \$120,000.00, will be distributed to the Class
28 Members.

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

4 This Motion is based upon the following Memorandum of Points and Authorities; the
5 Declarations of Class Counsel (Edwin Aiwanian), Class Representative (Rex Tullio), and the
6 Settlement Administrator (Lindsay Kline of Simpluris) in support thereof; the pleadings and
7 other records on file with the Court in this matter; and such evidence and oral argument as may
8 be presented at the hearing on this Motion.

9 Dated: October 6, 2022

LAWYERS for JUSTICE, PC

10
11 By:


Edwin Aiwanian
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Rex Tullio (“Plaintiff”) seeks final approval of: (1) the Total Settlement Amount of \$3,200,000.00; (2) attorneys’ fees in the amount of \$1,066,666.67, which is one-third (33.33%) of the Total Settlement Amount, and reimbursement of litigation costs and expenses in the combined amount of \$14,984.74 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$12,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Rex Tullio; and (5) allocation of \$480,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Allocation”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees employed by DACM, Inc. dba Del Amo Motorsports at any time from July 8, 2016 through December 15, 2021, including employment with the following entities:

DAMS – Orange County, currently located at 2401 Pullman Street, Santa Ana, California 92705, operated by DACM, Inc. dba Del Amo Motorsports;

DAMS – Redondo Beach, currently located at 2500 Marine Avenue, Redondo Beach, California 90278, operated by Too Fast, Inc.;

DAMS – Long Beach, currently located at 3291 Cherry Avenue, Long Beach, California 90807, operated by California Motorcycle Assessories, Inc.;

DAMS – Chula Vista, currently located at 1890 Auto Park Place, Chula Vista, California 91911, operated by DASB, Inc.; and

DAMS – Los Angeles, currently located at 15725 Lakewood Boulevard, Paramount, California 90723, operated by DAMLA, Inc.

(“Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by Hon. S. James Otero (Ret.), and extensive settlement negotiations. This matter has required

¹ First Amended Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶ 7.e.

711.40 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represents one-third (33.33%) of the Total Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys' fees are also supported under the lodestar cross-check method.²

Plaintiff moves for final approval of the Enhancement Payment in the amount of \$7,500.00, to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf 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 \$12,000.00 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of \$480,000.00 for the PAGA Allocation, of which \$360,000.00 will be paid to the California Labor Workforce and Development Agency ("LWDA") for its portion of the PAGA Allocation ("LWDA Payment"), and \$120,000.00 will be distributed to Class Members ("Employee PAGA Amount") on a *pro rata* basis.

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

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 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 Payment, Settlement Administration Costs, and PAGA Allocation in the amounts as fully disclosed to the Class and as requested herein.

² Applying a modest multiplier of 2, the total enhanced lodestar fees are \$1,067,100.00, and Class Counsel seeks an attorneys' fees award of \$1,066,666.67 (equal to 33.33% of the Total Settlement Amount).

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

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

8 Defendants DACM, Inc. dba Del Amo Motorsports, Too Fast, Inc., California
9 Motorcycle Assessories, Inc., DASB, Inc., and DMLA, Inc. (collectively, "Defendants") operate
10 powersports dealerships in southern California and manage locations in Redondo Beach, Long
11 Beach, Santa Ana, Los Angeles, and Chula Vista. Plaintiff Rex Tullio is a former employee of
12 Defendants.

13 On July 8, 2020, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys
14 General Act, California Labor Code § 2698, *Et Seq.* in the Orange County Superior Court
15 ("Court"), thereby commencing the above-captioned lawsuit ("Action").

16 On August 18, 2020, Defendant DACM, Inc. dba Del Amo Motorsports filed an Answer
17 to Plaintiff's Complaint.

18 On September 23, 2020, Plaintiff propounded multiple sets of discovery including
19 Requests for Production of Documents, (Sets One & Two); Special Interrogatories, (Sets One,
20 Two & Three); and Form Interrogatories, (Set One), on Defendants and noticed the deposition of
21 Defendants' Person Most Knowledgeable regarding organizational structure, wage and hour
22 practices, and affirmative defenses of Defendants, along with accompanying requests for
23 production of documents.

24 On April 8, 2021, the Parties participated in a formal, full-day mediation conducted by
25 Hon. S. James Otero (Ret.), a well-regarded mediator experienced in mediating complex labor
26 and employment matters. With the aid of the mediator, the Parties ultimately reached the
27 Settlement described herein to resolve the Action in its entirety.
28

On October 6, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Operative Complaint”).

Plaintiff’s core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*) (“PAGA”)

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

On January 4, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On February 3, 2022, the Court issued a tentative ruling (“February 3, 2022 Tentative Ruling”) in which it raised multiple points of inquiry with regards to the Motion for Preliminary Approval. On February 4, 2022, a hearing was held on Plaintiff’s Motion for Preliminary Approval, during which the Parties presented oral argument on a few of the issues within the February 3, 2022 Tentative Ruling. On March 22, 2022, Plaintiff filed supplemental papers in support of the Motion for Preliminary Approval. On April 1, 2022, the Court entered an Order Granting Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of the Settlement, the Class Notice, Workweeks Dispute Form (“Dispute Form”), and Request for Exclusion Form (“Exclusion Form”) (together, “Notice Packet”), and the proposed administration procedures and associated deadlines.

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

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants have agreed to pay a Total Settlement Amount of \$3,200,000.00 on a non-reversionary basis.³ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$1,066,666.67 and reimbursement of litigation costs and expenses in the amount of \$14,984.74, to Class Counsel; (2) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Rex Tullio; (3) Settlement Administration Costs in the amount of \$12,000.00 to Simpluris; and (4) PAGA Allocation in the amount of \$480,000.00.⁴ The Net Settlement Amount, which is estimated to be \$1,618,848.59, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendants.⁵

The Settlement Administrator will calculate each Settlement Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"), by dividing the total number of weeks each Settlement Class Member was employed as an hourly-paid or non-exempt employee by Defendant DACM, Inc. dba Del Amo Motorsports during the Class Period at California Store Locations ("Workweeks") to yield the "Final Workweek Value," and multiplying each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.⁶

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³ Settlement Agreement, ¶ 6.nn.

⁴ *Id.*, ¶¶ 7.x, 7.bb, 12, 13, 14, & 15.

⁵ This amount is higher than the amount stated in Paragraph 17 of the accompanying Declaration of Lindsay Kline Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$30,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$14,984.74 for reimbursement of litigation costs and expenses, and the difference of \$15,015.26 will remain part of the Net Settlement Amount.

⁶ Settlement Agreement, ¶¶ 7.v., 7.oo, and 16.b. "Class Period" is defined at the period from July 8, 2016 through December 15, 2021. *See id.*, 7.g. *See id.* at 7.b. for the full definition of "California Store Locations."

The Settlement Administrator will calculate each Class Member's *pro rata* share of the Employee PAGA Amount ("Individual PAGA Payment"), by dividing the Employee PAGA Amount by the Workweeks of all Class Members to yield the "PAGA Workweek Value," and multiplying each Class Member's individual Workweeks by the PAGA Workweek Value to yield his or her Individual PAGA Payment.⁷

Class Members had sixty (60) calendar days from the initial mailing of the Notice Packet to Class Members to dispute the number of Workweeks credited to each of them, opt out of the Class Settlement, and/or object to the Class Settlement ("Response Deadline").⁸ The Response Deadline was July 18, 2022.⁹ The Settlement Administrator has not received any Exclusion Forms or timely letters indicating a request to be excluded from the Class Settlement (both of which are referred to as "Requests for Exclusion") or written objections to the Class Settlement ("Notices of Objection") from Class Members.¹⁰

Individual Settlement Shares will be allocated as ten percent (10%) wages, to be reported on IRS Form W-2; and ninety percent (90%) penalties, interest, and non-wage damages, to be reported on IRS Form 1099 (if applicable).¹¹ Individual Settlement Shares will be paid out to Settlement Class Members subject to reduction for the employee's share of taxes, withholdings, and contribution with respect to the wages portion of the Individual Settlement Shares, and the net payment is referred to as "Individual Settlement Payment".¹² Defendants' employer share of taxes and contributions on the wages portion of Individual Settlement Shares will be paid by Defendants separately in addition to the Total Settlement Amount.¹³ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.¹⁴

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⁷ Settlement Agreement, ¶¶ 7.t & 17.

⁸ *Id.*, ¶¶ 7.jj, 21, 23, and 25.

⁹ Simpluris Decl., ¶ 10, Exh. A & Exh. B.

¹⁰ *Id.*, ¶¶ 11 & 12.

¹¹ Settlement Agreement, ¶ 28.

¹² *Id.*, ¶¶ 7.u & 28.

¹³ *Id.*, ¶ 28.

¹⁴ *Ibid.*

Each Individual Settlement Payment and Individual PAGA Payment will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.¹⁵ All funds associated with such cancelled checks will be distributed by the Settlement Administrator to the California State Controller's Office Unclaimed Property Division, in the name of the Class Member and/or Settlement Class Member and in the amount of his or her respective Individual Settlement Payment and/or Individual PAGA Payment.¹⁶

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's April 1, 2022 Preliminary Approval Order.

On April 5, 2022, Simpluris received the Court-approved Notice Packet.¹⁷

On April 25, 2022, Simpluris received a mailing list from Defendants' counsel ("Class Data and List") containing Class Members' full names, most recent mailing addresses, last known telephone numbers, name(s) of California Store Location(s) at which the Class Member worked during the Class Period, Social Security numbers, and Workweeks.¹⁸ The Class Data List contained information for eight hundred and seventy-seven (877) individuals identified as Class Members.¹⁹ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data and List with any updated addresses located.²⁰

On May 19, 2022, Simpluris mailed the Notice Packet via First Class U.S. mail in English and Spanish to eight hundred and seventy-seven (877) individuals identified as Class Members in the Class Data and List.²¹

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¹⁵ Settlement Agreement, ¶ 22.

¹⁶ Ibid.

¹⁷ Simpluris Decl., ¶ 5.

¹⁸ *Id.*, ¶ 6.

¹⁹ Ibid.

²⁰ *Id.*, ¶ 7.

²¹ *Id.*, ¶ 8.

As of the date of this Motion, a total of fifty-eight (58) Notice Packets were returned to Simpluris.²² Of these, zero (0) were returned with a forwarding address.²³ Simpluris performed a skip-trace search on all of these addresses, located forty-eight (48) updated addresses, and promptly mailed a Notice Packet to those updated addresses.²⁴ Simpluris re-mailed Notice Packets to four (4) Class Members who called in to request an address update or confirm their address was correct.²⁵ As of this date, there are five (5) Notice Packets that remain undeliverable.²⁶

As of the date of this Motion, Simpluris received one (1) dispute regarding Workweeks from a Class Member.²⁷ On July 7, 2022, Simpluris received a dispute from a Class Member regarding their Workweeks, separate from the above-mentioned dispute.²⁸ Simpluris promptly sent the response to Defendants' counsel.²⁹ Upon review by Defendants' counsel, it was determined that the Class Member was inadvertently included in the Class Data and List.³⁰ On August 2, 2022, Simpluris sent a letter to this individual informing them they were not included as a Class Member.³¹

As of the date of this Motion, the Settlement Administrator has not received any Notices of Objection or Requests for Exclusion from Class Members.³²

To date, there are eight hundred seventy-six (876) Class Members who have not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members, representing one hundred percent (100%) of the Class.³³ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$1,618,848.59 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.³⁴ The highest

²² Simpluris Decl., ¶ 9.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Id., ¶ 13.

²⁸ Id., ¶ 14.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Id., ¶¶ 11 & 12.

³³ Id., ¶ 15.

³⁴ Id., ¶ 17; see also, n.5, *supra*.

Individual Settlement Share is currently estimated to be \$9,280.60, the average Individual Settlement Share is currently estimated to be \$1,830.86, and the lowest Individual Settlement Share is currently estimated to be \$4.58.³⁵ These amounts are subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of each Individual Settlement Share.³⁶ The highest Individual PAGA Payment is currently estimated to be \$694.38, the average Individual PAGA Payment is currently estimated to be \$136.99, and the lowest Individual PAGA Payment is currently estimated to be \$0.34.³⁷

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

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

the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk, supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2)

³⁵ Simpluris Decl., ¶ 18. The actual average and highest Individual Settlement Shares 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 \$30,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$15,015.26, will be part of the Net Settlement Amount). See n.5, *supra*.

³⁶ Settlement Agreement, ¶ 28.

³⁷ Simpluris Decl., ¶ 19.

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, supra*, 162 Cal.App.4th at 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the Action since it was commenced on July 8, 2020. Prior to reaching the Settlement, counsel for the parties investigated the veracity, strength, and scope of the claims, and were preparing for class certification, representative adjudication, and trial.³⁸ The parties conducted significant formal and informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation.³⁹ Class Counsel propounded multiple sets of formal written discovery requests in various forms (specifically, Requests for Production of Documents (Sets One & Two); Special Interrogatories (Sets One, Two, & Three); and Form Interrogatories (Set One)), and prepared and served numerous notices of deposition of Person(s) Most Knowledgeable along with requests for production of documents.⁴⁰ Class Counsel also interviewed and obtained information from Plaintiff and Class Members, including and not limited to the names of potential witnesses, and

³⁸ Declaration of Edwin Aiwasian (“Aiwasian Decl.”), ¶ 6.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

reviewed and analyzed thousands of pages of documents and data obtained from Plaintiff, Defendants, and other sources.⁴¹ The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiff and other Class Members' employment records, a detailed sampling of Class Members' time and pay data, Defendants' Employee Handbook, company policy acknowledgements, agreements, and forms (including, but not limited to, Acknowledgment of Receipt of Employee Handbook, California Automotive Technician Tool Acknowledgment & Agreement, Mutual Agreement to Arbitrate Disputes, and Uniform Release Form), and Defendant's operations and employment practices, policies, and procedures documents (including, but not limited to, Time Records policy, Rest and Meal Periods (Non-Exempt Employees) policy, Overtime (Non-Exempt Employees) policy, Cell Phone Reimbursement policy, and Reimbursement of Business Expenses policy), among other information and documents.⁴² Class Counsel researched applicable law, developed violation, damages, and penalties valuation models in preparation for mediation, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, Defendants' contemplated motion for summary judgment, discovery, and production of various documents and data in the course of litigation and prior to mediation.⁴³

After conducting significant formal and informal discovery and investigation into the facts of the case, the parties participated in a formal, full-day mediation conducted by Hon. S. James Otero (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters.⁴⁴ Prior to and during mediation and settlement discussions, the parties exchanged information and data, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the parties of proceeding with Defendants' contemplated motion for summary judgment, class certification, representative adjudication, and trial, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims, arbitration agreements, and wage-and-hour law and

⁴¹ Aiwazian Decl., ¶ 6.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ *Id.*, ¶ 8.

1 enforcement, the evidence produced and analyzed, and the possibility of appeals, among other
2 things.⁴⁵ During all settlement discussions, the parties conducted their negotiations at arm's
3 length in an adversarial position.⁴⁶ Arriving at a settlement that was acceptable to the parties was
4 not easy.⁴⁷ Defendants and their counsel felt very strongly about Defendants' ability to prevail
5 on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel
6 believed that class certification would be obtained and Plaintiff would prevail at trial.⁴⁸ After
7 conducting significant formal and informal discovery and investigations, extensive settlement
8 negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matter was
9 well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as
10 the costs and risks to the parties that would attend further litigation.⁴⁹

11 The Settlement takes into account the strengths and weaknesses of each side's position
12 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.
13 Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.⁵⁰
14 Class Counsel also reviewed and analyzed thousands of pages of documents obtained from
15 Plaintiff, Defendants, and through other sources, and performed significant research into the law
16 concerning certification, off-the-clock theory, meal and rest periods, representative PAGA
17 claims, wage-and-hour law and enforcement, Plaintiff's claims, and Defendants' defenses, as
18 well as facts discovered.⁵¹ The Settlement was based on this large volume of facts, evidence,
19 and investigation.⁵² Additionally, Class Counsel has extensive experience in handling complex
20 wage-and-hour matters, including significant experience in employment class action litigation.⁵³

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24 ⁴⁵ Aiwazian Decl., ¶ 8

25 ⁴⁶ Ibid.

26 ⁴⁷ Ibid.

27 ⁴⁸ Ibid.

28 ⁴⁹ Ibid.

⁵⁰ *Id.*, ¶ 6.

⁵¹ Ibid.

⁵² *Id.*, ¶¶ 6 & 8.

⁵³ *Id.*, ¶¶ 15-18.

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

3 The Settlement, which provides for a Total Settlement Amount of \$3,200,000.00,
4 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
5 litigating class and representative claims through certification proceedings, trial, and/or
6 appeals.⁵⁴ The Settlement was calculated using information and data uncovered through
7 extensive case investigation, formal and informal discovery, and the exchange of information in
8 the context of mediation.⁵⁵ Had the Action not settled, Defendants would have vigorously
9 challenged class certification, manageability of representative adjudication, and liability.
10 Defendants contended that individualized questions of fact predominate over any common
11 issues, and these issues would pose challenges to certification and representative adjudication.
12 Defendants would have likely argued again at trial, if any, that Plaintiff's claims were not
13 appropriate for class-wide and/or representative adjudication. On the other hand, Defendants
14 also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims
15 on a class-wide or representative basis. Additionally, preparation for trial would have been
16 expensive for all parties.

17 It is preferable to reach an early resolution of a dispute because such resolutions save
18 time and money that would otherwise go to litigation. If this matter had settled after further
19 litigation, the settlement amount would have taken into account the additional costs incurred, and
20 there might have been less money available for Class Members after all was said and done. This
21 is not just an abstract contention. The risks and expenses of further litigation outweighed any
22 benefit that might have been gained otherwise. These risks of further litigation include a
23 determination that the claims were unsuitable for class treatment and/or representative
24 adjudication, class de-certification after certification of a class, allowing a jury to decide the
25 claims asserted in the case, and the real possibility of no recovery after years of litigation.
26 Additionally, the parties were moving into the phase of the litigation where they would have to
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28 ⁵⁴ Aiwazian Decl., ¶¶ 8 & 21.

⁵⁵ *Id.*, ¶¶ 5-8.

1 conduct a significant amount of additional discovery, including and not limited to, depositions of
2 Defendants' Person Most Knowledgeable designees, expert witnesses, and percipient witnesses,
3 such as managers, supervisors, and other current and former employees throughout the State of
4 California. Additional discovery would have certainly arisen, which would have cost the parties
5 additional time and money. In contrast, the Settlement provides real and significant benefits for
6 the Class here and now, while avoiding the further expenses, risks, and delay of prolonged
7 litigation with only the possibility of recovery.

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

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

15 The Settlement, which provides for a Total Settlement Amount of \$3,200,000.00,
16 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
17 using information and data uncovered through extensive case investigation, formal and informal
18 discovery, and the exchange of information in the context of mediation. The Settlement takes
19 into account the potential risks and rewards inherent in any case and, in particular, in this matter.
20 Moreover, considering all of the facts in the case, the Total Settlement Amount represents a
21 considerable recovery.

22 Even after deducting attorneys' fees in the amount of \$1,066,666.67, litigation costs and
23 expenses in the amount of \$14,984.74, Enhancement Payment of \$7,500.00, Settlement
24 Administration Costs in the amount of \$12,000.00, and PAGA Allocation in the amount of
25 \$480,000.00 from the Total Settlement Amount of \$3,200,000.00, the Net Settlement Amount is
26 currently estimated to be \$1,618,848.59.⁵⁶ Under the Settlement Agreement, the Total
27 Settlement Amount will be fully paid out without any reversion to Defendants, in accordance

28 ⁵⁶ Simpluris Decl., ¶ 17; see n.5, *supra*.

with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her. To date, there are 876 Settlement Class Members, representing 100% of the Class Members.⁵⁷ The highest Individual Settlement Share is currently estimated to be \$9,280.60, the average Individual Settlement Share is currently estimated to be \$1,830.86, and the lowest Individual Settlement Share is currently estimated to be \$4.58.⁵⁸ The highest Individual PAGA Payment is currently estimated to be \$694.38, the average Individual PAGA Payment is currently estimated to be \$136.99, and the lowest Individual PAGA Payment is currently estimated to be \$0.34.⁵⁹ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁶⁰ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

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⁵⁷ Simpluris Decl., ¶ 15.

⁵⁸ *Id.*, ¶ 18. see also, n.35, *supra*.

⁵⁹ *Id.*, ¶ 19.

⁶⁰ Aiwasian Decl., ¶ 21.

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

2 Class Counsel has extensive experience in employment class action law and complex
3 wage-and-hour litigation.⁶¹ Lawyers for Justice, PC has been appointed class counsel in
4 numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in
5 California.⁶² Both parties' counsel were capable of assessing the strengths and weaknesses of
6 the Class Members' claims against Defendants and the benefits of the Settlement under the
7 circumstances of the case and in the context of a private, consensual settlement agreement.

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

9 The Settlement has been well received by the Class – *not a single Class Member*
10 *objected to or opted out of the Class Settlement.*⁶³ Specifically, no objections have been made
11 as to the Total Settlement Amount or requested Attorneys' Fees and Costs, Enhancement
12 Payment, Settlement Administration Costs, or PAGA Allocation. California courts have
13 consistently found that a small number of objectors indicates the class' support for a settlement
14 and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval
15 granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval
16 granted despite 9 objectors).

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

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

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

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

27 ⁶¹ Aiwasian Decl., ¶¶ 15-18.

28 ⁶² Ibid.

⁶³ Simpluris Decl., ¶¶ 11 & 12.

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

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

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

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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 "verage[ing] around one-third of the recovery." *Chavez, supra*, 162 Cal.App.4th at 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulity* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁶⁴ 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.

⁶⁴ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

1 The propriety of calculating and awarding attorney” fees as a percentage of a monetary
2 settlement that has, by litigation, been preserved or recovered for the benefit of others, has been
3 confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The
4 California Supreme Court has taken the position that “[t]rial courts have discretion to conduct a
5 lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar
6 cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]”
7 and “[t]he percentage [...] method survives in California.” *Id.* (internal quotes omitted).

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

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

23 Under the terms of the Settlement Agreement, Defendants will pay a Total Settlement
24 Amount of \$3,200,000.00 on a non-reversionary basis. The requested attorneys’ fees are one-
25 third (33.33%) of the total value of the monetary settlement. In light of Class Counsel’s
26 successful prosecution and resolution of the case, the requested attorneys’ fees are appropriate
27 and reasonable.

28 ///

Compensating class counsel in class litigation on a percentage basis makes good sense because: (1) it is consistent with the private marketplace where contingent fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the case; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early, yet reasonable, settlement. The requested attorneys' fees in this matter 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. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of at least one-third (33.33%) of the recovery.⁶⁵

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”).

⁶⁵ Aiwazian Decl., ¶ 9.

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

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

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

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

22 Each and every one of these factors favors the attorneys' fees sought here; however,
23 some of the most relevant factors to this Court's fee determination will be addressed herein. The
24 award of attorneys' fees in the amount of \$1,066,666.67 (which is one-third of the Total
25 Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case,
26 the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill
27 and determination required, the results that Class Counsel has achieved, and the value of the
28 settlement that Class Counsel has obtained for the Class Members.

1 **1. *Time & Labor.***

2 Lawyers *for* Justice, PC used its experience and skills, and dedicated the full extent of
3 resources, to litigate and bring this matter to a successful conclusion on behalf of the Class.
4 Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive
5 experience in the handling of class actions and complex litigation matters.⁶⁶

6 As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively
7 participated in litigation of this case.⁶⁷ Prior to commencing the lawsuit, Class Counsel had
8 conducted a significant amount of investigation into the factual and legal issues, Defendant's
9 business, and their operations and employment policies, practices, and procedures.⁶⁸ During the
10 litigation of the Action, Class Counsel interviewed Plaintiff and other Class Members;
11 propounded formal written discovery requests; reviewed and analyzed thousands of pages of
12 documents and data produced by Defendants and obtained through other sources; and prepared
13 damages/valuation calculations.⁶⁹ Class Counsel also met and conferred with Defendants'
14 counsel over the issues relating to pleadings, discovery, and the production of documents and
15 data, among other things; engaged in extensive settlement negotiations with Defendants'
16 counsel; prepared for and attended court proceedings, and prepared for and engaged in mediation
17 and settlement negotiations.⁷⁰

18 Class Counsel has devoted a considerable number of hours to this matter over the course
19 of the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
20 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Lawyers *for*
21 Justice, PC has spent performing tasks on behalf of Plaintiff and the Class.⁷¹ The Task and Time
22 Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without
23 having to set forth each and every task in the body of this Motion. The Court is respectfully
24 referred to the chart, which sets forth the history of the work performed by Lawyers *for* Justice,

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26 ⁶⁶ Aiwarzian Decl., ¶¶ 15-18.

27 ⁶⁷ *Id.*, Exh. A.

28 ⁶⁸ *Id.*, ¶ 6 & Exh. A.

⁶⁹ *Id.*, ¶ 6.

⁷⁰ *Ibid.*

⁷¹ *Id.*, Exh. A.

1 PC, commencing with the pre-filing analysis and research, and continuing up to settlement and
2 final approval. Attorneys at Lawyers *for* Justice PC have spent **711.40** hours performing tasks to
3 obtain a significant recovery on behalf in the case.⁷² These hours were required to bring this
4 matter to its successful conclusion. In light of the value of time expended and the carrying of
5 costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and
6 reasonable.

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

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

13 Class Counsel undertook significant investigation, analysis, and research prior to filing
14 this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the
15 matter for class certification and representative adjudication and had every intention of taking the
16 case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide
17 settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the
18 Declaration of Edwin Aiwarzian, Class Counsel used its extensive experience in the handling of
19 class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with
20 maximum efficiency.⁷³

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

22 The Settlement represents an excellent resolution of the Action, given the risks inherent
23 in litigating the case through certification proceedings, trial, and/or appeals. Had the case not
24 settled, Defendants would have vigorously challenged certifiability, manageability of
25 representative adjudication, and liability. Defendants, however, faced risks if the Court certified
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28 ⁷² Aiwarzian Decl., ¶ 11.

⁷³ *Id.*, ¶¶ 15-18.

a class and allowed a jury to decide the claims. Additionally, preparing the case 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 while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

As a result of this litigation and extensive settlement negotiations, Defendants agreed to pay a Total Settlement Amount of \$3,200,000.00 to settle the matter. After deducting the attorneys' fees (\$1,066,666.67), litigation costs and expenses (\$14,984.74), Enhancement Payment (\$7,500.00), Settlement Administration Costs (\$12,000.00), and PAGA Allocation (\$480,000.00) from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$1,618,848.59.⁷⁴ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement.⁷⁵ The highest Individual Settlement Share is currently estimated to be \$9,280.60, the average Individual Settlement Share is currently estimated to be \$1,830.86, and the lowest Individual Settlement Share is currently estimated to be \$4.58.⁷⁶ The highest Individual PAGA Payment is currently estimated to be \$694.38, the average Individual PAGA Payment is currently estimated to be \$136.99, and the lowest Individual PAGA Payment is currently estimated to be \$0.34.⁷⁷ The Settlement offers significant monetary relief to the Settlement Class Members.

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⁷⁴ Simpluris Decl., ¶ 17; see n.5, *supra*.

⁷⁵ *Id.*, ¶ 17.

⁷⁶ *Id.*, ¶ 18. see also, n.35, *supra*.

⁷⁷ *Id.*, ¶ 19.

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

2 Plaintiff entered into a contingency fee agreement with Class Counsel, and the
3 representation of the Class provided by Class Counsel has been wholly contingent. Class
4 Counsel took on the case without knowing whether any recovery would be obtained. Class
5 Counsel has invested **711.40** hours of time to obtain relief on behalf of Plaintiff and the Class.⁷⁸
6 Class Counsel has also incurred litigation costs and expenses in the amount of \$14,984.74.⁷⁹

7 Class Counsel has borne all of the risks and costs of litigation and will not receive any
8 compensation until recovery is obtained.⁸⁰ Class Counsel is well-experienced in wage-and-hour
9 class action and complex litigation and used that experience to obtain a great result.⁸¹ The skill
10 and determination that Class Counsel has shown, along with the results obtained, justify the
11 requested Attorney'' Fees and Costs. Considering the amounts requested, the work performed,
12 and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

15 A contingent fee must be higher than a fee for the same legal services paid as they
16 are performed. The contingent fee compensates the lawyer not only for the legal
17 services he renders but for the loan of those services. A lawyer who both bears the
18 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.

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

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27 ⁷⁸ Aiwazian Decl., ¶ 11, Exh. A.

⁷⁹ See Part VII, *infra*.

⁸⁰ Aiwazian Decl., ¶ 19.

⁸¹ See *id.*, ¶¶ 15-18.

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

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
4 from the Class Members—no Class Members objected to or opted out of the Settlement.⁸²

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

10 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
11 in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have
12 resulted in a settlement that provides for a Total Settlement Amount of \$3,200,000.00.⁸³ The
13 Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement
14 Agreement. The highest Individual Settlement Share is currently estimated to be \$9,280.60, the
15 average Individual Settlement Share is currently estimated to be \$1,830.86, and the lowest
16 Individual Settlement Share is currently estimated to be \$4.58.⁸⁴ The highest Individual PAGA
17 Payment is currently estimated to be \$694.38, the average Individual PAGA Payment is
18 currently estimated to be \$136.99, and the lowest Individual PAGA Payment is currently
19 estimated to be \$0.34.⁸⁵

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

21 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
22 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
23 has years of complex and class action litigation experience, has recovered millions of dollars on
24 behalf of thousands of individuals in California, and has successfully handled numerous
25 significant wage-and-hour class action and complex cases.⁸⁶

26 ⁸² Simpluris Decl., ¶¶ 11 & 12.

27 ⁸³ Aiwasian Decl., ¶¶ 5-8.

28 ⁸⁴ *Id.*, ¶ 18. see also, n.35, *supra*.

⁸⁵ *Id.*, ¶ 19.

⁸⁶ *Id.*, ¶¶ 15-18.

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

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.^{5th} at 505 (explaining that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” of the settlement amount and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.^{5th} at 505.

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

1. *The Number of Hours Spent on the Litigation Was Reasonable.*

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

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendants made it clear very early on that they disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendants raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendants but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and

difficult battles would have followed as the case moved toward certification and trial, including taking and defending depositions of Defendant's Person Most Knowledgeable designees, percipient witnesses, and experts, propounding 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 mediation.

Class Counsel had to bring together a large volume of data and documents that were produced by Defendants and obtained from Plaintiff and Class Members and through other sources. Class Counsel conducted extensive review and analysis of these documents and data to strategize the Action and to prepare for and attend mediation and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁸⁷ The chart demonstrates that Lawyers for Justice, PC has spent a total of 711.40 hours litigating the case and finalizing the Settlement.⁸⁸ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiff and the Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this action. See *Ketchum*, *supra*, 24 Cal.4th at 1132-33. In

⁸⁷ See Aiwazian Decl., Exh. A.

⁸⁸ Aiwazian Decl., ¶ 11.

1 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
2 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
3 normal hourly rates for winning contingency cases." See *id.*

4 Class Counsel has been actively involved in this case, prior to its commencement and all
5 the way up to the present, and Class Counsel's dedication to providing representation in this
6 matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its
7 efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful
8 in reaching a settlement of \$3,200,000.00.

9 As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and
10 experience of Class Counsel support a reasonable blended hourly rate of compensation of at least
11 \$750 per hour for services provided by Lawyers for Justice, PC.⁸⁹ Class Counsel has been
12 awarded attorneys' fees, compensating the firm at the blended rate of at least \$750 for legal
13 services performed, by courts of this state.⁹⁰ While the circumstances of every case are unique,
14 the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of
15 the Class Members justify the requested attorneys' fees.

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19 ⁸⁹ Aiwarzian Decl., ¶ 12.

20 ⁹⁰ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment,*
21 *Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of
22 attorneys' fees involved an hourly rate of 936.47; final approval of the class and representative action settlement in
23 *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on
24 April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class
25 action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court
26 Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees
27 involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge,*
28 *et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on
June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and
representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No.
SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96;
final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation*
(Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of
attorneys' fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in
Maryjo Ungerbuhler Anderson v. Boyett Petroleum (Stanislaus County Superior Court Case No. 2020582) was
granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of \$780.77; and final approval of
the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento
County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees
involved an hourly rate of \$845.64. Aiwarzian Decl., ¶ 12.

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

3 Even when courts have opted to award fees in settlement fund cases based on time
4 reasonably expended on the action, courts have generally awarded these fees based on the actual
5 time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen*
6 *Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this case.

7 Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved,
8 the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051;
9 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee
10 enhancers [...] is for contingency risk.”). Such an enhancement “mirrors the established practice
11 in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying
12 them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290
13 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the
14 financial incentives for enforcing important rights “into line with incentives [attorneys] have to
15 undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal. 4th at
16 1132.

17 In determining whether or not to enhance the lodestar, California courts take into account
18 multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See,
19 *Cates* at 822-823. Multiple factors warrant enhancement in this case, including the following:

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

27 *Ketchum* at 1134.

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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. Defendants raised defenses and denied liability, and the case involved gathering and analyzing documents and data not only from Defendants but also from the Class Members. 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 the Class Members has precluded other employment.

Most importantly, 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 their 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 were successful in achieving substantial results in the form of

a settlement of \$3,200,000.00. Also, Class Counsel's efforts throughout the case demonstrate dedication to the interests of the Class Members.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time summarized above and detailed in the task and time chart, which is attached as EXHIBIT A to the Declarations of Edwin Aiwasian.⁹¹ As the chart indicates, attorneys at Lawyers for Justice, PC have collectively worked 711.40 hours in the pursuit of this matter. The attorney task and time chart present the entire picture. Applying a reasonable rate of \$750 per hour to 711.40 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$533,550.00 on Lawyers for Justice, PC's services, and applying a modest multiplier of 2, the total enhanced lodestar fees are \$1,067,100.00.⁹² Class Counsel seek an attorneys' fee award of \$1,066,666.67 (equal to 33.33% of the Total Settlement Amount based on the Settlement Agreement). 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**).

Therefore, application of a modest multiplier of 2 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$1,066,666.67 to Class Counsel.

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⁹¹ Aiwasian Decl., Exh. A.

⁹² *Id.*, ¶ 11; *see n.5, supra*.

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 \$30,000.00. As set forth in the Declaration of Edwin Aiwarzian, Class Counsel has incurred a total of \$14,984.74 in litigation costs and expenses.⁹³ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁹⁴ The cost savings of \$15,015.26 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁹⁵ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$14,984.74 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 \$12,000.00.⁹⁶ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, translating, printing, and mailing the Notice Packet to the Class Members; performing skip-trace searches on Notice Packets returned as undeliverable; re-mailing the Notice Packets to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Notices of Objection, and disputes regarding Workweeks (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and Individual PAGA Payments and preparing the associated tax forms; and transmitting payments, among other things.⁹⁷

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$12,000.00.

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⁹³ Aiwarzian Decl., ¶ 19.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Simpluris Decl., ¶ 21.

⁹⁷ *Id.*, ¶ 3.

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

The Settlement provides for an Enhancement Payment in the amount of \$7,500.00 to Plaintiff Rex Tullio to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Enhancement Payment is both common and reasonable and should be awarded.

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representatives 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 Payment is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and information, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁹⁸ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information to support pursuit of class and PAGA claims.⁹⁹ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendants, and gathering and reviewing documents.¹⁰⁰ These services merit the requested Enhancement Payment to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members to date.¹⁰¹

The requested Enhancement Payment was fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Rex Tullio to receive

⁹⁸ Aiwasian Decl., ¶ 20; Declaration of Rex Tullio ("Tullio Decl."), ¶¶ 3-4.

⁹⁹ Aiwasian Decl., ¶ 20; Tullio Decl., ¶¶ 3-4.

¹⁰⁰ Aiwasian Decl., ¶ 20; Tullio Decl., ¶¶ 2-4.

¹⁰¹ Tullio Decl., ¶ 8.

\$7,500.00 as a reasonable Enhancement Payment for his services in the Action, in addition to his Individual Settlement Payment and Individual PAGA Payment.

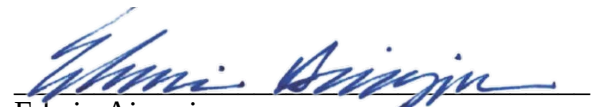
X. CONCLUSION

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

Dated: October 6, 2022

LAWYERS for JUSTICE, PC

By:


Edwin Aiwanian
Attorneys for Plaintiff and the Class