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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

EDUARDO LEE, individually, and on behalf
of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act;

Plaintiff,

vs.

DEL MONACO FOODS, INC., an unknown
business entity; DEL MONACO SPECIALTY
FOODS, INC., an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 19CV347471

Honorable Sunil R. Kulkarni
Department 1

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Eduardo Lee); Declaration
of Settlement Administrator (Christina
Fowler); and [Proposed] Final Approval
Order and Judgment filed concurrently
herewith]

Date: September 29, 2022
Time: 1:30 p.m.
Department: 1

Complaint Filed: May 3, 2019
FAC Filed: November 13, 2019
SAC Filed: March 1, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 29, 2022 at 1:30 p.m., in Department 1 of
2 the above-entitled Court, located at 191 North First Street, San Jose, California 95113, Plaintiff
3 Eduardo Lee (“Plaintiff”) will and hereby does move for an order granting final approval of:

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

- 7 • A Net Settlement Amount of approximately **\$380,204.71** will be fully distributed to
8 the Class Members who did not timely opt out of the Settlement (“Settlement Class
9 Member”);
10 • **No Notices of Objections** were submitted to the settlement administrator, Simpluris,
11 Inc. (“Settlement Administrator”);
12 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

13 2. Payment in the amount of **\$245,000.00** to Lawyers for Justice, PC (“Class
14 Counsel”), representing thirty-five percent (35%) of the Maximum Settlement Amount, for
15 attorneys’ fees, which is reasonable and justified on a percentage-basis;

16 3. Payment in the amount of **\$16,045.29** to Class Counsel for reimbursement of
17 litigation costs and expenses;

18 4. Payment in the amount of **\$11,250.00** to the Settlement Administrator, Simpluris,
19 Inc. (“Simpluris”), for Settlement Administration Costs;

20 5. Payment in the amount of **\$10,000.00** to Plaintiff Eduardo Lee, as a Class
21 Representative Service Award, for his time and effort in representing the Class; and

22 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
23 California Labor Code section 2698, *et seq.*, in the amount of **\$50,000.00**, of which seventy-five
24 percent (75%), or \$37,500.00, will be paid to the California Labor and Workforce Development
25 Agency and twenty-five percent (25%), or \$12,500.00, will be part of the Net Settlement
26 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 to
3 extend the page limit for memoranda.

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

9
10 Dated: September 6, 2022

LAWYERS for JUSTICE, PC

11
12 By:



13 Edwin Aiwanian
14 Attorneys for Plaintiff and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Edwardo Lee (“Plaintiff”) seeks final approval of: (1) the Maximum Settlement Amount of \$700,000.00; (2) attorneys’ fees of up to \$245,000, which is thirty-five percent (35%) of the Maximum Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$16,045.29 (together, “Class Counsel Award”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs of \$11,250.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Class Representative Service Award in the amount of \$10,000.00 to Plaintiff Edwardo Lee; and (5) allocation of \$50,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the Class Period (“Class” or “Class Members”).¹

This matter involved ongoing investigations, informal discovery, review and analysis of a large volume of documents and data prior to and during mediation conducted by Jeffrey Krivis, Esq., and extensive settlement negotiations. This matter has required 421.90 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.

Plaintiff moves for final approval of the Class Representative Service Award in the amount of \$10,000.00 to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$11,250.00 for Settlement

¹ First Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), § I.2. “Class Period” is referred to as the period from May 3, 2015 until May 4, 2022. *Id.*, § I.7.

Administration Costs. Plaintiff also moves for final approval of the allocation of \$50,000.00 for the PAGA Penalties, of which \$37,500.00 will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA Penalties (“LWDA Payment”), and \$12,500.00 will be part of the Net Settlement Amount that will be distributed to Class Members who did not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Members”).

The requests for the Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, and allocation for the PAGA Penalties were fully disclosed in the Notice of Class Action and PAGA Settlement (“Notice”) that was mailed to the Class Members. Most importantly, as of the date of this Motion, *not a single Class Member has sought exclusion from or objected to any aspect of the Settlement, including the requested Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, or allocation for PAGA Penalties.*

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

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award the Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, and PAGA Penalties, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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

2 Defendants Del Monaco Foods, Inc. and Del Monaco Specialty Foods, Inc. (together,
3 “Defendants”) are a custom food manufacturing company based in Morgan Hill, California.
4 Plaintiff Edwardo Lee is a former employee of Defendants.

5 On May 3, 2019, Plaintiff Edwardo Lee filed a Class Action Complaint for Damages,
6 thereby commencing the action. The action was filed in the Superior Court of California for the
7 County of Santa Clara, Case No. 19CV347471 (the “Action”).

8 On November 12, 2019, Plaintiff filed a First Amended Class Action Complaint for
9 Damages.

10 On December 16, 2019, Defendants filed an Answer to Plaintiff’s First Amended Class
11 Action Complaint.

12 On July 28, 2020, the parties participated in a formal, full-day mediation conducted by
13 Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and
14 employment matters.

15 On March 1, 2021, Plaintiff filed a Second Amended Class Action Complaint for
16 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
17 2698, *Et Seq.* (“Operative Complaint”).

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

On March 5, 2021, Defendants filed an Answer to Plaintiff's Second Amended Class Action Complaint.

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

The parties have actively litigated the matter since it was commenced May 3, 2019. With the aid of the mediator's evaluation, the parties ultimately reached the Settlement described herein to resolve the case in its entirety.

On February 15, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On March 2, 2022, the Court issued a tentative ruling ("Tentative Ruling"), requiring parties to provide additional information regarding the settlement and consider amending the settlement. On April 14, 2022 and April 18, 2022, Plaintiff's counsel filed supplemental materials requested by the Court, including an amended settlement agreement with an appropriate release. On May 4, 2022, the Court entered an Order Concerning Plaintiff's Motion for Preliminary Approval of Class/PAGA Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Class Counsel Award, Class Representative Service Award, 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, Defendants have agreed to pay a Maximum Settlement Amount of \$700,000.00 on a non-reversionary basis. Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Class Counsel Award, consisting of attorneys' fees in the amount of \$245,000.00 and reimbursement of litigation costs and expenses in the amount of \$16,045.29, to Class Counsel; (2) Class Representative Service Award in the amount of

1 \$10,000.00 to Plaintiff Edwardo Lee; (3) Settlement Administration Costs in the amount of
2 \$11,250.00 to Simpluris; and (4) LWDA Payment in the amount of \$37,500.00.² The Net
3 Settlement Amount, which is estimated to be three hundred eighty thousand two hundred four
4 dollars and seventy-one cents (\$380,204.71), will be distributed in accordance with the
5 Settlement Agreement, and there is no reversion to Defendants.³

6 The Settlement Administrator will calculate each Settlement Class Member's share of the
7 Net Settlement Amount ("Individual Settlement Payment"), in accordance with the Settlement
8 Agreement and as follows:

9 a. The Settlement Administrator will divide each Settlement Class Member's number of
10 weeks that he or she worked for Defendants as an hourly-paid or non-exempt
11 employee in California during the Class Period ("Workweeks") by the total
12 Workweeks for all Settlement Class Members, resulting in a "Payment Ratio" for
13 each individual Settlement Class Member.⁴

14 b. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net
15 Settlement Amount to calculate each Settlement Class Member's estimated Individual
16 Settlement Payment.⁵

17 Class Members had forty-five (45) calendar days after the initial mailing of the Notice to
18 Class Members to dispute the number of Workweeks credited to each of them, opt out of the
19 Settlement, and/or object to the Settlement ("Response Deadline").⁶ The Response Deadline was
20 July 23, 2022.⁷ The Settlement Administrator has not received any written requests for exclusion
21
22

23 ² Settlement Agreement, §§ I.4, I.9, I.22, I.34, I.22, III.53.c, III.53.d, III.53.e, & III.53.f.

24 ³ This amount is higher than the amount stated in Paragraph 10 of the accompanying Declaration of Christina
25 Fowler Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the
26 Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the
maximum amount of \$25,000.00, which is allocated under the Settlement. However, Class Counsel seeks the
amount of only \$16,045.29 for reimbursement of litigation costs and expenses, and the difference of \$8,954.71
will remain part of the Net Settlement Amount.

27 ⁴ Settlement Agreement, § III.53.b.i.

28 ⁵ Ibid.

⁶ *Id.*, §§ I.31, III.52.g & III.52.h.

⁷ Simpluris Decl., ¶ 8, Exh. A.

1 from the Settlement (“Requests for Exclusion”) or written statements of objection to the
2 Settlement (“Notices of Objection”) from Class Members.⁸

3 Individual Settlement Payments will be allocated as twenty-five percent (25%) wages, to
4 be reported on IRS Form W-2; and seventy-five percent (75%) interest, penalties, and other non-
5 wage damages, to be reported on IRS Form 1099 (if applicable).⁹ Individual Settlement
6 Payments will be paid out to Settlement Class Members subject to reduction for the employee’s
7 share of taxes, withholdings, and contribution with respect to the wages portion of the Individual
8 Settlement Payments.¹⁰ Defendants’ share of taxes on the wages portion of the Individual
9 Settlement Payments will be paid by Defendants separately and in addition to the Maximum
10 Settlement Amount.¹¹

11 Any and all Individual Settlement Payment checks issued to Settlement Class Members
12 will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of
13 mailing.¹² The Settlement Administrator will mail a reminder notice to those Settlement Class
14 Members who have not cashed their checks after one hundred twenty (120) calendar days and
15 will also send a reminder via any available email address or social media for these Settlement
16 Class Members.¹³ Individual Settlement Payment checks that are not negotiated within the 180-
17 day period will be void, and the funds associated with such voided checks, plus any accrued
18 interest, will be distributed to the State Controller's Office Unclaimed Property Fund in the name
19 of the Settlement Class Members who did not cash their settlement checks.¹⁴

20 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

21 The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps
22 to effectuate the notice and settlement administration process, as set forth in the Court’s May 4,
23 2022 Preliminary Approval Order.

25 ⁸ Simpluris Decl., ¶¶ 11 & 13.

26 ⁹ Settlement Agreement, § III.53.b.ii.

27 ¹⁰ *Id.*, § III.53.b.i.

28 ¹¹ *Id.*, § I.17.

¹² *Id.*, § III.53.b.iv.

¹³ *Ibid.*

¹⁴ *Ibid.*

1 On May 6, 2022, Simpluris received the Court-approved Notice.¹⁵

2 On May 24, 2022, Simpluris received a mailing list from Defendants' counsel that
3 contained the full names, last known addresses, last known telephone numbers, Social Security
4 numbers, and information sufficient to allow the Settlement Administrator to calculate the
5 number of Workweeks for all Class Members during the Class Period (collectively, "Class
6 Data").¹⁶ The Class Data contained information for three hundred thirty-eight (338) individuals
7 identified as Class Members.¹⁷ Simpluris processed the names and addresses through the
8 National Change of Address Database ("NCOA") and updated the Class Data with any updated
9 addresses located.¹⁸

10 On June 8, 2022, Simpluris mailed the Notice via First Class Mail to three hundred thirty-
11 eight (338) individuals identified as Class Members in the Class Data.¹⁹

12 As of the date of this Motion, twenty-seven (27) Notices were returned as undeliverable.²⁰
13 For those Notices that were returned as undeliverable without forwarding addresses, Simpluris
14 attempted to find a forwarding address using Accurint, a reputable research tool owned by Lexis-
15 Nexis, and located an updated address for twenty-two (22) Class Members, and promptly re-
16 mailed the Notice to the updated addresses.²¹ Ultimately, five (5) Notices remain undeliverable
17 because an updated address was not located through skip-tracing or the Notice was returned as
18 undeliverable a second time.²²

19 As of the date of this Motion, the Settlement Administrator has not received any Notices
20 of Objection or Requests for Exclusion from Class Members.²³

21 ///

22 ///

23
24 ¹⁵ Simpluris Decl., ¶ 5.

25 ¹⁶ *Id.*, ¶ 6.

26 ¹⁷ *Ibid.*

27 ¹⁸ *Id.*, ¶ 7.

28 ¹⁹ *Id.*, ¶ 8.

²⁰ *Id.*, ¶ 9.

²¹ *Id.*

²² *Ibid.*

²³ *Id.*, ¶¶ 11 & 13.

To date, there are three hundred thirty-eight (338) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁴ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$380,204.71 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁵ The highest Individual Settlement Payment is currently estimated to be \$3,552.25 and the average Individual Settlement Payment is currently estimated to be \$1,098.37.²⁶

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)

²⁴ Simpluris Decl., ¶ 10.

²⁵ *Id.*; see also, n.3, *supra*.

²⁶ *Id.* 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 \$25,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$8,954.71, will be part of the Net Settlement Amount). See n.3, *supra*.

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 case since it was commenced on May 3, 2019. Prior to reaching the Settlement, the parties investigated the veracity, strength, and scope of the claims, and were preparing the matter for class certification, and trial.²⁷ The parties conducted significant investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation.²⁸ Class Counsel also interviewed and obtained information from Plaintiff and Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed a large volume of documents and data produced by Defendants.²⁹ The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiff’s employment records, a detailed sampling of Class Members’

²⁷ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

²⁸ *Ibid.*

²⁹ *Ibid.*

time and pay data, multiple iterations of Defendants' Team Member Guidebook, company policy acknowledgements and agreements (e.g., Meal Break Waiver, Meal Break Coaching Acknowledgement, Final Paycheck Acknowledgement, New Hire Receipt Acknowledgement, Harassment Training Acknowledgement), internal memoranda, new hire orientation materials and checklists, and Defendants' operations and employment practices, procedures, and policies (including, but not limited to, Wage and Hour Rules form, Expense Report, Meal Break Waiver Form, Meal and Rest Period Policy, and Business Expense Reimbursement Policy) among other information, documents, and data.³⁰ Class Counsel researched applicable law, developed damages/valuation models in preparation for mediation, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to the pleadings and the production of documents and data prior to mediation.³¹

After conducting significant informal discovery and investigation into the facts of the case, the parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, 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 Defendants and their counsel felt very strongly about Defendants' ability to prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class certification would be

³⁰ Aiwazian Decl., ¶ 6.

³¹ Ibid.

³² *Id.*, ¶ 8.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

1 obtained and Plaintiff would prevail at trial.³⁶ After conducting significant informal discovery
2 and investigations, extensive settlement negotiations, and with the aid of the mediator's
3 evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues
4 relating to Plaintiff's principal claims, as well as the costs and risks to the parties that would
5 attend further litigation.³⁷

6 The Settlement takes into account the strengths and weaknesses of each side's position
7 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.
8 Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.³⁸
9 Class Counsel also reviewed and analyzed a large volume of documents produced by Defendants
10 and obtained through other sources, and performed significant research into the law concerning
11 certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-
12 and-hour enforcement, Plaintiff's claims, and Defendants' defenses, as well as facts discovered.³⁹
13 The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁰
14 Additionally, Class Counsel has extensive experience in handling complex wage-and-hour
15 matters, including significant experience in employment class action litigation.⁴¹

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

18 The Settlement, which provides for a Maximum Settlement Amount of \$700,000.00,
19 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
20 litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴²
21 The Settlement was calculated using information and data uncovered through extensive case
22 investigation, informal discovery, and the exchange of information in the context of mediation.⁴³
23 Had the Action not settled, Defendants would have vigorously challenged class certification,

24 ³⁶ Aiwazian Decl., ¶ 8.

25 ³⁷ Ibid.

26 ³⁸ *Id.*, ¶ 6.

27 ³⁹ Ibid.

28 ⁴⁰ *Id.*, ¶¶ 6 & 8.

⁴¹ *Id.*, ¶¶ 15-18.

⁴² *Id.*, ¶¶ 8 & 21.

⁴³ *Id.*, ¶¶ 5-8.

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

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

26 It would be grossly inefficient for such a large class of current and former employees to
27 bring individual actions to recover from Defendants for the alleged violations of wage-and-hour
28 laws. Moreover, the potential individual recovery that could be obtained by a Class Member

would not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

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

The Settlement, which provides for a Maximum Settlement Amount of \$700,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Maximum Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$245,000.00, litigation costs and expenses in the amount of \$16,045.29, Class Representative Service Award in the amount of \$10,000.00, Settlement Administration Costs in the amount of \$11,250.00, and LWDA Payment in the amount of \$37,500.00 from the Maximum Settlement Amount of \$700,000.00, the Net Settlement Amount is currently estimated to be three hundred eighty thousand two hundred four dollars and seventy-one cents (\$380,204.71).⁴⁴ Under the Settlement Agreement, the Maximum Settlement Amount will be fully paid out without any reversion to Defendants, 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 three hundred thirty-eight (338) Settlement Class Members, representing 100% of the Class Members.⁴⁵ The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$3,552.25 and the average Individual Settlement Payment is currently estimated to be \$1,098.37.⁴⁶ These are significant individual recoveries, particularly in light of the risks of litigation.

⁴⁴ Simpluris Decl., ¶ 10; see n.3, *supra*.

⁴⁵ *Ibid*.

⁴⁶ Simpluris Decl., ¶ 10; see n.26, *supra*.

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 in California.⁴⁹ Both parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendants 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 or opted out of the Settlement.*⁵⁰ Specifically, no objections have been made as to the Maximum Settlement Amount or requested Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, or the allocation for PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class’

⁴⁷ Aiwazian Decl., ¶ 21.

⁴⁸ *Id.*, ¶¶ 15-18.

⁴⁹ *Ibid.*

⁵⁰ Simpluris Decl., ¶¶ 11 & 13.

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 CLASS COUNSEL 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. 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. 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, 34.⁵¹ 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 cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he percentage [...] method survives in California." *Id.* (internal quotes omitted).

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

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

8 Under the terms of the Settlement Agreement, Defendants will pay a Maximum
9 Settlement Amount of \$700,000.00 on a non-reversionary basis. The requested attorneys’ fees
10 are thirty-five percent (35%) of the total value of the monetary settlement. In light of Class
11 Counsel’s successful prosecution and resolution of the case, the requested attorneys’ fees are
12 appropriate and reasonable.

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

20 The percentage method is consistent with, and is intended to mirror, the practice in the
21 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
22 arrangements with their clients. A named plaintiff’s agreement to pay a contingent fee is
23 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
24 counsel’s work to the class is to review the consideration agreed to be paid by the named
25 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
26 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
27 without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this
28

case, Plaintiff has 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 Plaintiff and the Class, and the results achieved justify an attorneys’ fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. Thus, the requested attorneys’ fees are appropriate.

C. The Class Counsel 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

⁵² Aiwazian Decl., ¶ 9.

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 \$245,000 (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

As outlined in the Declaration of Edwin Aiwasian, 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, Defendants' business, and their operations and employment policies, practices, and procedures.⁵⁵ Class Counsel used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare for class certification, representative adjudication, and trial. The

⁵³ Aiwasian Decl., ¶¶ 15-18.

⁵⁴ *Id.*, Exh. A.

⁵⁵ *Id.*, ¶ 6 & Exh. A.

parties conducted significant informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation. The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiff and other Class Member's employment records, a detailed sampling of Class Member's time and pay data, multiple iterations of Defendants' Team Member Guidebook, company policy acknowledgements (e.g., Meal Break Coaching Acknowledgement, Final Paycheck Acknowledgement, New Hire Receipt Acknowledgement, Harassment Training Acknowledgment), internal memoranda, new hire orientation checklists, Defendants' operations and employment practices, procedures (including but not limited to, Wage and Hour Rules form, Expense Report, and Meal Break Waiver form), and policies (including but not limited to Meal and Rest Period Policy and Business Expense Reimbursement Policy), among other documents and data.⁵⁶ Class Counsel also met and conferred with Defendants' counsel over the issues relating to pleadings and the production of documents and data, prior to mediation; engaged in extensive settlement negotiations with Defendants' 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 Plaintiff 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 **421.90** hours performing tasks and to obtain a significant recovery on behalf

⁵⁶ *Id.*, ¶ 6.

⁵⁷ *Ibid.*

⁵⁸ Aiwazian Decl Exh. A.

of Plaintiff 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 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. Defendants retained well-respected counsel to represent their defenses. More specifically, Defendants and their counsel felt very strongly about Defendants' ability to obtain a denial of certification and to prevail on the merits. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendants 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.⁶⁰

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, Defendants would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendants, 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.

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

⁵⁹ *Id.*, ¶ 11.

⁶⁰ Aiwazian Decl., ¶¶ 15-18.

further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Settlement Class Members while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

As a result of this litigation and extensive settlement negotiations, Defendants agreed to pay a Maximum Settlement Amount of \$700,000.00 to settle the matter. After deducting the attorneys' fees (\$245,000.00), litigation costs and expenses (\$16,045.29), Class Representative Service Award (\$10,000.00), Settlement Administration Costs (\$11,250.00), and LWDA Payment (\$37,500.00) from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$380,204.71.⁶¹ 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 \$3,552.25 and the average Individual Settlement Payment is currently estimated to be \$1,098.37.⁶² The Settlement offers significant monetary relief to the Settlement Class Members.

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

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 421.90 hours of time to obtain relief on behalf of Plaintiff and the Class.⁶³ Class Counsel has also incurred litigation costs and expenses in the amount of \$16,045.29.⁶⁴

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

⁶¹ Simpluris Decl., ¶ 10; see n.3, *supra*.

⁶² Simpluris Decl., ¶ 10; see n.26, *supra*.

⁶³ Aiwasian Decl., ¶ 11, Exh. A.

⁶⁴ See Part VII, *infra*.

⁶⁵ Aiwasian Decl., ¶ 19.

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 Class Counsel Award. 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 or opted out of 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 Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have

⁶⁶ See *id.*, ¶¶ 15-18.

⁶⁷ Simpluris Decl., ¶¶ 11 & 13.

1 resulted in a settlement that provides for a Maximum Settlement Amount of \$700,000.00.⁶⁸ The
2 Maximum Settlement Amount will be fully paid out, in accordance with the terms of the
3 Settlement Agreement. The highest Individual Settlement Payment to a Settlement Class
4 Member is currently estimated \$3,552.25 and the average Individual Settlement Payment is
5 currently estimated \$1,098.37.⁶⁹

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

7 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys'
8 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
9 has years of complex and class action litigation experience, has recovered millions of dollars on
10 behalf of thousands of individuals in California, and has successfully handled numerous
11 significant wage-and-hour class action and complex cases.⁷⁰

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

15 While the percentage-of-the-benefit approach is endorsed as the better approximation of
16 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
17 method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining
18 that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
19 spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*,
20 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method,
21 the lodestar may provide a useful perspective on the reasonableness of a given percentage
22 award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary
23 determination of the fee as a percentage” of the settlement amount and “does not impose an
24 absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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27 ⁶⁸ Aiwazian Decl., ¶¶ 5-8.

⁶⁹ Simpluris Decl., ¶¶ 11 & 13; see n.26, *supra*.

⁷⁰ Aiwazian Decl., ¶¶ 15-18.

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

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

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

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendants made it clear very early on that they disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendants raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendants but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward certification and trial, including taking and defending depositions of Defendants’ 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 produced by Plaintiff, Defendants and other sources. Class Counsel conducted extensive review and analysis of these documents and data to strategize the Action and to prepare for and attend mediation and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed

on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁷¹ The chart demonstrates that Class Counsel has spent a total of 421.90 hours litigating the case and finalizing the Settlement.⁷² 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 reaching a settlement of \$700,000.00.

As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$650 per hour for services provided by Class Counsel.⁷³ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$650 for legal service performed, by

⁷¹ See Aiwasian Decl., Exh. A.

⁷² *Id.*, ¶ 11.

⁷³ Aiwasian Decl., ¶ 12.

courts of this state.⁷⁴ 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.

Applying the rate of \$650 per hour to 421.90 hours would place a reasonable value of \$274,235, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$245,000, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2

⁷⁴ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; 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 hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved an hourly rate of \$845.64. Aiwazian Decl., ¶ 12.

1 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78
2 (affirming a 2.34 multiplier without remand); *Wershba, supra*, 91 Cal.App.4th at 255
3 (“Multipliers can range from 2 to 4 or even higher.”); *Sutter Health Uninsured Pricing Cases*
4 (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez,*
5 *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

6 The lodestar method as a cross-check to the percentage figure sought strongly supports
7 the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiff respectfully requests
8 that the Court grant final approval of, and award, attorneys’ fees in the amount of \$245,000 to
9 Class Counsel.

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

12 The Settlement provides for reimbursement of litigation costs and expenses of up to
13 \$25,000.00. As set forth in the Declaration of Edwin Aiwarzian, Class Counsel has incurred a
14 total of \$16,045.29 in litigation costs and expenses.⁷⁵ This amount was reasonable and necessary
15 in the prosecution of the case and to obtain the Settlement.⁷⁶ The cost savings of \$8,954.71 will
16 be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members
17 in accordance with the Settlement.⁷⁷ Accordingly, Plaintiff requests that the Court award
18 litigation costs and expenses in the amount of \$16,045.29 to Class Counsel.

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

21 As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be
22 incurred by Simpluris for the notice and settlement administration process are \$11,250.00.⁷⁸ The
23 costs incurred and to be incurred include, but are not limited to, expenses for formatting,
24 printing, and mailing the Notice to the Class Members; performing skip-trace searches on
25 Notices returned as undeliverable; re-mailing the Notices to any updated addresses located by

26 ⁷⁵ Aiwarzian Decl., ¶ 19.

27 ⁷⁶ Ibid.

27 ⁷⁷ Ibid.

28 ⁷⁸ Simpluris Decl., ¶ 10.

1 skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Notices of
2 Objection, and Workweeks disputes (if any); handling inquiries from Class Members regarding
3 the Settlement; calculating Individual Settlement Payments and preparing the associated tax
4 forms; and transmitting payments, among other things.⁷⁹

5 Accordingly, the Court should grant final approval of payment to Simpluris, a necessary
6 third-party for handling of the notice and settlement process, in the amount of \$11,250.00.

7 **IX. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS FAIR**
8 **AND REASONABLE, AND SHOULD BE APPROVED.**

9 The Settlement provides for a Class Representative Service Award in the amount of
10 \$10,000.00 to Plaintiff Edwardo Lee to compensate Plaintiff for the time and effort that he
11 expended on behalf of the Class. The requested Class Representative Service Award is both
12 common and reasonable and should be awarded.

13 In determining whether to make service payments, courts consider the following factors:
14 (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the
15 notoriety and personal difficulties encountered by the class representatives; (3) the amount of
16 time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the
17 personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation.
18 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000
19 participation award to a single class representative).

20 The requested Class Representative Service Award is fair and appropriate because
21 Plaintiff spent a substantial amount of time and effort producing relevant documents and
22 information, as well as providing the facts and evidence necessary to attempt to prove the
23 allegations.⁸⁰ Plaintiff was available whenever Class Counsel needed him and actively tried to
24 obtain, and gave, information that would support the pursuit of class and PAGA claims.⁸¹
25 Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his

26 ⁷⁹ *Id.*, ¶ 3.

27 ⁸⁰ Aiwazian Decl., ¶ 20; Declaration of Edwardo Lee in Support of Plaintiff's Motion for Final Approval of Class
Action Settlement ("Lee Decl."), ¶¶ 3-4.

28 ⁸¹ Aiwazian Decl., ¶ 20; Lee Decl., ¶¶ 3-4.

work experiences with Defendants, and gathering and reviewing documents.⁸² These services merit the requested Class Representative Service Award to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members to date.⁸³

The requested Class Representative Service Award was fully disclosed in the Notice that was mailed to the Class Members. No objections were made with regards to the requested Class Representative Service Award. Accordingly, it is appropriate and just for Plaintiff Edwardo Lee to receive \$10,000.00 as a reasonable Class Representative Service Award, in addition to his Individual Settlement Payment, for his services in the Action.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award the Class Counsel Award, Class Representative Service Award, 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: September 6, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwazian
Attorneys for Plaintiff and the Class

⁸² Aiwazian Decl., ¶ 20; Lee Decl., ¶¶ 2-4.

⁸³ Aiwazian Decl., ¶ 20; Lee Decl., ¶ 8.