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

SPENCER SUMISAKI, DAVIAN
MONTGOMERY, individually, and on behalf
of other members of the general public
similarly situated; NADIA MORALES,
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; NINA WILLIAMS, individually, on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act,

Plaintiffs,

v.

BERKELEY BOWL PRODUCE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: RG19014520

Honorable Evelio Grillo
Department 21

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declarations of Class
Representatives (Davian Montgomery, Nadia
Morales, and Nina Williams); Declaration of
Settlement Administrator (Evelin Reyes);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Reservation No. 876901747574
Date: June 15, 2022
Time: 10:00 a.m.
Department: 21

Complaint Filed: April 10, 2019
FAC Filed: July 17, 2019
SAC Filed: November 20, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 15, 2022 at 10:00 a.m., in Department 21 of the
2 above-entitled Court, located at 1221 Oak Street, Oakland, California 94612, Plaintiffs Davian
3 Montgomery, Nadia Morales, and Nina Williams (“Plaintiffs”) will and hereby do move for an
4 order granting final approval of:

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

- 8 • A Net Distribution Fund of approximately **\$1,276,528.12** will be distributed to the
9 Class Members who did not timely opt out of the Settlement (“Settlement Class
10 Members”);
- 11 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
12 (“Settlement Administrator”);
- 13 • **One (1) Request for Exclusion** was submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$1,140,000.00** to Lawyers for Justice, PC (“Class
15 Counsel”), representing thirty-eight percent (38%) of the Maximum Settlement Amount, for
16 attorneys’ fees, which is reasonable and justified on a percentage-basis;

17 3. Payment in the amount of **\$98,471.88** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$25,000.00** to the Settlement Administrator, Simpluris,
20 Inc. (“Simpluris”), for Settlement Administration Costs;

21 5. Payments in the amount of **\$10,000.00** each to Plaintiffs Davian Montgomery,
22 Nadia Morales, and Nina Williams, as Service Payments, for their time and effort in representing
23 the Class, State of California, and PAGA Members; 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 **\$430,000.00**, of which seventy-five
26 percent (75%), or \$322,500.00, will be paid to the California Labor and Workforce Development
27 Agency (“LWDA Payment”) and twenty-five percent (25%), or \$107,500.00, to PAGA
28

Members on a *pro rata* basis (“Individual PAGA Payment(s)” refer to PAGA Members’ *pro rata* share of 25% of the PAGA Allocation).

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

This motion is based upon the following Memorandum of Points and Authorities; the Declaration of Class Counsel (Edwin Aiwarzian), Class Representatives (Davian Montgomery, Nadia Morales, and Nina Williams), and Settlement Administrator (Evelin Reyes of Simpluris) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: May 23, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams (“Plaintiffs”) seek final approval of: (1) the Maximum Settlement Amount of \$3,000,000.00; (2) attorneys’ fees in the amount of \$1,140,000.00, which is thirty-eight percent (38%) of the Maximum Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$98,471.88 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$25,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Service Payments in the amount of \$10,000.00 each to Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams, for a combined amount of \$30,000.00; and (5) allocation of \$430,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Allocation”).

Plaintiffs seek relief on behalf of the following Class:

All current and former non-exempt individuals employed by Defendant within the State of California at any time during the period from April 10, 2015 through February 17, 2022 (“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 Jeffrey A. Ross, and extensive settlement negotiations. This matter has required 1,756.50 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-eight percent (38%) of the Maximum Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.

Plaintiffs move for final approval of the Service Payments in the amount of \$10,000.00 to each of them, to compensate Plaintiffs for the time and effort that they expended spearheading this lawsuit on behalf of the Class, PAGA Members, and the State of California. Plaintiffs also

¹ Class Action and PAGA Settlement Agreement and Stipulation (“Settlement Agreement”), Exh. 1, § 2.a.

1 move for final approval of the payment to the Settlement Administrator in the amount of
2 \$25,000.00 for Settlement Administration Costs. Plaintiffs also move for final approval of the
3 allocation of \$430,000.00 for the PAGA Allocation, of which \$322,500.00 will be paid to the
4 California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA
5 Allocation (“LWDA Payment”), and \$107,500.00 will be paid to all Class Members who are
6 employed or have been employed by Defendant in the State of California during the period from
7 August 27, 2019 through February 17, 2022 (“PAGA Members”) on a *pro rata* basis
8 (“Individual PAGA Payment(s)” refer to PAGA Members’ *pro rata* share of 25% of the PAGA
9 Allocation.)

10 The requests for Attorneys’ Fees and Costs, Service Payments, Settlement Administration
11 Costs, and allocation for the PAGA Allocation were fully disclosed in the Notice of Class Action
12 and PAGA Settlement (“Class Notice”) that was mailed to the Class Members and PAGA
13 Members. Most importantly, as of the date of this Motion, *not a single Class Member has*
14 *objected to any aspect of the Settlement, including the requested Attorney” Fees and Costs,*
15 *Service Payments, Settlement Administration Costs, or allocation for PAGA Allocation.*

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

22 In order to efficiently present the Court with adequate information to determine whether
23 to grant final approval of the Settlement and award Attorneys’ Fees and Costs, Service
24 Payments, Settlement Administration Costs, and PAGA Allocation, Plaintiffs also move for an
25 order permitting the filing of this single consolidated memorandum, although it exceeds the page
26 limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate
27 motions.

28 ///

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is an independent grocery store selling primarily organic and natural products in Berkeley, California. Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams are former employees of Defendant.

On April 10, 2019, former plaintiff Spencer Sumisaki filed a Class Action Complaint for Damages in the Alameda County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On July 17, 2019, former plaintiff Spencer Sumisaki filed a First Amended Class Action Complaint for Damages (“First Amended Complaint”) in the Action, adding Davian Montgomery as a named plaintiff (“Plaintiff Montgomery”). On September 9, 2019, Defendant filed an Answer to Plaintiffs’ First Amended Complaint, and thereafter, on October 3, 2019, Defendant filed a First Amended Answer to Plaintiffs’ First Amended Complaint in the Action.

On September 5, 2019, Plaintiff Montgomery and former plaintiff Spencer Sumisaki served multiple sets of discovery requests on Defendant, including Requests for Production of Documents (Set One); Special Interrogatories (Sets One and Two), and Form Interrogatories-General (Set One), and noticed multiple depositions of Defendant’s person(s) most knowledgeable regarding organizational structure, job duties, and wage and hour practices of Defendant. On December 10, 2019, Plaintiff Montgomery and former plaintiff Spencer Sumisaki served additional sets of written discovery requests on Defendant, Requests for Production of Documents (Set Two) and Special Interrogatories (Set Three), and served notices of deposition(s) of Defendant’s person(s) most knowledgeable regarding organizational structure, job duties, wage and hour practices, and affirmative defenses of Defendant, along with accompanying requests for production of documents. On April 23, 2020, Plaintiff Montgomery and former plaintiff Spencer Sumisaki served a notice of videotape deposition of non-party witness, Chemseddine Chekill. On June 19, 2020, Plaintiff Montgomery and former plaintiff Spencer Sumisaki served notices of deposition of Defendant’s person(s) most knowledgeable regarding organizational structure, job duties, wage and hour practices, and affirmative defenses of Defendant, along with accompanying requests for production of documents. On or about

1 December 3, 2019, January 13, 2020, February 21, 2020, and April 14, 2020 Defendant provided
2 responses and objections to Plaintiff Montgomery and former plaintiff Spencer Sumisaki's
3 written discovery requests, and on October 20, 2019 and July 22, 2020, Defendant served
4 objections to the notices of deposition.

5 On April 6, 2020, Defendant propounded Special Interrogatories (Set One), Requests for
6 Production of Documents (Set One), Form Interrogatories-General (Set One), and Form
7 Interrogatories-Employment Law (Set One) on Plaintiff Montgomery and former plaintiff
8 Spencer Sumisaki, and on June 5, 2020, Plaintiff Montgomery and former plaintiff Spencer
9 Sumisaki provided their responses to the discovery requests. On July 9, 2020, Defendant
10 propounded a Demand for Inspection to Plaintiff Montgomery and former plaintiff Spencer
11 Sumisaki, and on August 10, 2020, Plaintiff Montgomery and former plaintiff Spencer Sumisaki
12 provided their responses to the discovery requests. Furthermore, Class Counsel prepared for and
13 took the deposition for Defendant's Human Resources Director on July 30, 2020. Parties also
14 engaged in a *Belaire-West* privacy notice and opt-out process with a neutral third-party,
15 Simpluris, Inc. (the same third-party proposed as the Settlement Administrator), and after the
16 process was completed, the class contact information was produced to Plaintiffs' Counsel in
17 April 2020.

18 On August 27, 2020, Plaintiff Montgomery and former plaintiff Spencer Sumisaki filed a
19 Request for Dismissal of Plaintiff Spencer Sumisaki's Individual Claims in this Action Without
20 Prejudice. On September 15, 2020, the Court issued an Order, granting the dismissal of former
21 plaintiff Spencer Sumisaki's individual claims without prejudice.

22 On September 8, 2020, Plaintiff Montgomery provided supplemental responses to
23 Defendant's Special Interrogatories (Set One), Requests for Production of Documents (Set One),
24 Form Interrogatories-General (Set One), and Form Interrogatories-Employment Law (Set One).
25 On September 10, 2020, Defendant propounded Special Interrogatories (Set Two) and Requests
26 for Production of Documents (Set Two) on Plaintiff Montgomery, and on October 9, 2020,
27 Plaintiff Montgomery provided his responses to the discovery requests. On October 23, 2020,
28

1 Plaintiff Montgomery provided further supplemental responses to Defendant's Requests for
2 Production of Documents (Set One).

3 On November 20, 2020, Plaintiff Montgomery filed a Second Amended Class Action
4 Complaint for Damages & Enforcement Under the Private Attorneys General Act, California
5 Labor Code § 2698, *Et Seq.* in the Action, adding a cause of action under the Private Attorneys
6 General Act ("PAGA") and adding Nadia Morales and Nina Williams as named plaintiffs
7 ("Operative Complaint"). On December 22, 2020, Defendant filed an Answer to Plaintiffs'
8 Second Amended Complaint.

9 Plaintiffs' core allegation is that Defendant has violated the California Labor Code and
10 applicable Industrial Welfare Commission Wage Orders by engaging in a uniform practice and
11 procedure, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to pay all
12 overtime and minimum wages, failing to provide compliant meal and rest periods and associated
13 premium pay, failing to timely pay wages during employment and upon termination of
14 employment, failing to provide compliant wage statements, failing to maintain requisite payroll
15 records, and failing to reimburse necessary business expenses, and thereby engaged in unfair
16 business practices in violation of California Business and Professions Code section 17200, *et*
17 *seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and
18 the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited
19 to, penalties pursuant to PAGA), and attorneys' fees.

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

24 The Parties have actively litigated the matter since it was commenced April 10, 2019.
25 The parties conducted significant formal and informal discovery, took and defended depositions
26 of Defendant's Person Most Knowledgeable witness and Plaintiffs Montgomery, Morales, and
27 Williams, and exchanged thousands of pages of documents and data. On July 21, 2021, the
28 parties participated in a formal, full-day mediation conducted by Jeffrey A. Ross, Esq. a well-

1 regarded mediator experienced in mediating complex labor and employment matters. With the
2 aid of the mediator's evaluation, the parties ultimately reached the Settlement described herein to
3 resolve the case in its entirety.

4 On January 5, 2022, Plaintiffs filed a Motion for Preliminary Approval of Class Action
5 Settlement and supporting documents. The Motion for Preliminary Approval was noticed for
6 hearing on January 26, 2022. On January 25, 2022, the Court issued a tentative ruling,
7 continuing the hearing of the Motion for Preliminary Approval to February 15, 2022, so that the
8 Parties' counsel can provide declarations in conformity with California Code of Civil Procedure
9 section 382.4 regarding the proposed *cy pres* recipient and reserve a hearing date for the motion
10 for final approval. On February 8, 2022, Plaintiffs filed supplemental papers in support of the
11 Motion for Preliminary Approval. On February 17, 2022, the Court entered an Order Granting
12 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary
13 Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class
14 Notice, and the proposed administration procedures and associated deadlines.

15 Plaintiffs now move for final approval of the Settlement, Attorneys' Fees and Costs,
16 Service Payments, Settlement Administration Costs, and apportionment for the PAGA
17 Allocation.

18 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

19 Under the terms of the Settlement Agreement, Defendant has agreed to pay a Maximum
20 Settlement Amount of \$3,000,000.00 on a non-reversionary basis.² Subject to approval by the
21 Court, the Net Distribution Fund will be calculated by deducting the following amounts from the
22 Maximum Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the
23 amount of \$1,140,000.00 and reimbursement of litigation costs and expenses in the amount of
24 \$98,471.88, to Class Counsel; (2) Service Payments in the amount of \$10,000.00 each to
25 Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams, for a combined amount of
26 \$30,000.00; (3) Settlement Administration Costs in the amount of \$25,000.00 to Simpluris; and
27

28

² Settlement Agreement; § 18.

(4) PAGA Allocation in the amount of \$430,000.00.³ The Net Distribution Fund, which is estimated to be \$1,276,528.12, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁴

The Settlement Administrator will calculate each Settlement Class Member's share of the Net Distribution Fund ("Individual Settlement Payment") by dividing the Net Distribution Fund by the total number of Qualifying Workweeks, resulting in the value of a single Qualifying Workweek. Each Settlement Class Member's Individual Settlement Payment will then be determined by multiplying each individual Settlement Class Member's number of Qualifying Workweeks by the value of a single Qualifying Workweek.⁵

The Settlement Administrator will calculate each PAGA Member's share of the available Net PAGA Distribution Amount ("Individual PAGA Payment") by dividing the Net PAGA Distribution Amount by the total number of Qualifying PAGA Workweeks, resulting in the value of a single Qualifying PAGA Workweek. Each PAGA Member's Individual PAGA Payment will then be determined by multiplying each individual PAGA Member's number of Qualifying PAGA Workweeks by the value of a single Qualifying PAGA Workweek.⁶

Class Members and PAGA Members had forty-five (45) calendar days after the initial mailing of the Class Notice to Class Members and PAGA Members to dispute the number of Qualifying Workweeks and/or Qualifying PAGA Workweeks credited to each of them, opt out of the Class Settlement, and/or object to the Class Settlement ("Response Deadline").⁷ The Response Deadline was May 9, 2022.⁸ The Settlement Administrator has received one (1) written request for exclusion from the Class Settlement ("Opt Out Request") and no objections to the Class Settlement ("Objections") from Class Members.⁹

³ Settlement Agreement, §§ 53.a., 53.b., 53.c., 53.d., & 53.f.

⁴ This amount is higher than the amount stated in Paragraph 11 of the accompanying [Declaration of Evelin Reyes 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 \$120,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$98,471.88 for reimbursement of litigation costs and expenses, and the difference of \$26,528.12 will remain part of the Net Distribution Fund.

⁵ Settlement Agreement, § 53.g.

⁶ *Id.*, § 53.f.

⁷ *Id.*, § 8.

⁸ Simpluris Decl., ¶ 10, Exh. A.

⁹ *Id.*, ¶¶ 13 & 14.

Individual Settlement Payments will be allocated as twenty-five percent (25%) wages (“wages portion”), to be reported on IRS Form W-2; and seventy-five percent (75%) penalties, interest, and non-wage damages to be reported on IRS Form 1099 (if required).¹⁰ Individual PAGA Payments will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if required). Individual Settlement Payments will be paid out to Settlement Class Members subject to reduction for the employee’s and employer’s share of taxes, withholdings, and contribution with respect to the wages portion of the Individual Settlement Payments.¹¹

The Individual Settlement Payment issued to Settlement Class Members and Individual PAGA Payment checks issued to PAGA Members will be negotiable for ninety (90) calendar days from the date of issuance.¹² Checks that are not negotiated within the 90-day period will be cancelled and the funds associated with such cancelled checks will be transmitted by the Settlement Administrator to Katherine and George Alexander Community Law Center.¹³

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court’s February 17, 2022 Preliminary Approval Order.

On February 25, 2022, Simpluris received the Court-approved text for the Class Notice.¹⁴

On March 13, 2022, Simpluris received a mailing list from Defendant's counsel that contained the names, last known addresses, Social Security numbers, telephone numbers, and pertinent employment information for each Class Member during the Class Period and each PAGA Member during the PAGA Period (“Class List”).¹⁵ The Class List contained information for 2,100 individuals identified as Class Members.¹⁶ Simpluris processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class

¹⁰ Settlement Agreement, §§ 55.a. and 55.b.

¹¹ Ibid.

¹² *Id.*, §§ 63-64.

¹³ Ibid.

¹⁴ Simpluris Decl., ¶ 5.

¹⁵ *Id.*, ¶ 6.

¹⁶ Ibid.

1 List with any updated addresses located.¹⁷

2 On March 25, 2022, Simpluris mailed the Class Notice via First Class U.S. Mail to 2,100
3 individuals identified as Class Members in the Class List.¹⁸

4 As of the date of this Motion, no Class Notices were returned as undeliverable with
5 forwarding addresses.¹⁹ One hundred forty-five (145) Class Notices were returned as
6 undeliverable without forwarding addresses.²⁰ Simpluris performed an advanced address search
7 on the one hundred forty-five (145) Class Notices that were returned to Simpluris without
8 forwarding addresses, located an updated address for all one hundred forty-five (145)
9 undeliverable Class Notices, and promptly re-mailed the Class Notice to the updated addresses.²¹
10 Ultimately, there were no Class Notices that were undeliverable.²²

11 As of the date of this Motion, the Settlement Administrator has not received any
12 Objections and has received one (1) Opt Out Request from the Class Settlement from a Class
13 Member.²³

14 To date, there are 2,099 Class Members who did not submit a timely and valid Request
15 for Exclusion from the Class Settlement, and are therefore, deemed to be Settlement Class
16 Members.²⁴ Pursuant to the terms of the Settlement, the Net Distribution Fund of approximately
17 \$1,276,528.12 will be distributed to Settlement Class Members in accordance with the terms of
18 the Settlement.²⁵ The highest Individual Settlement Payment is currently estimated to be at least
19 \$2, 354.48 and the average Individual Settlement Payment is currently estimated to be at least
20 \$597.90.²⁶ The highest Individual PAGA Payment is currently estimated to be at least \$209.12
21

22 ¹⁷ Simpluris Decl., ¶ 7.

23 ¹⁸ *Id.*, ¶ 8.

24 ¹⁹ *Id.*, ¶ 9.

25 ²⁰ *Ibid.*

26 ²¹ *Ibid.*

27 ²² *Ibid.*

28 ²³ *Id.*, ¶¶ 13 & 14.

²⁴ *Id.*, ¶ 10.

²⁵ *Id.*, ¶ 12; see also, n.4, *supra*.

²⁶ *Id.*, ¶ 12. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Simpluris Declaration because the Net Distribution Fund is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$125,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$26,528.12, will be part of the Net Distribution Fund). See n.4, *supra*.

and the average Individual PAGA Payment is currently estimated to be at least \$108.59.²⁷

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

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

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

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately,

²⁷ Simpluris Decl., ¶ 12.

1 meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords
2 relief that is substantially narrower than it would be if the case were to be successfully litigated,
3 that is no bar to a class settlement because the public interest may indeed be served by a
4 voluntary settlement in which each side gives ground in the interest of avoiding prolonged
5 litigation. *Id.*

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

8 The parties actively litigated the case since it was commenced on April 10, 2019.
9 Counsel for the parties used the pre-mediation time period to investigate the veracity, strength,
10 and scope of the claims, and also were actively preparing the matter for class certification,
11 representative adjudication, and trial.²⁸ The parties conducted significant formal and informal
12 discovery and investigation into the facts of the case, and also informally exchanged information
13 and data in preparation for mediation.²⁹ Class Counsel propounded multiple sets of written
14 discovery requests in various forms; reviewed Defendant’s responses thereto; worked with
15 Plaintiffs to provide responses to discovery requests that were propounded on Plaintiff
16 Montgomery and former plaintiff Spencer Sumisaki by Defendant; and prepared and served
17 numerous deposition notices.³⁰ Class Counsel prepared for and took the deposition of
18 Defendant’s Person Most Knowledgeable witness and prepared for and defended the depositions
19 of Plaintiffs.³¹ Parties also engaged in a *Belaire-West* privacy notice and opt-out process with a
20 neutral third-party, Simpluris, Inc. (the same third-party proposed as the Settlement
21 Administrator), and after the process was completed, the class contact information was produced
22 to Plaintiffs’ Counsel in April 2020.³² Class Counsel also interviewed and obtained information
23 from Plaintiffs and Class Members, including and not limited to the names of potential
24 witnesses, and reviewed and analyzed thousands of pages of documents and data produced by
25 Defendant and obtained through other sources.³³ The documents and data reviewed and analyzed

26 ²⁸ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

27 ²⁹ *Ibid.*

28 ³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Id.*, ¶ 7.

by Class Counsel included, and were not limited to, Plaintiffs and other Class Members' employment records, a detailed sampling of Class Members' time and pay data, multiple iterations of Defendant's Employee Handbook, company policy acknowledgements job descriptions, new hire checklists, and Defendant's operations and employment practices, policies, procedures, and forms (including but not limited to those regarding Worker's Compensation Form, Employee Handbook Acknowledgement Form, Time & Attendance Policy Acknowledgement Form, California Meal Period Waiver, Missed Punch Form, Employee Counseling Notice, Timecard Exception Log, Time Clock Procedures, Work Schedules, Attendance and Punctuality, Rest Breaks and Meal Periods, Employee Classification, Change to Classification, Overtime and Payday, Performance Reviews, New Hire Audit, Attendance Records, Counseling Notices, Unpaid Suspension, and Dress, Appearance and Personal Hygiene), among other documents and data.³⁴ Class Counsel researched applicable law, developed damages/valuation models in preparation for mediation, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, *Belaire-West* process, and production of documents and data prior to mediation.³⁵

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 Jeffrey A. Ross, Esq. a well-regarded mediator experienced in mediating complex labor and employment matters.³⁶ 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 class certification, representative adjudication, and trial, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³⁷ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial

³⁴ Aiwazian Decl., ¶ 6.

³⁵ Ibid.

³⁶ *Id.*, ¶ 8.

³⁷ Ibid.

position.³⁸ Arriving at a settlement that was acceptable to the parties was not easy.³⁹ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification, while Plaintiffs and Class Counsel believed that class certification would be obtained and Plaintiffs would prevail at trial.⁴⁰ After conducting significant formal and informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the parties that would attend further litigation.⁴¹

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

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

The Settlement, which provides for a Maximum Settlement Amount of \$3,000,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁶

³⁸ Aiwazian Decl., ¶ 8.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ *Id.*, ¶ 8.

⁴² *Id.*, ¶ 7.

⁴³ Ibid.

⁴⁴ *Id.*, ¶¶ 6 & 8.

⁴⁵ *Id.*, ¶¶ 15-18.

⁴⁶ *Id.*, ¶¶ 9 & 21.

1 The Settlement was calculated using information and data uncovered through extensive case
2 investigation, formal and informal discovery, and the exchange of information in the context of
3 mediation.⁴⁷ Had the action not settled, Defendant would have vigorously challenged class
4 certification, manageability of representative adjudication, and liability. Defendant contended
5 that individualized questions of fact predominate over any common issues, and these issues
6 would pose challenges to certification and representative adjudication. Defendant would have
7 likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide
8 and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court
9 certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or
10 representative basis. Additionally, preparation for trial would have been expensive for all
11 parties.

12 It is preferable to reach an early resolution of a dispute because such resolutions save
13 time and money that would otherwise go to litigation. If this matter had settled after further
14 litigation, the settlement amount would have taken into account the additional costs incurred, and
15 there might have been less money available for Class Members after all was said and done. This
16 is not just an abstract contention. The risks and expenses of further litigation outweighed any
17 benefit that might have been gained otherwise. These risks of further litigation include a
18 determination that the claims were unsuitable for class treatment and/or representative
19 adjudication, failure to obtain certification, class de-certification after certification of a class,
20 allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery
21 after years of litigation. Additionally, the parties were moving into the phase of the litigation
22 where they would have to conduct a significant amount of additional discovery, including and
23 not limited to, additional depositions of Defendant's Person Most Knowledgeable designees,
24 expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and
25 former employees throughout the State of California. Discovery would have certainly arisen,
26 which would have cost the parties additional time and money. In contrast, the Settlement
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28

⁴⁷ Aiwazian Decl., ¶¶ 5-8.

provides real and significant benefits for the Class here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

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

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

The Settlement, which provides for a Maximum Settlement Amount of \$3,000,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation. The Settlement 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 Maximum Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$1,140,000.00, litigation costs and expenses in the amount of \$98,471.88, Service Payments in the combined amount of \$30,000.00, Settlement Administration Costs in the amount of \$25,000.00, and PAGA Allocation in the amount of \$430,000.00 from the Maximum Settlement Amount of \$3,000,000.00, the Net Distribution Fund is currently estimated to be \$1,276,528.12.⁴⁸ Under the Settlement Agreement, the Maximum Settlement Amount will be fully paid out without any reversion to Defendant, in accordance 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 Distribution Fund, based on the number of Qualifying Workweeks credited to him or her. To date, there are 2,099 Settlement Class Members, representing 99.95% of the Class Members.⁴⁹ The highest Individual Settlement

⁴⁸ Simpluris Decl., ¶ 11; see n.4, *supra*.

⁴⁹ *Id.*, ¶ 10.

1 Payment to a Settlement Class Member is currently estimated to be at least \$2,563.60 and the
2 average Individual Settlement Payment is currently estimated to be at least \$649.19.⁵⁰ The
3 highest Individual PAGA Payment is currently estimated to be at least \$209.12 and the average
4 Individual PAGA Payment is currently estimated to be at least \$108.59.⁵¹ These are significant
5 individual recoveries, particularly in light of the risks of litigation.

6 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational
7 basis [to warrant approval], particularly if recommended by experienced and competent class
8 counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
9 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to
10 distribute the Net Distribution Fund. In light of the above considerations, Class Counsel believes
11 that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the
12 Plaintiffs, Class Members, and the State of California.⁵² Although the recommendations of Class
13 Counsel are not conclusive, the Court can properly take the recommendations into account,
14 particularly if Class Counsel appears to be competent, has experience with this type of litigation,
15 and significant discovery and investigation have been completed, as is the case here. Conte &
16 Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should
17 grant final approval of the Settlement.

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

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

25 ///

26 _____
27 ⁵⁰ Simpluris Decl., ¶ 12; see n.26, *supra*.

⁵¹ Ibid.

⁵² Aiwasian Decl., ¶ 21.

⁵³ *Id.*, ¶¶ 15-18.

⁵⁴ Ibid.

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

2 The Settlement has been well received by the Class – *not a single Class Member*
3 *objected to the Class Settlement and only one (1) Class Member has requested exclusion from*
4 *the Class Settlement.*⁵⁵ Specifically, no objections have been made as to the Maximum
5 Settlement Amount or requested Attorneys’ Fees and Costs, Service Payments, Settlement
6 Administration Costs, or the PAGA Allocation. California courts have consistently found that a
7 small number of objectors indicates the class’s support for a settlement and strongly favors final
8 approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20
9 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9
10 objectors).

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

15 **VI. THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS**
16 **FAIR AND REASONABLE AND SHOULD BE APPROVED.**

17 **A. Legal Standard for Attorneys’ Fees in a Class Action Settlement.**

18 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
19 decisions will “‘not be disturbed on appeal absent a manifest abuse of discretion.’” *Lealao v.*
20 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
21 1132 (The “experienced trial judge is the best judge of the value of professional services
22 rendered in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.
23 Where the amount of a settlement is a “certain easily calculable sum of money,” California
24 courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and
25 Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also*
26 *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808.
27 The percentage-of-the-benefit approach is preferred in class and representative actions because
28

⁵⁵ Simpluris Decl., ¶¶ 13 & 14.

1 “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao*,
2 *supra*, 82 Cal.App.4th at 49.

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

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

21 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
22 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
23 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
24 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
25 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
26 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
27 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.”
28 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent

range of contingency fee in marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁶ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent, supra*, 557 F.2d at 769.

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

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

Courts have consistently recognized that class and representative action litigation is

⁵⁶ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

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

Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement Amount of \$3,000,000.00 on a non-reversionary basis. The requested attorneys’ fees are thirty-eight percent (38%) of the total value of the monetary settlement. In light of Class Counsel’s successful prosecution and resolution of the case, the requested attorneys’ fees are appropriate and reasonable.

Compensating class counsel in class litigation on a percentage basis makes good sense because: (1) it is consistent with the private marketplace where contingent fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the case; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early, yet reasonable, settlement. The requested attorneys’ fees in this matter satisfy all of those factors such and should be approved on a percentage basis.

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee

1 arrangements with their clients. Named plaintiffs’ agreement to pay a contingent fee is powerful
2 evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel’s work to
3 the class is to review the consideration agreed to be paid by the named plaintiffs. If the named
4 plaintiffs have employed counsel on a contingency-fee basis, it would indeed be inequitable for
5 the members of the class, who will enjoy the benefits of the settlement without incurring the
6 risks of bringing the claim, to pay less than the named plaintiffs. In this case, Plaintiffs have
7 agreed to a contingency fee of at least thirty-eight percent (38%) of the recovery.⁵⁷

8 Furthermore, a percentage-fee award is not dependent on a determination of the actual
9 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
10 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
11 equitable that [the attorney’s] compensation and expenses should come from the entire fund
12 saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.*
13 (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be
14 calculated on the basis of the total fund made available rather than the actual payments made to
15 the class.” *Lealao*, *supra*, 82 Cal.App.4th at 51; *see also Boeing*, *supra*, 444 U.S. at 478 (“a
16 litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or
17 his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

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

28

⁵⁷ Aiwazian Decl., ¶ 9.

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

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

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$1,140,000.00 (which is 38% of the Maximum Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for the Class Members, State of California, and PAGA Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class, PAGA Members, and the State of California. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁵⁸

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⁵⁸ Aiwazian Decl., ¶¶ 15-18.

1 ///

2 As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively
3 participated in litigation of this case.⁵⁹ Prior to commencing the lawsuit, Class Counsel had
4 conducted a significant amount of investigation into the factual and legal issues, Defendant's
5 business, and its operations and employment policies, practices, and procedures.⁶⁰ During the
6 litigation of the action, Class Counsel interviewed Plaintiffs and other Class Members;
7 propounded formal written discovery requests and reviewed Defendant's responses thereto;
8 worked with Plaintiff Montgomery and former plaintiff Spencer Sumisaki to provide responses
9 to discovery requests that were propounded by Defendant; preparing for and taking the
10 depositions of Defendant's Person Most Knowledgeable witnesses; prepared for and defending
11 the depositions of Plaintiffs; reviewed and analyzed thousands of pages of pages of documents
12 and data produced by Defendant and obtained through other sources; and prepared
13 damages/valuation calculations.⁶¹ Class Counsel also met and conferred with Defendant's
14 counsel over the issues relating to pleadings, discovery, *Belaire-West* process, and the production
15 of documents and data, among other things; engaged in extensive settlement negotiations with
16 Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement
17 negotiations.⁶²

18 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
19 matter diligently and with maximum efficiency and has fully and actively participated in the
20 litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
21 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel
22 has spent performing tasks on behalf of Plaintiffs and the Class.⁶³ The Task and Time Chart is
23 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
24 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
25 chart, which sets forth the history of the work performed by Class Counsel, commencing with
26

27 ⁵⁹ Aiwarzian Decl., Exh. A.

⁶⁰ *Id.*, ¶ 6 & Exh. A.

⁶¹ Aiwarzian Decl., ¶ 6.

⁶² *Ibid.*

⁶³ *Id.*, Exh. A.

the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent **1,756.50** hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs and the Class.⁶⁴ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

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

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁶⁵

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

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

⁶⁴ Aiwazian Decl., ¶ 11.

⁶⁵ *Id.*, ¶¶ 15-18.

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

10 As a result of this litigation and extensive settlement negotiations, Defendant agreed to
11 pay a Maximum Settlement Amount of \$3,000,000.00 to settle the matter. After deducting the
12 attorneys' fees (\$1,140,000.00), litigation costs and expenses (\$98,471.88), Service Payments
13 (combined, \$30,000.00), Settlement Administration Costs (\$25,000.00), and PAGA Allocation
14 (\$430,000.00) from the Maximum Settlement Amount, it is currently estimated that the Net
15 Distribution Fund is approximately \$1,276,528.12.⁶⁶ The Net Distribution Fund will be fully
16 distributed in accordance with the terms of the Settlement. The highest Individual Settlement
17 Payment to a Settlement Class Member is currently estimated to be at least \$2,563.60 and the
18 average Individual Settlement Payment is currently estimated to be at least \$649.19.⁶⁷ The
19 highest Individual PAGA Payment is currently estimated to be at least \$209.12 and the average
20 Individual PAGA Payment is currently estimated to be at least \$108.59.⁶⁸ The Settlement offers
21 significant monetary relief to the Settlement Class Members and PAGA Members.

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

23 Plaintiffs entered into contingency fee agreements with Class Counsel, and the
24 representation of the Class provided by Class Counsel has been wholly contingent. Class
25 Counsel took on the case without knowing whether any recovery would be obtained. Class
26 Counsel has invested 1,756.50 hours of time to obtain relief on behalf of Plaintiffs and the

27 _____
28 ⁶⁶ Simpluris Decl., ¶ 11; see n.4, *supra*.

⁶⁷ *Id.*, ¶ 12; see n.26, *supra*.

⁶⁸ *Ibid*.

Class.⁶⁹ Class Counsel has also incurred litigation costs and expenses in the amount of \$98,471.88.⁷⁰

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷² The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

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

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement and only one (1) Class Member opted out of the Class Settlement.⁷³

The court in *Camden* noted that, “a key element of the common fund case is that fees are

⁶⁹ Aiwasian Decl., ¶ 11, Exh. A.

⁷⁰ See Part VII, *infra*.

⁷¹ Aiwasian Decl., ¶ 19.

⁷² See *id.*, ¶¶ 15-18.

⁷³ Simpluris Decl., ¶¶ 13 & 14.

[...] 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)).

Here, the results achieved and obtained on behalf of Plaintiffs and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Maximum Settlement Amount of \$3,000,000.00.⁷⁴ The Maximum Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be at least \$2,563.60 and the average Individual Settlement Payment is currently estimated to be at least \$649.19.⁷⁵ The highest Individual PAGA Payment is currently estimated to be at least \$209.12 and the average Individual PAGA Payment is currently estimated to be at least \$108.59.⁷⁶

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 case 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.⁷⁷

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

⁷⁴ Aiwazian Decl., ¶¶ 5-8.

⁷⁵ *Id.*, ¶ 12; see n.26, *supra*.

⁷⁶ *Ibid.*

⁷⁷ *Id.*, ¶¶ 15-18.

1 spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*,
2 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method,
3 the lodestar may provide a useful perspective on the reasonableness of a given percentage
4 award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary
5 determination of the fee as a percentage” of the settlement amount and “does not impose an
6 absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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

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

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

14 As discussed above, the case was highly contested and required a significant amount of
15 time and labor. Defendant made it clear very early on that it disputed all of the allegations of the
16 case and disputed that the matter was appropriate for class or representative treatment.
17 Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved
18 gathering and analyzing data not only from Defendant but also from the Class Members. The
19 handling of the case involved a great amount of effort, and also required and involved the
20 exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in
21 employment class actions and complex wage-and-hour litigation. Long and difficult battles
22 would have followed as the case moved toward certification and trial, including taking and
23 defending additional depositions of Defendant’s Person Most Knowledgeable designees,
24 percipient witnesses, and experts, propounding additional discovery requests and conducting
25 additional document production, and engaging in extensive motion practice. As Class Counsel
26 geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve
27 the entire matter through mediation.

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwasian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁷⁸ The chart demonstrates that Class Counsel has spent a total of 1,756.50 hours litigating the case and finalizing the Settlement.⁷⁹ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiffs and the Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this action. See *Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." See *id.*

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its

⁷⁸ See Aiwasian Decl., Exh. A.

⁷⁹ Aiwasian Decl., ¶ 11.

efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$3,000,000.00.

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

Applying the rate of \$650 per hour to 1,756.50 hours would place a reasonable value of \$1,141,725.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$1,140,000.00, which is thirty-five percent (38%) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the

⁸⁰ Aiwarzian Decl., ¶ 12.

⁸¹ For example, final approval of the class and representative action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; 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 a higher hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved a higher hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved a higher hourly rate of \$780.77; final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved a higher hourly rate of \$845.64. Aiwarzian Decl., ¶ 12.

established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290 F.3d at 1051; *accord Ketchum, supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba, supra*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher.”); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys’ fees in the amount of \$1,140,000.00 to Class Counsel.

VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for reimbursement of litigation costs and expenses of up to \$125,000.00. As set forth in the Declaration of Edwin Aiwasian, Class Counsel has incurred a total of \$98,471.88 in litigation costs and expenses.⁸² This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.⁸³ The cost savings of \$26,528.12 will be part of the Net Distribution Fund, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸⁴ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$98,471.88 to Class Counsel.

VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND

⁸² Aiwasian Decl., ¶ 19.

⁸³ *Id.*

⁸⁴ *Ibid.*

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 \$25,000.00.⁸⁵ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members and PAGA Members; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Opt Out Requests, Objections, and Workweeks Disputes (if any); handling inquiries from Class Members and/or PAGA Members regarding the Settlement; calculating Individual Settlement Payments and Individual PAGA Payments and preparing the associated tax forms; and transmitting payments, among other things.⁸⁶

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$25,000.00.

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

The Settlement provides for Service Payments in the amount of \$10,000.00 each to Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams to compensate Plaintiffs for the time and effort that they expended on behalf of the Class, PAGA Members, and the State of California. The requested Service Payments are both common and reasonable and should be awarded.

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation.

⁸⁵ Simpluris Decl., ¶ 16.

⁸⁶ Simpluris Decl., ¶ 3.

1 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000
2 participation award to a single class representative).

3 The requested Service Payments are fair and appropriate because Plaintiffs spent a
4 substantial amount of time and effort producing relevant documents and past employment
5 records, as well as providing the facts and evidence necessary to attempt to prove the allegations,
6 including and not limited to, by way of working with Class Counsel to prepare responses to
7 written discovery requests that were propounded by Defendant, preparing for and attending
8 depositions, and reviewing their deposition transcripts.⁸⁷ Plaintiffs were available whenever
9 Class Counsel needed them and actively tried to obtain, and gave, information that would
10 facilitate the pursuit of the Class and PAGA claims.⁸⁸ Plaintiffs spent numerous hours speaking
11 with Class Counsel about their claims, describing their work experiences with Defendant, and
12 gathering and reviewing documents.⁸⁹ These services merit the requested Service Payments to
13 Plaintiffs, who have not received any compensation for their efforts on behalf of the Class
14 Members, PAGA Members, and the State of California to date.⁹⁰

15 The requested Service Payments were fully disclosed in the Class Notice that was mailed
16 to the Class Members and PAGA Members. No objections were made with regards to the
17 requested Service Payments. Accordingly, it is appropriate and just for Plaintiffs Davian
18 Montgomery, Nadia Morales, and Nina Williams to each receive \$10,000.00 as reasonable
19 Service Payments, in addition to their Individual Settlement Payments and/or Individual PAGA
20 Payments, for their services on behalf of the Class, PAGA Members, and the State of California.

21 **X. CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final
23 approval of the Settlement, and award Attorneys' Fees and Costs, Service Payments, Settlement
24

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26 ⁸⁷ Aiwarzian Decl., ¶ 20; Declaration of Davian Montgomery in Support of Plaintiffs' Motion for Final Approval of
27 Class Action Settlement ("Montgomery Decl."), ¶¶ 4-5; Declaration of Nadia Morales in Support of Plaintiffs'
28 Motion for Final Approval of Class Action Settlement ("Morales Decl."), ¶¶ 4-5; Declaration of Nina Williams in
Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Williams Decl."), ¶¶ 4-5.

⁸⁸ Aiwarzian Decl., ¶ 20; Montgomery Decl., ¶¶ 3-6; Morales Decl., ¶¶ 3-6; Williams Decl., ¶¶ 3-6.

⁸⁹ Aiwarzian Decl., ¶ 20; Montgomery Decl., ¶¶ 2-6; Morales Decl., ¶¶ 2-6; Williams Decl., ¶¶ 2-6.

⁹⁰ Montgomery Decl., ¶ 9; Morales Decl., ¶ 9; Williams Decl., ¶ 9.

Administration Costs, and allocation for the PAGA Allocation, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: May 23, 2022

LAWYERS for JUSTICE, PC

By: _____



Edwin Aiwanian
Attorneys for Plaintiffs and the Class