

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 Plaintiffs and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

JOSE SALDANA, individually, and on behalf
of other members of the general public
similarly situated; THOMAS JOHNS,
individually, and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,

vs.

INTERNATIONAL E-Z UP INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: RIC1902873

Honorable Craig G. Riemer
Department 1

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT AWARDS**

[Declaration of Class Counsel (Edwin
Aiwazian); Declarations of Class
Representatives (Jose Saldana and Thomas
Johns); Declaration of Settlement
Administrator (Norman Alcantara);
Declaration of Proposed *Cy Pres* Recipient;
and [Proposed] Final Approval Order and
Judgment filed concurrently herein]

Date: November 16, 2021
Time: 8:30 a.m.
Department: 1

Complaint Filed: May 10, 2019
FAC Filed: March 25, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 16, 2021 at 8:30 a.m., in Department 1 of
2 the above-entitled Court, located at 4050 West Main Street, Riverside, California 92501,
3 Plaintiffs Jose Saldana and Thomas Johns (“Plaintiffs”) will and hereby do move for an order
4 granting final approval of:

5 1. The First Amended Joint Stipulation of Class and PAGA Settlement and Release
6 and Amendment No. 1 to First Amended Joint Stipulation of Class and PAGA Settlement and
7 Release (“Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the
8 Settlement is fair, adequate, and reasonable because:

- 9 • A Net Settlement Amount of approximately **\$492,868.49** will be fully distributed to
10 the Class Members who did not submit timely and valid Opt-Out Requests
11 (“Settlement Class Members”);
12 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
13 (“Settlement Administrator”);
14 • **Two Opt-Out Requests** were submitted to the Settlement Administrator;

15 2. Payment in the amount of **\$332,500.00** to Lawyers *for* Justice, PC (“Class
16 Counsel”), representing thirty-five percent (35%) of the Gross Settlement Fund, for attorneys’
17 fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-
18 check with a multiplier of 1.01;

19 3. Payment in the amount of **\$28,131.51** to Class Counsel for reimbursement of
20 litigation costs and expenses;

21 4. Payment in the amount of **\$9,000.00** to the Settlement Administrator, Simpluris,
22 Inc. (“Simpluris”), for Settlement Administration Costs;

23 5. Payment in the amount of **\$7,500.00** to Plaintiff Jose Saldana and **\$5,000.00** to
24 Plaintiff Thomas Johns, as Enhancement Awards, for their time and effort in representing the
25 Class;

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6. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*, in the amount of **\$75,000.00**, of which seventy-five percent (75%), or \$56,250.00, will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or \$18,750.00, will be distributed to Aggrieved Employees.

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

This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Edwin Aiwanian), Class Representatives (Jose Saldana and Thomas Johns), Settlement Administrator (Norman Alcantra of Simpluris), and Proposed *Cy Pres* Recipient (Jose Padilla of California Rural Legal Assistance, Inc.) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: October 22, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Jose Saldana and Thomas Johns (“Plaintiffs”) seek final approval of: (1) the Gross Settlement Fund of \$950,000.00; (2) attorneys’ fees in the amount of \$332,500.00, which is thirty-five percent (35%) of the Gross Settlement Fund (“Attorneys’ Fees”), and reimbursement of litigation costs and expenses in the combined amount of \$28,131.51 (“Litigation Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$9,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Awards in the amount of \$7,500 to Plaintiff Jose Saldana and \$5,000.00 to Plaintiff Thomas Johns, for a combined amount of \$12,500.00; and (5) allocation of \$75,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Settlement Amount”).

Plaintiffs seek relief on behalf of the following Class:

All hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the time period from May 10, 2015 until May 8, 2020 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, informal discovery, review and analysis of thousands of pages of documents and data prior to and during two (2) mediation sessions conducted by Jeffrey Krivis, Esq. and extensive settlement negotiations. This matter has required 514.90 hours of attorney time from Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the Gross Settlement Fund, 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

Plaintiffs moves for final approval of the Enhancement Awards in the amount of \$7,500.00 to Plaintiff Jose Saldana and \$5,000.00 to Plaintiff Thomas Johns, to compensate

¹ First Amended Joint Stipulation of Class and PAGA Settlement and Release and Amendment No. 1 to First Amended Joint Stipulation of Class and PAGA Settlement and Release (together, “Settlement Agreement”), §§ I.e & I.h.

² Applying a modest multiplier of 1.01, the total enhanced lodestar fees are \$332,832.36, and Class Counsel seeks an attorneys’ fees award of \$332,500.00 (equal to 35% of the Gross Settlement Fund).

1 Plaintiffs for the time and effort that they expended spearheading this lawsuit on behalf of the
2 Class. Plaintiffs also move for final approval of the payment to the Settlement Administrator in
3 the amount of \$9,000.00 for Settlement Administration Costs. Plaintiffs also move for final
4 approval of the allocation of \$75,000.00 for the PAGA Settlement Amount, of which \$56,250.00
5 will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its
6 portion of the PAGA Settlement Amount (“LWDA Payment”), and \$18,750.00 will be distributed
7 to Plaintiffs and Class Members who worked for Defendant within the PAGA Period (“Aggrieved
8 Employees”) for their portion of the PAGA Settlement Amount (“Net PAGA Payment”).³

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

16 The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length, good-
17 faith negotiations by experienced counsel presided over a highly-regarded mediator who is
18 experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should
19 grant final approval of the Settlement, and award Attorneys’ Fees, Litigation Costs, Enhancement
20 Awards, Settlement Administration Costs, and the PAGA Settlement Amount in the amounts as
21 fully disclosed to the 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, Litigation Costs,
24 Enhancement Awards, Settlement Administration Costs, and the PAGA Settlement Amount,
25 Plaintiffs also move for an order permitting the filing of this single consolidated memorandum,
26 although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d),
27 instead of filing several separate motions.

28
³ The period of time from May 10, 2018 to May 8, 2020 is referred to as the “PAGA Period.” See *id* § I.dd.

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

2 Defendant International E-Z Up, Inc. (“Defendant”) is a manufacturer of portable shelters
3 for personal and professional use, such as camping, vacations, and sporting events. Plaintiff Jose
4 Saldana is a former employee of Defendant and Plaintiff Thomas Johns is a current employee of
5 Defendant.

6 On May 10, 2019, Plaintiff Jose Saldana filed a Class Action Complaint for Damages
7 (“Original Complaint”) in the Riverside County Superior Court, Case No. RIC1902873, thereby
8 commencing the above-captioned action (the “Action”).

9 On July 1, 2019, Defendant filed its Answer to Plaintiff Jose Saldana’s Original Complaint.

10 The parties have actively litigated the matter since the Action was commenced May 10,
11 2019. On December 11, 2019 and February 8, 2020, the parties participated in mediation sessions
12 conducted by Jeffrey Krivis, Esq., a well-regarded mediator of complex wage-and-hour class and
13 PAGA actions. The parties have conducted significant investigation and informal discovery into
14 the claims and engaged in extensive discussions about the strengths and weaknesses of Plaintiffs’
15 claims and Defendant’s defenses thereto, to try to resolve the Action. With the aid of the mediator,
16 substantial negotiations, and feedback provided by this Court in connection with the original
17 settlement and motion seeking preliminary approval thereof, the parties ultimately reached the
18 Settlement described herein to resolve the Action in its entirety.

19 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by
20 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
21 of, *inter alia*, failing to pay minimum and overtime wages, failing to provide compliant meal and
22 rest periods and associated premium pay, failing to timely pay wages and associated waiting time
23 penalties, failing to maintain accurate payroll records, failing to provide compliant wage
24 statements, and failing to reimburse necessary business-related expenses, and thereby engaged
25 in unfair business practices under the California Business and Professions Code and conduct the
26 gives to penalties recoverable under the Private Attorneys General Act of 2004 (California Labor
27 Code sections 2698, et seq.) (“PAGA”).

28 ///

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

On March 3, 2021, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) and supporting documents. On March 25, 2021, a hearing was held on Plaintiffs’ Motion for Preliminary Approval, during which the Court adopted its tentative ruling raising certain points of inquiry in connection with the Motion for Preliminary Approval. Based on the Court’s inquiries and guidance, the parties revised, negotiated and executed the First Amended Joint Stipulation of Class and PAGA Settlement and Release (“First Amended Agreement”).

On March 25, 2021, the First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“First Amended Complaint”) was filed in the Action, adding Plaintiff Thomas Johns as a plaintiff in the Action and his cause of action under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* (“PAGA”).

On July 8, 2021, Plaintiffs filed a Renewed Motion for Preliminary Approval of Class Action Settlement (“Renewed Motion for Preliminary Approval”) and supporting documents. On August 3, 2021, the court issued a tentative ruling raising additional points of inquiry in connection with the Renewed Motion for Preliminary Approval and on August 4, 2021, a hearing was held on Plaintiffs’ Renewed Motion for Preliminary Approval. At the hearing on the Renewed Motion for Preliminary Approval, counsel for the parties presented oral argument on the issues articulated in the tentative ruling and the Court granted preliminary approval. The Court also instructed the parties to select a different *cy pres* recipient.

On August 10, 2021, the Court entered an Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of the Settlement, the Class Notice, Exclusion Form, and Objection Form (together, the “Notice Packet”), and the proposed administration procedures and associated deadlines. Based on the Court’s inquiries and guidance, on October 21, 2021, the parties negotiated and executed the

Amendment No. 1 to First Amended Joint Stipulation of Class and PAGA Settlement and Release (“Amendment No. 1”), which changed the *cy pres* recipient from CASA Riverside County (Voices for Children) to California Rural Legal Assistance, Inc.

Plaintiffs now move for final approval of the Settlement, Attorneys’ Fees, Litigation Costs, Enhancement Awards, Settlement Administration Costs, and allocation for the PAGA Settlement Fund.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Settlement Fund of \$950,000.00 on a non-reversionary basis.⁴ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Fund: (1) Attorneys’ Fees, consisting of attorneys’ fees in the amount of \$332,500.00, and Litigation Costs, consisting of reimbursement of litigation costs and expenses in the amount of \$28,131.51, to Class Counsel; (2) Enhancement Awards in the amount of \$7,500.00 to Plaintiff Jose Saldana and \$5,000.00 to Plaintiff Thomas Johns, for a combined amount of \$12,500.00; (3) Settlement Administration Costs in the amount of \$9,000.00 to Simpluris; and (4) PAGA Settlement Amount in the amount of \$75,000.00, of which seventy-five percent (75%) (i.e., \$56,250.00), will be paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) (i.e., \$18,750.00) will be distributed to Aggrieved Employees (i.e., the Net PAGA Payment).⁵ The Net Settlement Amount, which is estimated to be \$492,868.49, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁶

The Settlement Administrator will determine each Settlement Class Member’s *pro rata* share of the Net Settlement Amount (“Individual Settlement Payment”), by multiplying the Net Settlement Amount by a ratio that is determined by dividing a Settlement Class Member’s number of weeks during the Class Period commencing on Sunday and ending on the following Saturday

⁴ Settlement Agreement, §§ I.s & II.h.

⁵ *Id.*, §§ I.d, I.p, I.y, & I.ff, & III.3.06.d.

⁶ This amount is higher than the amount stated in Paragraph 15 of the accompanying Declaration of Norman Alcantara 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 \$40,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$28,131.51 for reimbursement of litigation costs and expenses, and the difference of \$11,868.49 will remain part of the Net Settlement Amount.

1 in which the Settlement Class Member worked one or more days (“Workweeks”) by the total
2 aggregate number of Workweeks of all Settlement Class Members (“Total Workweeks”).⁷

3 The Settlement Administrator will determine each Aggrieved Employee’s *pro rata* share
4 of the Net PAGA Payment (i.e., 25% of the PAGA Settlement Amount) (“Individual PAGA
5 Payment”) by multiplying the Net PAGA Payment by a ratio that is determined by dividing an
6 Aggrieved Employee’s pay periods during the PAGA Period during which the Aggrieved
7 Employee worked for Defendant as an hourly-paid or non-exempt employee in California (“Pay
8 Periods”) by the total aggregate number of Pay Periods of all Aggrieved Employees (“Total Pay
9 Periods”).⁸

10 Class Members had forty-five (45) days after the date the Notice Packet was first mailed
11 (“Response Deadline”) to dispute the number of Workweeks credited to each of them, opt out of
12 the Settlement, and/or object to the Settlement.⁹ The Response Deadline was October 15, 2021.¹⁰
13 The Settlement Administrator has received two written requests to be excluded from the Class
14 Settlement (“Opt-Out Request”) and has not received any written statements objecting to the Class
15 Settlement (“Objection”) from Class Members.¹¹

16 Each Individual Settlement Payment will be allocated as one-third (1/3) to wages, to be
17 reported on IRS Form W-2, and two-thirds (2/3) to penalties and interest, to be reported on IRS
18 Form 1099 (if applicable).¹² Settlement Class Members will be issued payment of their Individual
19 Settlement Payments after reduction for the employee’s share of taxes on the portion of Individual
20 Settlement Payments allocated to wages.¹³ Defendant will pay the employer’s share of payroll
21 taxes separately and in addition to the Gross Settlement Fund.¹⁴ Each Individual PAGA Payment
22 will be allocated as entirely as penalties and will be reported on an IRS Form 1099 as required by
23 law.¹⁵

24
25 ⁷ Settlement Agreement, §§ I.oo, I.pp, & III.3.06.e.

26 ⁸ *Id.*, §§ I.hh, I.nn, & III.3.06.d.

27 ⁹ *Id.*, §§ III.3.04.a, III.3.04.b, & III.3.04.c.

28 ¹⁰ Simpluris Decl., ¶ 10.

¹¹ *Id.*, ¶¶ 11 & 12.

¹² Settlement Agreement, § III.3.06.e.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

For those Settlement Class Members who are also Aggrieved Employees, said individuals' applicable Individual Settlement Payment and Individual PAGA Payment may be combined into one check.¹⁶ To the extent that an Individual Settlement Payment check or Individual PAGA Payment check is (1) undeliverable or (2) not cashed, deposited, or otherwise negotiated within 180 days after the date listed on the check, the check will be cancelled and associated funds shall be distributed to California Rural Legal Assistance, Inc., a *cy pres* recipient pursuant to *Code of Civil Procedure* Section 384.¹⁷

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 August 10, 2021 Preliminary Approval Order.

On August 17, 2021, Simpluris received the Court-approved Notice Packet.¹⁸

On August 20, 2021, counsel for Defendant provided Simpluris with a list contained each Class Member's full name, last known home address, telephone number, Social Security number, and beginning and ending dates of employment ("Class List").¹⁹ The Class List contained data for two hundred seventy-nine (279) individuals identified as Class Members.²⁰ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.²¹

On August 31, 2021, Simpluris mailed the Notice Packets via first class United States mail to 279 individuals identified as Class Members in the Class List.²²

A total of nineteen (19) Notice Packets were returned to Simpluris, of which seventeen (17) did not have a forwarding address.²³ For the seventeen (17) Notice Packets without forwarding addresses, Simpluris performed an advanced address search (i.e., skip trace) on all of

¹⁶ Settlement Agreement, § III.3.06.e.

¹⁷ Amendment No. 1 attached as "EXHIBIT 1" to Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ A.

¹⁸ Simpluris Decl., ¶ 5.

¹⁹ *Id.*, ¶ 6.

²⁰ *Ibid.*

²¹ *Id.*, ¶ 7.

²² *Id.*, ¶ 8.

²³ *Id.*, ¶ 9.

these addresses by using Accurant, a reputable research tool owned by Lexis-Nexis.²⁴ Through the advanced address search, Simpluris was able to locate fifteen (15) updated addresses and Simpluris promptly mailed the Notice Packets to those updated addresses.²⁵ In addition, Simpluris received two (2) returned Notice Packets with forwarding addresses and promptly mailed the Notice Packets to those updated addresses.²⁶ Ultimately, two (2) Notice Packets remain undeliverable because an updated address was not located through skip-tracing.²⁷

As of the date of this Motion, the Settlement Administrator has not received any Objections and has received only two (2) Opt-Out Requests from Class Members.²⁸

To date, there are 277 Class Members who did not submit a timely and valid Opt-Out Request, and are therefore, deemed to be Settlement Class Members, representing 99% of the Class.²⁹

Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$492,868.49 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.³⁰ The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$4,767.63 and the average Individual Settlement Payment is currently estimated to be \$1,736.46.³¹ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$183.82 and the average Individual PAGA Payment is currently estimated to be \$105.93.³²

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²⁴ Simpluris Decl., ¶ 9.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Id.*, ¶¶ 11 & 12.

²⁹ *Id.*, ¶ 14.

³⁰ *Id.*, ¶ 15; see also, n.6, *supra*.

³¹ *Id.*, ¶ 16. The actual average and highest Individual Settlement Payments 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 \$40,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$11,868.49, will be part of the Net Settlement Amount). See n.6, *supra*.

³² *Id.*, ¶ 17.

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, 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 May 10, 2019. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for class certification, and trial.³³ The parties conducted significant informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for meditation.³⁴ Class Counsel also interviewed and obtained information from Plaintiffs and Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed thousands of pages of documents and data obtained from Plaintiffs, Defendant, and other sources.³⁵ The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiffs' employment records, sampling of time and payroll records, Employee Handbook, weekly Earning Schedule, forms (e.g., Meal Break Waiver and Time Clock Missed Punch Request Form), internal memorandum (e.g., Buildings Hours and Card Access Areas and Employee Parking), guidelines and policies (e.g., Evaluation Guideline, Property Inspection Policy, and Prohibited Time Clock Actions), acknowledgements (e.g., Employee Payroll Swipe Card), and Defendant's operations and employment practices and procedures, among other documents and data.³⁶ 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 and the production of documents and data prior to the two (2) mediation sessions.³⁷

³³ Aiwasian Decl., ¶ 7.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

After conducting significant informal discovery and investigation into the facts of the case, the parties participated in two formal mediation sessions conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters³⁸ Prior to and during the mediations 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.³⁹ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was acceptable to the parties was not easy.⁴¹ 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.⁴² After conducting significant informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator, 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.⁴³

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.⁴⁴ Class Counsel also reviewed and analyzed thousands of pages of documents obtained from Plaintiffs, Defendant, and 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.⁴⁵ The

³⁸ Aiwazian Decl., ¶ 9.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶ 7.

⁴⁵ *Ibid.*

Settlement was based on this large volume of facts, evidence, and investigation.⁴⁶ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴⁷

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

The Settlement, which provides for a Gross Settlement Fund of \$950,000.00, represents a fair, adequate, and reasonable resolution of the Action, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁸ The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation.⁴⁹ Had the Action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the claims

⁴⁶ Aiwasian Decl., ¶¶ 7 & 9.

⁴⁷ *Id.*, ¶¶ 16-19.

⁴⁸ *Id.*, ¶¶ 9 & 26.

⁴⁹ *Id.*, ¶¶ 6-9.

1 asserted in the case, and the real possibility of no recovery after years of litigation. Additionally,
2 the parties were moving into the phase of the litigation where they would have to conduct a
3 significant amount of discovery, including and not limited to, depositions of Defendant's Person
4 Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers,
5 supervisors, and other current and former employees throughout the State of California.
6 Discovery would have certainly arisen, which would have cost the parties additional time and
7 money. In contrast, the Settlement provides real and significant benefits for the Class here and
8 now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the
9 possibility of recovery.

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

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

17 The Settlement, which provides for a Gross Settlement Fund of \$950,000.00, represents a
18 fair, reasonable, and adequate resolution of the case. The Settlement was calculated using
19 information and data uncovered through extensive case investigation, informal discovery, and the
20 exchange of information in the context of mediation. The Settlement takes into account the
21 potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,
22 considering all of the facts in the case, the Gross Settlement Fund represents a considerable
23 recovery.

24 Even after deducting attorneys' fees in the amount of \$332,500.00, litigation costs and
25 expenses in the amount of \$28,131.51, Enhancement Awards in the combined amount of
26 \$12,500.00, Settlement Administration Costs in the amount of \$9,000.00, and the PAGA
27 Settlement Amount in the amount of \$75,000.00 from the Gross Settlement Fund of \$950,000.00,
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the Net Settlement Amount is currently estimated to be \$492,868.49.⁵⁰ Under the Settlement Agreement, the Gross Settlement Fund 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 Settlement Amount, based on the number of Workweeks credited to him or her and each Aggrieved Employee will be paid a *pro rata* share of the Net PAGA Payment, based on the number of Pay Periods credited to him or her. To date, there are 277 Settlement Class Members, representing 99% of the Class Members.⁵¹ The highest Individual Settlement Payment is currently estimated to be \$4,767.63 and the average Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$1,736.46.⁵² The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$183.82 and the average Individual PAGA Payment is currently estimated to be \$105.93.⁵³ 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.⁵⁴ 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 investigation has 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.

⁵⁰ Simpluris Decl., ¶ 15; see n.6, *supra*.

⁵¹ *Id.*, ¶ 14.

⁵² *Id.*, ¶ 16. The actual average and highest Individual Settlement Payments 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 \$40,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$11,868.49, will be part of the Net Settlement Amount). See n.6, *supra*.

⁵³ *Id.*, ¶ 17.

⁵⁴ Aiwazian Decl., ¶ 22.

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.⁵⁵ Lawyers for Justice, PC has been appointed class counsel in numerous
4 complex wage-and-hour cases, and has recovered millions of dollars for individuals in
5 California.⁵⁶ Both parties' counsel were capable of assessing the strengths and weaknesses of the
6 Class Members' claims against Defendant 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 Settlement.**

9 The Settlement has been well received by the Class – *not a single Class Member objected*
10 *to and only two (2) people opted out of the Class Settlement.*⁵⁷ Specifically, no objections have
11 been made as to the Gross Settlement Fund or requested Attorneys' Fees, Litigation Costs,
12 Enhancement Awards, Settlement Administration Costs, or the allocation for the PAGA
13 Settlement Amount. California courts have consistently found that a small number of objectors
14 indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*,
15 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*,
16 85 Cal.App.4th at 1152-53 (final approval 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 FAIR**
22 **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
28 ⁵⁵ Aiwasian Decl., ¶¶ 16-19.

⁵⁶ *Ibid.*

⁵⁷ Simpluris Decl., ¶¶ 12.

1 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
2 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where
3 the amount of a settlement is a “certain easily calculable sum of money,” California courts may
4 calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown, California
5 Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert*
6 *Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-
7 of-the-benefit approach is preferred in class and representative actions because “it better
8 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
9 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 Half*
12 *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 will
16 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
17 representative actions that often relieve the courts of the need to separately adjudicate numerous
18 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 amount
25 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 "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁸ 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.

⁵⁸ 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 attorneys' 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 cross-
6 check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and
7 "[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 Action was originally filed, not only was it inescapably contingent, but the
17 prospect of a long, drawn-out battle with a defendant 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 that
20 the courts approve the use of the percentage method when a settlement is obtained by the efforts
21 of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing
22 the risks of engaging in litigation without certainty of compensation).

23 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Fund
24 of \$950,000.00 on a non-reversionary basis. The requested attorneys' fees are thirty-five percent
25 (35%) of the total value of the monetary settlement. In light of Class Counsel's successful
26 prosecution and resolution of the case, the requested attorneys' fees are appropriate and
27 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 such and should be approved on a percentage basis.

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. 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 plaintiffs. If the named plaintiffs have employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiffs. In this case, Plaintiffs have each agreed to contingency fees of at least thirty-five percent (35%) of the recovery.⁵⁹

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”).

⁵⁹ Aiwazian Decl., ¶ 10.

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

6 Class Counsel has obtained a substantial recovery on behalf of Plaintiffs 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 Plaintiffs and Class Counsel. Thus, the requested attorneys' fees are appropriate.

10 **C. The Attorneys' Fees Award Requested by Class Counsel Is Reasonable Based**
11 **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 required;
14 (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal
15 services properly; (4) the preclusion of other employment by the attorney due to the acceptance
16 of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation
17 imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the
18 experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the
19 nature and length of the professional relationship with the client; and (12) awards in similar cases.
20 *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

21 Each and every one of these factors favors the attorneys' fees sought here; however, some
22 of the most relevant factors to this Court's fee determination will be addressed herein. The award
23 of attorneys' fees in the amount of \$332,500.00 (which is 35% of the Gross Settlement Fund) is
24 commensurate with the time, effort, and expense dedicated to the case, the contingent nature of
25 Class Counsel's fee and the risks taken in commencing the case, the skill and determination
26 required, the results that Class Counsel has achieved, and the value of the settlement that Class
27 Counsel has obtained for the Class Members.

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

2 Class Counsel used their experience and skills, and dedicated the full extent of resources,
3 to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as
4 demonstrated in the supporting declaration, Class Counsel has extensive experience in the
5 handling of class actions and complex litigation matters.⁶⁰

6 As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively
7 participated in litigation of this case.⁶¹ Prior to commencing the Action, Class Counsel had
8 conducted a significant amount of investigation into the factual and legal issues, Defendant's
9 business, and its operations and employment policies, practices, and procedures.⁶² During the
10 litigation of the Action, Class Counsel interviewed Plaintiffs and other Class Members; reviewed
11 and analyzed thousands of pages of documents and obtained from Plaintiffs, Defendant, and other
12 sources; and prepared damages/valuation calculations.⁶³ Class Counsel also met and conferred
13 with Defendant's counsel over the issues relating to pleadings and the production of documents
14 and data, among other things; engaged in extensive settlement negotiations with Defendant's
15 counsel; and prepared for and attended court proceedings, two (2) mediation sessions, and
16 settlement negotiations.⁶⁴

17 Class Counsel has devoted a considerable number of hours to this matter over the course
18 of the litigation process. The task and time chart, which is attached as "EXHIBIT 2" to the
19 accompanying declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel
20 has spent performing tasks on behalf of Plaintiffs and the Class.⁶⁵ The task and time chart is
21 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
22 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
23 chart, which sets forth the history of the work performed by Class Counsel, commencing with the
24 pre-filing analysis and research, and continuing up to settlement and final approval. Lawyers for
25 Justice, PC has spent 514.90 hours performing tasks and to obtain a significant recovery on behalf

26 ⁶⁰ Aiwarzian Decl., ¶¶ 16-19.

27 ⁶¹ *Id.*, Exh. 2.

28 ⁶² *Id.*, ¶ 7 & Exh. 2.

⁶³ *Id.*, ¶ 7.

⁶⁴ *Ibid.*

⁶⁵ *Id.*, Exh. 2.

of Plaintiffs and the Class.⁶⁶ 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 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.⁶⁷

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.

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⁶⁶ Aiwazian Decl., ¶ 12.

⁶⁷ *Id.*, ¶¶ 16-19.

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, Defendant agreed to pay a Gross Settlement Fund of \$950,000.00 to settle the matter. After deducting the attorneys' fees (\$332,500.00), litigation costs and expenses (\$28,131.51), Enhancement Awards (combined, \$12,500.00), Settlement Administration Costs (\$9,000.00), and the PAGA Settlement Amount (\$75,000.00) from the Gross Settlement Fund, it is currently estimated that the Net Settlement Amount is approximately \$492,868.49.⁶⁸ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$4,767.63 and the average Individual Settlement Payment is currently estimated to be \$1,736.46.⁶⁹ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$183.82 and the average Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$105.93. The Settlement offers significant monetary relief to the Settlement Class Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into contingency fee agreements with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has

⁶⁸ Simpluris Decl., ¶ 15; see n.6, *supra*.

⁶⁹ *Id.*, ¶ 16. The actual average and highest Individual Settlement Payments 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 \$40,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$11,868.49, will be part of the Net Settlement Amount). See n.6, *supra*.

invested 514.90 hours of time to obtain relief on behalf of Plaintiffs and the Class.⁷⁰ Class Counsel has also incurred litigation costs and expenses in the amount of \$28,131.51.⁷¹

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷² Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷³ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Litigation 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 two (2) Class Members opted out of the Class Settlement.⁷⁴

⁷⁰ Aiwazian Decl., ¶ 12, Exh. A.

⁷¹ See Part VII, *infra*.

⁷² Aiwazian Decl., ¶ 20.

⁷³ See *id.*, ¶¶ 16-19.

⁷⁴ Simpluris Decl., ¶¶ 13.

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

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 Gross Settlement Fund of \$950,000.00.⁷⁵ The Gross Settlement Fund 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 \$4,767.63 and the average Individual Settlement Payment is currently estimated to be \$1,736.46.⁷⁶ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$183.82 and the average Individual PAGA Payment is currently estimated to be \$105.93.⁷⁷

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.⁷⁸

D. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Have 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

⁷⁵ Aiwazian Decl., ¶¶ 6-9.

⁷⁶ *Id.*, ¶ 16. The actual average and highest Individual Settlement Payments 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 \$40,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$11,868.49, will be part of the Net Settlement Amount). See n.6, *supra*.

⁷⁷ *Id.*, ¶ 17.

⁷⁸ *Id.*, ¶¶ 16-19.

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

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

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

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

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

Class Counsel had to bring together a large volume of data and documents that were obtained from Defendant, Plaintiffs, 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 the mediations and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwanian 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.⁷⁹ The chart demonstrates that Lawyers for Justice, PC has spent a total of 514.90 hours litigating the case and finalizing the Settlement.⁸⁰ 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 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." See *id.*

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in

⁷⁹ See Aiwanian Decl., Exh. 2.

⁸⁰ Aiwanian Decl., ¶ 12.

reaching a settlement of \$950,000.00.

As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$640 per hour for services provided by Class Counsel.⁸¹ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$640 for legal services performed, by courts of this state.⁸² While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

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

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

Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved, the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers [...] is for contingency risk."). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a

⁸¹ Aiwasian Decl., ¶¶ 13 & 15.

⁸² For example, final approval of the class 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 effective 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 effective 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 effective 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 effective 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 effective 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 an effective hourly rate of \$845.64. Aiwasian Decl., ¶ 15.

premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. 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.

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

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

Ketchum at 1134.

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

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, and the case involved

1 gathering and analyzing documents and data not only from Defendant but also from the Class
2 Members. The handling of this matter involved a great amount of effort, and required the exercise
3 of high-level of skill, which Class Counsel has as a result of extensive experience in employment
4 class actions and wage-and-hour litigation. Class Counsel has been actively involved in the
5 prosecution of this matter, prior to its commencement and Class Counsel's work has continued all
6 the way up to the present. Class Counsel's dedication to the representation of the Class Members
7 has precluded other employment.

8 Most importantly, all services were performed by Class Counsel on a contingent basis.
9 Both California and federal courts recognize that attorneys should be compensated for taking on
10 such contingent risks and provided with financial incentives to enforce important rights and
11 protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*,
12 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the
13 skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to
14 a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here.
15 Class Counsel was successful in achieving substantial results in the form of a settlement of
16 \$950,000.00. Also, Class Counsel's efforts throughout the case demonstrate dedication to the
17 interests of the Class Members.

18 Class Counsel's application for attorneys' fees in light of the facts and circumstances
19 surrounding the matter is well within the range of reasonableness. While handling this matter,
20 Class Counsel devoted the hours in legal time summarized above and detailed in the task and time
21 chart, which is attached as "EXHIBIT 2" to the Declaration of Edwin Aiwasian.⁸³ As the chart
22 indicates, Class Counsel worked 514.90 hours in the pursuit of this matter. The attorney task and
23 time chart presents the entire picture. Applying a reasonable blended rate of \$640 per hour to
24 514.90 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of
25 \$329,536 on Class Counsel's services, and applying a modest multiplier of 1.01, the total enhanced
26 lodestar fees are \$332,831.36.⁸⁴ Class Counsel seeks an attorneys' fee award of \$332,500.00

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28 ⁸³ Aiwasian Decl., Exh. 2.

⁸⁴ Aiwasian Decl., ¶¶ 12 & 15; see n.2, *supra*.

(equal to 35% of the Gross Settlement Fund 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 1.01 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. Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys’ fees in the amount of \$332,500.00 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$40,000.00. As set forth in the Declaration of Edwin Aiwasian, Class Counsel has incurred a total of \$28,131.51 in litigation costs and expenses.⁸⁵ 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.⁸⁶ The cost savings of \$11,868.49 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸⁷ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$28,131.51 to Class Counsel.

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⁸⁵ Aiwasian Decl., ¶ 22.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

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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 \$9,000.00.⁸⁸ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Notice Packet to the Class Members in both English and Spanish; 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 Opt-Out Requests, Objections, and written disputes challenging the number of Workweeks (“Workweek Challenges”) (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.⁸⁹

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 \$9,000.00.

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

The Settlement provides for Enhancement Awards in the amount of \$7,500.00 to Plaintiff Jose Saldana and \$5,000.00 to Thomas Johns to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Enhancement Awards are both common and reasonable and should be awarded.

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

⁸⁸ Simpluris Decl., ¶ 16.

⁸⁹ *Id.*, ¶ 3.

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

3 The requested Enhancement Awards are fair and appropriate because Plaintiffs spent a
4 substantial amount of time and effort producing relevant documents and past employment records,
5 as well as providing the facts and evidence necessary to attempt to prove the allegations.⁹⁰
6 Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and
7 gave, information that would benefit the Class.⁹¹ Plaintiffs spent numerous hours speaking with
8 Class Counsel about their claims, describing their work experiences with Defendant, and gathering
9 and reviewing documents.⁹² These services merit the requested Enhancement Awards to
10 Plaintiffs, who have not received any compensation for their efforts on behalf of the Class
11 Members to date.⁹³

12 The requested Enhancement Awards were fully disclosed in the Class Notice that was
13 mailed to the Class Members. No objections were made with regards to the requested
14 Enhancement Awards. Accordingly, it is appropriate and just for Plaintiff Jose Saldana to receive
15 \$7,500.00 and Plaintiff Thomas Johns to receive \$5,000.00 as reasonable Enhancement Awards ,
16 in addition to their Individual Settlement Payments and Individual PAGA Payments (if
17 applicable), for their services on behalf of the Class.

18 **X. CONCLUSION**

19 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval
20 of the Settlement, and award the Attorneys' Fees, Litigation Costs, Enhancement Awards,
21 Settlement Administration Costs, and allocation for the PAGA Settlement Amount, in their
22 entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

23 Dated: October 22, 2021

LAWYERS for JUSTICE, PC

24 By:



25 Edwin Aiwanian
26 Attorneys for Plaintiff and the Class

27 ⁹⁰ Aiwanian Decl., ¶ 25; Declaration of Jose Saldana ("Saldana Decl."), ¶¶ 3-5; Declaration of Thomas Johns ("Johns
Decl."), ¶¶ 3-5;

28 ⁹¹ Aiwanian Decl., ¶ 25; Saldana Decl., ¶¶ 3-5; Johns Decl., ¶¶ 3-5.

⁹² Aiwanian Decl., ¶ 25; Saldana Decl., ¶¶ 3-5; Johns Decl., ¶¶ 3-5.

⁹³ Saldana Decl., ¶ 10; Johns Decl., ¶ 10.