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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

YANET GARCIA, individually, and on behalf
of other members of the general public
similarly situated; AUSTIN WILDER,
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;

Plaintiffs,

vs.

JOHNSON MATTHEY, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 37-2019-00003740-CU-OE-CTL

Honorable Eddie C. Sturgeon
Department C-67

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declarations of Class
Representatives (Yanet Garcia and Austin
Wilder); Declaration of Settlement
Administrator (Jeremiah Kincannon); and
[Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: May 28, 2021
Time: 9:00 a.m.
Department: C-67

Complaint Filed: January 18, 2019
FAC Filed: January 11, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 28, 2021 at 9:00 a.m., in Department C-67 of
2 the above-entitled Court, located at Hall of Justice, located at 330 West Broadway, San Diego,
3 California 92101, Plaintiffs Yanet Garcia and Austin Wilder (“Plaintiffs”) will and hereby do
4 move for an order granting final approval of:

5 1. The Joint Stipulation of Class Action and PAGA Settlement and Release none
6 none(“Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the
7 Settlement is fair, adequate, and reasonable because:

- 8 • A Net Settlement Amount of approximately **\$1,766,319.87** will be distributed to the
9 Class Members who did not timely opt out of the Settlement (“Settlement Class
10 Member”);
- 11 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
12 (“Settlement Administrator”);
- 13 • **Only one (1) Requests for Exclusion** was submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$1,015,000.00** to Lawyers for Justice, PC (“Class
15 Counsel”), representing thirty-five percent (35%) of the Maximum Settlement Amount, for
16 attorneys’ fees, which is reasonable and justified on a percentage-basis and also based on a
17 lodestar cross-check with a multiplier of 2.0;

18 3. Payment in the amount of **\$13,180.13** to Class Counsel for reimbursement of
19 litigation costs and expenses;

20 4. Payment in the amount of **\$10,500.00** to the Settlement Administrator, Simpluris,
21 Inc. (“Simpluris”), for Settlement Administration Costs;

22 5. Payments in the amount of **\$10,000.00** each to Plaintiffs Yanet Garcia and Austin
23 Wilder, as Enhancement Payment , for their time and effort in representing the Class; and

24 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
25 California Labor Code section 2698, *et seq.*, in the amount of **\$100,000.00**, of which seventy-
26 five percent (75%), or \$75,000.00, will be paid to the California Labor and Workforce
27 Development Agency and twenty-five percent (25%), or \$25,000.00, will be part of the Net
28 Settlement Amount for distribution to the Settlement Class Members.

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

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declaration of Class Counsel (Edwin Aiwarzian), Class Representatives (Yanet Garcia and
6 Austin Wilder), and Settlement Administrator (Simpluris, Inc. of Simpluris) in support thereof;
7 the pleadings and other records on file with the Court in this matter; and such evidence and oral
8 argument as may be presented at the hearing on this Motion.

9 Dated: May 6, 2021

LAWYERS for JUSTICE, PC

10
11 By:


Edwin Aiwarzian
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Yanet Garcia and Austin Wilder (“Plaintiffs”) seek final approval of: (1) the Maximum Settlement Amount of \$2,900,000.00; (2) attorneys’ fees in the amount of \$1,015,000.00, which is thirty-five percent (35%) of the Maximum Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$13,180.13 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$10,500.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$10,000.00 each to Plaintiffs Yanet Garcia and Austin Wilder, for a combined amount of \$20,000; and (5) allocation of \$100,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiffs seek relief on behalf of the following Class:

All current and former non-exempt employees of Defendant in California at any time during the period from January 18, 2015 through Preliminary Approval (“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 Paul Grossman, Esq., and extensive settlement negotiations. This matter has required 723.3 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) 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.²

Plaintiffs move for final approval of the Enhancement Payment 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. Plaintiffs also move for final approval of the

¹ Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), § 6.d.

² Applying a modest multiplier of 2.0, the total enhanced lodestar fees are \$1,012,620, and Class Counsel seeks an attorneys’ fees award of \$1,015,000.00 (equal to 35% of the Maximum Settlement Amount).

1 payment to the Settlement Administrator in the amount of \$10,500.00 for Settlement
2 Administration Costs. Plaintiffs also move for final approval of the allocation of \$100,000.00
3 for the PAGA Penalties, of which \$75,000.00 will be paid to the California Labor Workforce
4 and Development Agency (“LWDA”) for its portion of the PAGA Penalties (“LWDA
5 Payment”), and \$25,000.00 will be part of the Net Settlement Amount that will be distributed to
6 Class Members who did not submit a timely and valid request to be excluded from the
7 Settlement (“Settlement Class Members”).

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

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

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

26 ///

27 ///

28 ///

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

2 Defendant Johnson Matthey, Inc. (“Defendant”) is a multinational specialty chemicals
3 and sustainable technologies company that operates locations in Aliso Viejo, San Diego, and
4 San Jose. Plaintiffs Yanet Garcia and Austin Wilder are former employees of Defendant.

5 On January 18, 2019, Plaintiff Yanet Garcia filed a Class Action Complaint for Damages
6 in the San Diego County Superior Court thereby commencing the above-captioned lawsuit
7 ("Action").

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

17 On April 22, 2019, Defendant filed an Answer to Complaint.

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

21 On April 22, 2019, Defendant propounded Requests for Production of Documents Set
22 One onto Plaintiff Yanet Garcia and noticed the deposition of Plaintiff Yanet Garcia.

23 On April 29, 2019, Plaintiff Yanet Garcia propounded Form Interrogatories – General
24 (Set One), Special Interrogatories (Set One), Special Interrogatories (Set Two), Special
25 Interrogatories (Set Three), Requests for Production of Documents (Set One), and Requests for
26 Production of Documents (Set Two) onto Defendant and noticed multiple depositions of
27 Defendant’s Person Most Knowledgeable designees.
28

On May 28, 2019, Plaintiff Yanet Garcia served Objections and Responses to Defendant's Notice of Deposition of Plaintiff Yanet Garcia onto Defendant. On June 6, 2019, Defendant re-noticed the deposition of Plaintiff Yanet Garcia.

The parties have actively litigated the matter since it was commenced January 18, 2019. The parties conducted significant formal and informal discovery, and exchanged thousands of pages of documents and data. On January 24, 2020, the parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. Although the parties were not able to reach an agreement at mediation, the mediator continued to assist the parties in working toward a resolution of the case. After conducting significant formal and informal discovery and investigation into the facts of the case and with the aid of the mediator's evaluation, the parties ultimately reached the Settlement described herein to resolve the case in its entirety.

On November 13, 2020, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On November 20, 2020, the Court issued a tentative ruling granting leave for Plaintiffs to file their First Amended Complaint for Damages and Enforcement Under the Private Attorney Generals Act, Cal. Labor Code § 2698 *Et Seq* ("Operative Complaint").

On January 11, 2021, Plaintiffs' the Operative Complaint.

On January 21, 2021, the Court entered an Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of the Settlement, Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, and allocation for PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Maximum Settlement Amount of \$2,900,000.00 on a non-reversionary basis.³ Subject to approval by the

³ Settlement Agreement; § 6.r.

Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$1,015,000.00 and reimbursement of litigation costs and expenses in the amount of \$13,180.13, to Class Counsel; (2) Enhancement Payment in the amount of \$10,000.00 each to Plaintiffs Yanet Garcia and Austin Wilder, for a combined amount of \$20,000; (3) Settlement Administration Costs in the amount of \$10,500.00 to Simpluris; and (4) LWDA Payment in the amount of \$75,000.00.⁴ The Net Settlement Amount, which is estimated to be \$1,766,319.87, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁵

The Settlement Administrator will calculate each Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Share"), by dividing the Net Settlement Amount by the number of weeks all Settlement Class Members worked for Defendant (and were paid regular wages) as non-exempt employees in California during the period from January 18, 2015 through January 21, 2021 ("Workweeks") to yield the "Final Workweek Value" and multiplying each Settlement Class Member's number of individual number of Workweeks by the Final Workweek value.⁶

Class Members had forty-five (45) calendar days after the initial mailing of the Class Notice to Class Members to dispute the number of Workweeks credited to each of them, opt out of the Settlement, and/or object to the Settlement ("Response Deadline").⁷ The Response Deadline was April 12, 2021.⁸ The Settlement Administrator has received only one (1) written requests for exclusion from the Settlement ("Request for Exclusion") or zero (0) objections to the Settlement ("Notices of Objection") from Class Members.⁹

⁴ Settlement Agreement, §§ 10-13.

⁵ This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Jeremiah Kincannon 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 \$18,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$13,180.13 for reimbursement of litigation costs and expenses, and the difference of \$4,819.87 will remain part of the Net Settlement Amount.

⁶ Settlement Agreement, §§ 6.ee & 14.

⁷ *Id.*, §§ 6.t, 6.z, 6.aa, & 22.

⁸ Simpluris Decl., ¶ 9, Exh. A.

⁹ *Id.*, ¶¶ 10 & 11.

Individual Settlement Shares will be allocated as forty percent (40%) wages, to be reported on IRS Form W-2; and sixty percent (60%) interest and penalties, to be reported on IRS Form 1099 (if applicable).¹⁰ Individual Settlement Shares 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 Shares, and the net payment is referred to as "Individual Settlement Payment".¹¹

Any and all Individual Settlement Payment checks issued to Settlement Class Members will remain valid for 180 calendar days from the date of mailing.¹² Thereafter, Individual Settlement Payment checks that are not negotiated within the 150-day period will be void, and the funds associated with such voided checks will be distributed to Legal Aid Society of San Diego in accordance with Code of Civil Procedure section 384.¹³

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 January 21, 2021 Preliminary Approval Order.

On January 27, 2021, Simpluris received the Court-approved text for the Class Notice.¹⁴

On February 12, 2021, Simpluris received a mailing list from Defendant's counsel that contained the full names, last known addresses, Social Security numbers, last known telephone numbers, and number of Workweeks ("Class Data List").¹⁵ The Class Data List contained information for 446 individuals identified as Class Members.¹⁶ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data List with any updated addresses located.¹⁷

On February 26, 2021, Simpluris mailed the Class Notice via first class mail to 446

¹⁰ Settlement Agreement, § 25.

¹¹ *Ibid.*

¹² *Id.*, § 19.

¹³ *Ibid.*

¹⁴ Simpluris Decl., ¶ 4.

¹⁵ *Id.*, ¶ 5.

¹⁶ *Id.*, ¶ 5.

¹⁷ *Ibid.*

individuals identified as Class Members in the Class Data List.¹⁸

As of the date of this Motion, fourteen (14) Class Notices were returned as undeliverable with forwarding addresses, and Simpluris promptly re-mailed the Class Notice to the forwarding addresses.¹⁹ Simpluris performed a skip-trace search on the Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for thirteen (13) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²⁰ Ultimately, one (1) Class Notices remain undeliverable because an updated address was not located through skip-tracing.²¹

As of the date of this Motion, the Settlement Administrator has not received any Objections and only one (1) Request for Exclusion from Class Members.²²

To date, there are 445 Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²³ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$1,766,319.87 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁴ The highest Individual Settlement Share is currently estimated to be at least \$8,184.34 and the average Individual Settlement Share is currently estimated to be at least \$3,958.43.²⁵

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:

¹⁸ Simpluris Decl., ¶ 7.

¹⁹ *Id.*, ¶ 8.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, ¶¶ 10 & 11.

²³ *Id.*, ¶ 12.

²⁴ *Id.*, ¶ 12; see also, n.5, *supra*.

²⁵ *Id.*, ¶ 12. The actual average and highest Individual Settlement Shares will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$18,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$4,819.87, will be part of the Net Settlement Amount). See n.5, *supra*.

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.*

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

3 The parties actively litigated the case since it was commenced on January 18, 2019.
4 Counsel for the parties used the pre-mediation time period to investigate the veracity, strength,
5 and scope of the claims, and also to prepare the matter for class certification, representative
6 adjudication, and trial.²⁶ The parties conducted extensive formal and informal discovery and
7 investigation into the facts of the case, and also informally exchanged information and data in
8 preparation for mediation.²⁷ Class Counsel propounded multiple sets of written discovery
9 requests in various forms; worked with Plaintiff Garcia to provide responses to discovery
10 requests that were propounded on her by Defendant; and prepared and served numerous
11 deposition notices.²⁸ Class Counsel also interviewed and obtained information from Plaintiffs
12 and Class Members, including and not limited to the names of potential witnesses, and reviewed
13 and analyzed thousands of pages of documents and data produced by Defendant and obtained
14 through other sources.²⁹ The documents and data reviewed and analyzed by Class Counsel
15 included, and were not limited to, employment records of Plaintiffs, a detailed sampling of Class
16 Members’ time and pay data, company policy acknowledgements, agreements (such as a
17 confidentiality agreement), forms, notices, training records, internal memoranda, job
18 descriptions, and Defendant’s operations and employment practices, procedures, and policies
19 (including, but not limited to, time and attendance policy and business integrity and ethics
20 policy), among other documents and data.³⁰ Class Counsel researched applicable law, developed
21 damages/valuation models in preparation for mediation, and met and conferred with
22 Defendant’s counsel on numerous occasions, e.g., to discuss issues relating to the pleadings,
23 case management, discovery, and production of documents and data prior to mediation.³¹

24 After conducting significant formal and informal discovery and investigation into the
25 facts of the case, the parties participated in a formal, full-day mediation conducted by Paul

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

27 ²⁷ *Ibid.*

28 ²⁸ *Ibid.*

29 ²⁹ *Ibid.*

30 ³⁰ *Ibid.*

31 ³¹ *Ibid.*

Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.³² 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.³³ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.³⁴ Arriving at a settlement that was acceptable to the parties was not easy.³⁵ 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.³⁶ 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.³⁷

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.³⁸ 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.³⁹ The Settlement was based on this large volume of facts, evidence, and

³² Aiwazian Decl., ¶ 8.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Id.*, ¶ 6.

³⁹ *Ibid.*

investigation.⁴⁰ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴¹

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

The Settlement, which provides for a Maximum Settlement Amount of \$2,900,000.00, 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.⁴² 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.⁴³ 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,

⁴⁰ Aiwazian Decl., ¶¶ 6 & 8.

⁴¹ *Id.*, ¶¶ 15-18.

⁴² *Id.*, ¶¶ 8 & 21.

⁴³ *Id.*, ¶¶ 5-8.

1 allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery
2 after years of litigation. Additionally, the parties were moving into the phase of the litigation
3 where they would have to conduct a significant amount of additional discovery, including and
4 not limited to, depositions of Defendant's Person Most Knowledgeable designees, expert
5 witnesses, and percipient witnesses, such as managers, supervisors, and other current and former
6 employees throughout the State of California. Discovery disputes would have certainly arisen,
7 which would have cost the parties additional time and money. In contrast, the Settlement
8 provides real and significant benefits for the Class Members here and now, while avoiding the
9 further expenses, risks, and delay of prolonged litigation with only the 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
14 final 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 Maximum Settlement Amount of \$2,900,000.00,
18 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
19 using information and data uncovered through extensive case investigation, formal and informal
20 discovery, and the exchange of information in the context of mediation. The Settlement takes
21 into account the potential risks and rewards inherent in any case and, in particular, in this matter.
22 Moreover, considering all of the facts in the case, the Maximum Settlement Amount represents
23 a considerable recovery.

24 Even after deducting attorneys' fees in the amount of \$1,015,000.00, litigation costs and
25 expenses in the amount of \$13,180.13, Enhancement Payments in the combined amount of
26 \$20,000.00, Settlement Administration Costs in the amount of \$10,500.00, and LWDA Payment
27 in the amount of \$75,000.00 from the Maximum Settlement Amount of \$2,900,000.00, the Net
28

Settlement Amount is currently estimated to be \$1,766,319.87.⁴⁴ Under the Settlement Agreement, the Maximum Settlement Amount will be 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. To date, there are 445 Settlement Class Members, representing 99.78% of the Class Members.⁴⁵ The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least \$8,184.34 and the average Individual Settlement Share is currently estimated to be at least \$3,958.43.⁴⁶ 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.⁴⁷ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁴⁸ Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals

⁴⁴ Simpluris Decl., ¶ 12; see n.5, *supra*.

⁴⁵ *Ibid*.

⁴⁶ *Ibid*; see n.25, *supra*.

⁴⁷ Aiwazian Decl., ¶ 21.

⁴⁸ *Id.*, ¶¶ 15-18.

in California.⁴⁹ Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Settlement*.⁵⁰ Specifically, no objections have been made as to the Maximum Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, or the allocation for PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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

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

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement.

⁴⁹ Aiwasian Decl., ¶¶ 15-18.

⁵⁰ Simpluris Decl., ¶¶ 10 & 11.

Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; see also *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49.

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

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195

(awarding approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulity* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵¹ 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

⁵¹ 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 cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]"

2 and "[t]he percentage [...] method survives in California." *Id.* (internal quotes omitted).

3 Courts have consistently recognized that class and representative action litigation is

4 increasingly necessary to protect the rights of individuals whose injuries and/or damages are too

5 small to economically justify legal action on an individual basis. Accordingly, in determining

6 a reasonable fee award, courts award fees to serve as an economic incentive for lawyers to

7 pursue such litigation in order to achieve increased access to the judicial system for meritorious

8 claims and to enhance deterrents to wrongdoing. This is especially true in situations where

9 multiple similar alleged wrongs would not be economically feasible to pursue individually, such

10 as here. See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

11 When the case was originally filed, not only was it inescapably contingent, but the

12 prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was

13 almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked

14 substantial economic loss if the results were not successful. This substantial risk is the reason

15 that the courts approve the use of the percentage method when a settlement is obtained by the

16 efforts of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49

17 (discussing the risks of engaging in litigation without certainty of compensation).

18 Under the terms of the Settlement Agreement, Defendant will pay a Maximum

19 Settlement Amount of \$2,900,000.00 on a non-reversionary basis. The requested attorneys' fees

20 are thirty-five percent (35%) of the total value of the monetary settlement. In light of Class

21 Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are

22 appropriate and reasonable.

23 Compensating class counsel in class litigation on a percentage basis makes good sense

24 because: (1) it is consistent with the private marketplace where contingent fee attorneys are

25 customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent

26 class members in achieving the maximum possible resolution of the case; and (3) it encourages

27 the most efficient and expeditious resolution of the litigation by providing an incentive for early,

28 yet reasonable, settlement. The requested attorneys' fees in this matter satisfy all of those factors

and should be approved on a percentage basis.

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. Named Plaintiffs’ 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 agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁵²

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

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiffs and the Class, and the results achieved justify an attorneys’ fees award that is the equivalent of the standard

⁵² Aiwazian Decl., ¶ 9.

market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiffs and Class Counsel. Thus, the requested attorneys' fees are appropriate.

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 \$1,015,000.00 (which is 35% 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.

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. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁵³

⁵³ Aiwazian Decl., ¶¶ 15-18.

As outlined in the Declaration of Edwin Aiwazian, Class Counsel has fully and actively participated in litigation of this case.⁵⁴ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁵⁵ During the litigation of the action, Class Counsel interviewed Plaintiffs and other Class Members; propounded formal written discovery requests; worked with Plaintiffs to provide responses to discovery requests that were propounded by Defendant; reviewed and analyzed thousands of pages of pages of documents and data produced by Defendant and obtained through other sources; and prepared damages/valuation calculations.⁵⁶ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, case management, discovery, and production of documents and data, among other things; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁵⁷

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiffs and the Class.⁵⁸ The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent **723.3** hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs and the Class.⁵⁹ 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

⁵⁴ Aiwazian Decl., ¶ 4-5.

⁵⁵ *Id.*, ¶ 6 & Exh. A.

⁵⁶ *Ibid*

⁵⁷ *Id.*, ¶ 6.

⁵⁸ *Id.*, Exh. A.

⁵⁹ *Id.*, ¶ 11.

1 in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

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

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

8 Class Counsel undertook significant investigation, analysis, and research prior to filing
9 this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the
10 matter for class certification and representative adjudication and had every intention of taking
11 the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide
12 settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the
13 Declaration of Edwin Aiwasian, Class Counsel used its extensive experience in the handling of
14 class actions and complex wage-and-hour litigation matters in order to obtain the Settlement
15 with maximum efficiency.⁶⁰

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

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

23 The Settlement at this stage is preferred over continued litigation because such
24 resolutions save time and money that would otherwise go to litigation. The risks and expenses
25 of further litigation outweighed any benefit that might have been gained otherwise. The
26 Settlement provides an immediate recovery, as opposed to an uncertain result in the future after
27 prolonged litigation involving expert discovery, trial preparation, class certification
28

⁶⁰ Aiwasian Decl., ¶¶ 15-18.

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 Maximum Settlement Amount of \$2,900,000.00 to settle the matter. After deducting the attorneys' fees (\$1,015,000.00), litigation costs and expenses (\$13,180.13), Enhancement Payment (combined, \$20,000.00), Settlement Administration Costs (\$10,500.00), and LWDA Payment (\$75,000.00) from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$1,766,319.87.⁶¹ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least \$8,184.34 and the average Individual Settlement Share is currently estimated to be at least \$3,958.43.⁶² 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 invested 723.3 hours of time to obtain relief on behalf of Plaintiffs and the Class.⁶³ Class Counsel has also incurred litigation costs and expenses in the amount of \$13,180.13.⁶⁴

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁵ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁶⁶ 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.

⁶¹ Simpluris Decl., ¶ 12; see n.5, *supra*.

⁶² *Id.*, ¶ 12; see n.25, *supra*.

⁶³ Aiwasian Decl., ¶ 11, Exh. A.

⁶⁴ See Part VII, *infra*.

⁶⁵ Aiwasian Decl., ¶ 19.

⁶⁶ See *id.*, ¶¶ 15-18.

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 Settlement.⁶⁷

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 Maximum Settlement Amount of \$2,900,000.00.⁶⁸ The Maximum Settlement Amount will be paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share to a Settlement

⁶⁷ Simpluris Decl., ¶ 11.

⁶⁸ Aiwezian Decl., ¶¶ 5-8.

Class Member is currently estimated to be at least \$8,184.34 and the average Individual Settlement Share is currently estimated to be at least \$3,958.43.⁶⁹

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.⁷⁰

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

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

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

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⁶⁹ Simpluris Decl., ¶ 12.

⁷⁰ *Id.*, ¶¶ 15-18.

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

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

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

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

24 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwasian
25 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
26 on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁷¹ The
27 chart demonstrates that Class Counsel has spent a total of 723.3 hours litigating the case and
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⁷¹ See Aiwasian Decl., Exh. A.

1 finalizing the Settlement.⁷² In light of the facts and circumstances of the case, as well as the
2 results that Class Counsel has achieved on behalf of Plaintiffs and the Class Members, Class
3 Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will
4 continue to perform work on this matter through the date of final approval and in connection
5 with the implementation of the Settlement.

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

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

15 Class Counsel has been actively involved in this case, prior to its commencement and all
16 the way up to the present, and Class Counsel's dedication to providing representation in this
17 matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of
18 its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was
19 successful in reaching a settlement of \$2,900,000.00.

20 As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and
21 experience of Class Counsel support a reasonable hourly rate of compensation of at least \$700
22 per hour for services provided by Class Counsel.⁷³ Lawyers for Justice, PC has been awarded
23 attorneys' fees, compensating the firm at the rate of at least \$700 for legal service performed,
24 by courts of this state.⁷⁴ While the circumstances of every case is unique, the fact remains that

25 ⁷² Aiwazian Decl., ¶ 11.

26 ⁷³ *Id.*, ¶ 12.

27 ⁷⁴ For example, final approval of the class and representative action settlement in *Seth Swan v. Pace Supply*
28 (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.*

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 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

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; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved a higher hourly rate of \$845.64. *Aiwazian Decl.*, ¶ 12.

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

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051;

1 *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts
2 and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is
3 entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are
4 significant here. Class Counsel was successful in achieving substantial results in the form of a
5 settlement of \$2,900,000.00. Also, Class Counsel's efforts throughout the case demonstrate
6 dedication to the interests of the Class Members.

7 Class Counsel's application for attorneys' fees in light of the facts and circumstances
8 surrounding the matter is well within the range of reasonableness. While handling this matter,
9 Class Counsel devoted the hours in legal time summarized above and detailed in the Task and
10 Time Chart, which is attached as EXHIBIT A to the Declaration of Edwin Aiwasian.⁷⁵ As the
11 chart indicates, Class Counsel has worked 723.3 hours in the pursuit of this matter. The attorney
12 task and time chart presents the entire picture. Applying a reasonable rate of \$700 per hour to
13 723.3 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of
14 \$506,310.00 on Class Counsel's services, and applying a modest multiplier of 2.0, the total
15 enhanced lodestar fees are \$1,012,620.00.⁷⁶ Class Counsel seeks an attorneys' fee award of
16 \$1,015,000.00 (equal to 35% of the Maximum Settlement Amount based on the Settlement
17 Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of
18 fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases.
19 Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even**
20 **higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v.*
21 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at
22 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005)
23 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal.
24 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with
25 cross-check **multipliers ranging from 4.5 to 19.6**).

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27
28 ⁷⁵ Aiwasian Decl., Exh. A.

⁷⁶ Aiwasian Decl., ¶ 11; *see n.2, supra*.

Therefore, application of a modest multiplier of 2.0 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 \$1,015,000.00 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 \$18,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$13,180.13 in litigation costs and expenses.⁷⁷ 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.⁷⁸ The cost savings of \$4,819.87 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁷⁹ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$13,180.13 to Class Counsel.

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

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$10,500.00.⁸⁰ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Class Notice to the Class Members in both English, Spanish, and Vietnamese; 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 Requests for Exclusion, Notices of Objection, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement;

⁷⁷ Aiwazian Decl., ¶ 19.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Simpluris Decl., ¶ 13.

calculating Individual Settlement Shares and preparing the associated tax forms; and transmitting payments, among other things.⁸¹

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 \$10,500.00.

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

The Settlement provides for Enhancement Payments in the amount of \$10,000.00 each to Plaintiffs Yanet Garcia and Austin Wilder to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Enhancement Payment 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 v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative).

The requested Enhancement Payment are fair and appropriate because Plaintiffs spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations, including and not limited to, by way of working with Class Counsel to prepare responses to written discovery requests that were propounded by Defendant.⁸² Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that would benefit the Class.⁸³ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing

⁸¹ Simpluris Decl., ¶ 3.

⁸² Aiwazian Decl., ¶ 20; Declaration of Yanet Garcia (“Garcia Decl.”), ¶¶ 3-5; Declaration of Austin Wilder (“Wilder Decl.”), ¶¶ 3-5.

⁸³ Aiwazian Decl., ¶ 20; Garcia Decl., ¶¶ 3-5; Wilder Decl., ¶¶ 3-5.

documents.⁸⁴ These services merit the requested Enhancement Payment to Plaintiffs, who have not received any compensation for their efforts on behalf of the Class Members to date.⁸⁵

The requested Enhancement Payment were fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Enhancement Payment. Accordingly, it is appropriate and just for Plaintiffs Yanet Garcia and Austin Wilder to each receive \$10,000.00 as reasonable Enhancement Payment, in addition to their Individual Settlement Payments, for their services on behalf of the Class.

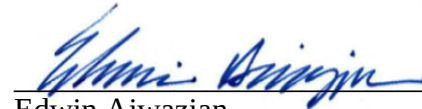
X. CONCLUSION

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

Dated: May 6, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiffs and the Class

⁸⁴ Aiwanian Decl., ¶ 20; Garcia Decl., ¶¶ 2-6; Wilder Decl., ¶¶ 3-5.

⁸⁵ Garcia Decl., ¶ 8; Wilder Decl., ¶ 9.