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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

REVERIANO DIAZ, 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.

101 PHOENIX, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 20STCV36090

Honorable Carolyn B. Kuhl
Department SSC-12

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Reveriano Diaz);
Declaration of Settlement Administrator
(Simpluris, Inc.); and [Proposed] Final
Approval Order and Judgment filed
concurrently herewith]

Date: October 6, 2022
Time: 10:30 a.m.
Department: SSC-12

Complaint Filed: September 22, 2020
FAC Filed: January 11, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 6, 2022 at 10:30 a.m., in Department SSC-12
2 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff
3 Reveriano Diaz (“Plaintiff”) will and hereby does move for an order granting final approval of:

4 1. The First Amended Stipulation and Settlement of Class Action and Private
5 Attorneys General Act Representative Claims (“Settlement,” “Agreement,” or “Settlement
6 Agreement”) on the grounds that the Settlement is fair, adequate, and reasonable because:

- 7 • A Net Settlement Amount of approximately **\$105,291.85** will be fully distributed to the
8 Class Members who did not timely opt out of the Settlement (“Participating Class
9 Member”);
10 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
11 (“Settlement Administrator”);
12 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

13 2. Payment in the amount of **\$91,413.00** to Lawyers for Justice, PC (“Class
14 Counsel”), representing thirty-five percent (35%) of the Gross Settlement Amount, for attorneys’
15 fees, which is reasonable and justified on a percentage-basis;

16 3. Payment in the amount of **\$20,775.15** to Class Counsel for reimbursement of
17 litigation costs and expenses;

18 4. Payment in the amount of **\$6,200.00** to the Settlement Administrator, Simpluris,
19 Inc. (“Simpluris”), for Settlement Administration Costs;

20 5. Payment in the amount of **\$7,500.00** to Plaintiff Reveriano Diaz, as a Class
21 Representative Enhancement Payment, 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 \$40,000.00, of which seventy-five
24 percent (75%), or **\$30,000.00**, will be paid to the California Labor and Workforce Development
25 Agency and twenty-five percent (25%), or **\$10,000.00**, will be part of the Net Settlement Amount
26 for distribution to the Participating Class Members.

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1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of
2 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 Declaration of Class Counsel (Edwin Aiwazian), Class Representative (Reveriano Diaz), and
6 Settlement Administrator (Christina Fowler) in support thereof; the pleadings and other records on
7 file with the Court in this matter; and such evidence and oral argument as may be presented at the
8 hearing on this Motion.

9 Dated: September 13, 2022

LAWYERS for JUSTICE, PC

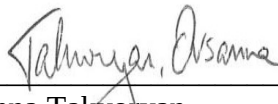
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11 By: 
12 Ovsanna Takvoryan
13 Attorneys for Plaintiff and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Reveriano Diaz (“Plaintiff”) seeks final approval of: (1) the Gross Settlement Amount of \$261,180.00; (2) attorneys’ fees in the amount of \$91,413.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$20,775.15 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$6,200.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Class Representative Enhancement Payment in the amount of \$7,500.00 to Plaintiff Reveriano Diaz; and (5) allocation of \$40,000.00 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 non-exempt hourly employees who were employed by Defendant 101 Phoenix, Inc. in the State of California at any time during the period from September 22, 2016 through October 1, 2021 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, significant motion practice, formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by Jeffrey Krivis, Esq., and extensive settlement negotiations. This matter has required 384.80 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 Gross 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 Enhancement Payment in the amount of \$7,500.00, to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$6,200.00 for Settlement Administration Costs.

¹ First Amended Stipulation and Settlement of Class Action and Private Attorneys General Act Representative Claims (“Settlement Agreement”) § I.G.

1 Plaintiff also moves for final approval of the allocation of \$40,000.00 for the PAGA penalties, of
2 which \$30,000.00 will be paid to the California Labor Workforce and Development Agency
3 (“LWDA”) for its portion of the PAGA penalties (“LWDA Payment”), and \$10,000.00 will be
4 part of the Net Settlement Amount that will be distributed to Class Members who did not submit
5 a timely and valid request to be excluded from the Settlement (“Participating Class Members”).

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

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

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

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

25 Defendant 101 Phoenix, Inc. (“Defendant”) is a Chinese restaurant. Plaintiff Reveriano
26 Diaz is a former employee of Defendant.

27 On September 22, 2020, Plaintiff Reveriano Diaz, individually, and on behalf of all current
28 and former hourly-paid or non-exempt employees who worked for Defendant within the State of

California at any time since September 22, 2016, filed a Class Action Complaint for Damages, thereby commencing the action. The action was filed in the Superior Court of California for the County of Los Angeles, Case No. 20STCV36090 (the “Action”).

On November 2, 2020, Plaintiff notified the California Labor and Workforce Development Agency (“LWDA”) of his PAGA claim by submitting a letter to LWDA for the purpose of complying with Labor Code Section 2699 et seq. (and any amendments thereto). Upon the expiration of the 65-day exhaustion period, on January 11, 2021, Plaintiff filed a first amended complaint, entitled Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., adding a PAGA cause of action (“Operative Complaint”).

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

On March 19, 2021, Defendant filed an Answer to Plaintiff’s Operative Complaint.

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

The Parties have actively litigated this matter since the Action was commenced on September 22, 2020. The Parties have conducted significant formal and informal discovery and investigation into the claims. Both sides have propounded multiple sets of formal written discovery requests. The Parties engaged in extensive discussions about the strengths and weaknesses of

Plaintiff's claims and Defendant's defenses thereto, to try to resolve the Action. Ultimately, the Parties reached the proposed Settlement described herein to resolve this Action in its entirety.

On July 20, 2021, 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. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On December 15, 2021, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On February 15, 2022, a hearing was held on Plaintiff's Motion for Preliminary Approval, during which the Court raised certain points of inquiry. On April 13, 2022, Plaintiff filed supplemental papers in support of the Motion for Preliminary Approval. On May 2, 2022, the Court entered an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Attorneys' Fees and Costs, Class Representative 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 Gross Settlement Amount of \$261,180.00 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 Gross Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$91,413.00 and reimbursement of litigation costs and expenses in the amount of \$20,775.15, to Class Counsel; (2) Class Representative Enhancement Payment in the amount of \$7,500.00 to Plaintiff Reveriano Diaz; (3) Settlement Administration Costs in the amount of \$6,200.00 to Simpluris; and (4) LWDA Payment in the amount of \$30,000.00.² The Net Settlement Amount,

² Settlement Agreement, §§ III, IV, V, and VI.

1 which is estimated to be \$105,291.85, will be distributed in accordance with the Settlement
2 Agreement, and there is no reversion to Defendant.³

3 The Settlement Administrator will calculate each Participating Class Member's share of
4 the Net Settlement Amount ("Individual Settlement Payment"), by multiplying each Individual
5 Class Member's number of weeks that he or she was employed by Defendant as a non-exempt
6 employee in California during the period from September 22, 2016 through October 1, 2021
7 ("Workweeks") by the Workweek Value (the Net Settlement amount divided by the total number
8 of Workweeks).⁴

9 Class Members had forty-five (45) calendar days after the initial mailing of the Class
10 Notice to Class Members to dispute the number of Workweeks credited to each of them, opt out
11 of the Settlement, and/or object to the Settlement ("Response Deadline").⁵ The Response Deadline
12 was August 13, 2022.⁶ The Settlement Administrator has not received any written requests for
13 exclusion from the Settlement ("Requests for Exclusion") or objections to the Settlement
14 ("Objections") from Class Members.⁷

15 Individual Settlement Payments will be allocated as thirty percent (30%) wages, to be
16 reported on IRS Form W-2; and seventy percent (70%) penalties, to be reported on IRS Form 1099
17 (if applicable).⁸ Individual Settlement Payments will be paid out to Participating Class Members
18 subject to reduction for the employee's and employer's share of taxes, withholdings, and
19 contribution with respect to the wages portion of the Individual Settlement Payments, and the net
20 payment is referred to as "Individual Settlement Payment".⁹

21 Any and all Individual Settlement Payment checks issued to Participating Class Members
22 will remain valid for 180 calendar days from the date of mailing.¹⁰ Thereafter, Individual

23 ³ This amount is higher than the amount stated in Paragraph 10 of the accompanying Administrator's Declaration
24 ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class
25 Counsel will obtain litigation costs and expenses in the maximum amount of \$25,000.00, which is allocated under the
26 Settlement. However, Class Counsel seeks the amount of only \$20,775.15 for reimbursement of litigation costs and
27 expenses, and the difference of \$4,224.85 will remain part of the Net Settlement Amount.

28 ⁴ Settlement Agreement, § VIII.

⁵ *Id.*, § I. ff.

⁶ *Simpluris Decl.*, ¶ 12, Exh. A.

⁷ *Id.*, ¶¶ 13 & 14.

⁸ Settlement Agreement, § VIII.7.c.

⁹ *Id.*, § VIII.7.

¹⁰ *Id.*, § XI.24.

Settlement Payment checks that are not negotiated within the 180-day period will be void, and the funds associated with such voided checks will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Procedure Code § 1500 et seq., for the benefit of those Class Members whose check is cancelled, until such time that they claim their property.¹¹

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 May 2, 2022 Preliminary Approval Order.

On June 14, 2022, Simpluris received the Court-approved text for the Class Notice.¹²

On June 15, 2022, Simpluris received a mailing list from Defendant's counsel that contained the names, last known addresses, Social Security numbers, telephone numbers, and pertinent employment information for the period from September 22, 2016 through October 1, 2021, for individuals identified as Class Members ("Class List").¹³ The Class List contained information for ninety-seven (97) individuals identified as Class Members.¹⁴ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.¹⁵

On June 29, 2022, Simpluris mailed the Class Notice via first class mail to the ninety-seven (97) individuals identified as Class Members in the Class List.¹⁶

As of the date of this Motion, three (3) Class Notices were returned to Simpluris as undeliverable by the post office.¹⁷ For those without forwarding addresses, Simpluris performed an advanced address search (i.e., skip trace) by using Accurant, a reputable research tool owned by Lexis-Nexis.¹⁸ Simpluris used the Class Member's name and previous address to locate a current

¹¹ Settlement Agreement, § XI.24.

¹² Simpluris Decl., ¶ 5.

¹³ *Id.*, ¶ 6.

¹⁴ *Ibid.*

¹⁵ *Id.*, ¶ 7.

¹⁶ *Id.*, ¶ 8.

¹⁷ *Id.*, ¶ 9.

¹⁸ *Ibid.*

address.¹⁹ Altogether, Simpluris re-mailed three (3) Class Notices to either; a new forwarding address provided by the Post Office, a newfound address using Accurint, or a forwarding address provided by the Class.²⁰ Ultimately, no Class Notices were undeliverable.²¹

As of the date of this Motion, Simpluris has not received any Notice of Objections, Requests for Exclusion, or Workweek disputes from Class Members.²²

To date, there are ninety-seven (97) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Participating Class Members.²³ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$105,291.85 will be distributed to Participating Class Members in accordance with the terms of the Settlement.²⁴ The highest Individual Settlement Payment is currently estimated to be \$3,915.36 and the average Individual Settlement Payment is currently estimated to be \$1,041.93.²⁵

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:

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.

¹⁹ Simpluris Decl., ¶ 9.

²⁰ Ibid.

²¹ Ibid.

²² *Id.*, ¶¶ 13, 14 & 15.

²³ *Id.*, ¶ 16.

²⁴ *Id.*, ¶ 10; see also, n.3, *supra*.

²⁵ *Id.*, ¶ 11. 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., \$4,224.85, will be part of the Net Settlement Amount). See n.3, *supra*.

1 “Due regard should be given to what is otherwise a private consensual agreement between the
2 parties.” *Dunk*, *supra*, 48 Cal.App.4th at 1801.

3 The proponent of the settlement has the burden to show that it is fair and reasonable.
4 *Wershba*, *supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness
5 exists where, as here: “(1) the settlement is reached through arm’s-length bargaining; (2)
6 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
7 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
8 *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any
9 ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.
10 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The
11 inquiry is not whether the settlement agreement is the best one that class members could have
12 possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.”
13 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent
14 of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba*, *supra*,
15 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower
16 than it would be if the case were to be successfully litigated, that is no bar to a class settlement
17 because the public interest may indeed be served by a voluntary settlement in which each side
18 gives ground in the interest of avoiding prolonged litigation. *Id.*

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

21 The parties actively litigated the case since it was commenced on September 22, 2020.
22 Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and
23 scope of the claims, and also to prepare the matter for class certification, representative
24 adjudication, and trial.²⁶ The parties conducted extensive formal and informal discovery and
25 investigation into the facts of the case, and also informally exchanged information and data in
26 preparation for mediation.²⁷ Class Counsel propounded multiple sets of written discovery requests
27

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

²⁷ Aiwasian Decl., ¶ 6.

1 onto Defendant; reviewed Defendant's responses thereto; worked with Plaintiff to review
2 discovery requests and a notice of deposition that were served by Defendant; and prepared and
3 served numerous deposition notices.²⁸ Class Counsel also interviewed and obtained information
4 from Plaintiff and Class Members, including and not limited to the names of potential witnesses,
5 and reviewed and analyzed a large volume of documents and data obtained from Plaintiff,
6 Defendant, and other sources.²⁹ The documents and data reviewed and analyzed by Class Counsel
7 included, and were not limited to, Plaintiff's employment records, a detailed sampling of Class
8 Members' time and pay data, multiple iterations of Defendant's Employee Handbooks, internal
9 memoranda, job descriptions, and Defendant's operations and employment practices, forms,
10 procedures, and policies, among other information and documents.³⁰ Class Counsel researched
11 applicable law, developed damages/valuation models in preparation for mediation, and met and
12 conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the
13 pleadings, discovery, and production of documents and data prior to mediation.³¹

14 After conducting significant formal and informal discovery and investigation into the facts
15 of the case, the parties participated in a formal, full-day mediation conducted by Jeffrey Krivis,
16 Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.³²
17 Prior to and during mediation and settlement discussions, the parties exchanged information and
18 data, and discussed various aspects of the case, including and not limited to, the risks and delays
19 of further litigation, the risks and expenses to the parties of proceeding with class certification,
20 representative adjudication, and trial, the law relating to off-the-clock theory, meal and rest
21 periods, representative PAGA claims, and wage-and-hour law and enforcement, the evidence
22 produced and analyzed, and the possibility of appeals, among other things.³³ During all settlement
23 discussions, the parties conducted their negotiations at arm's length in an adversarial position.³⁴
24 Arriving at a settlement that was acceptable to the parties was not easy.³⁵ Defendant and its counsel

25 ²⁸ Aiwazian Decl., ¶ 6.

26 ²⁹ Ibid.

27 ³⁰ Ibid.

28 ³¹ Ibid.

³² Aiwazian Decl., ¶ 8.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

1 felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class
2 certification, while Plaintiff and Class Counsel believed that class certification would be obtained
3 and Plaintiff would prevail at trial.³⁶ After conducting significant formal and informal discovery
4 and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation,
5 the parties agreed that the matter was well-suited for settlement given the legal issues relating to
6 Plaintiff's principal claims, as well as the costs and risks to the parties that would attend further
7 litigation.³⁷

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

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

20 The Settlement, which provides for a Gross Settlement Amount of \$261,180.00, represents
21 a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class
22 and representative claims through certification proceedings, trial, and/or appeals.⁴² The Settlement
23 was calculated using information and data uncovered through extensive case investigation, formal
24 and informal discovery, and the exchange of information in the context of mediation.⁴³ Had the

25 ³⁶ Aiwazian Decl., ¶ 8.

26 ³⁷ Ibid.

27 ³⁸ *Id.*, ¶ 6.

28 ³⁹ Ibid.

⁴⁰ *Id.*, ¶¶ 6 & 8.

⁴¹ *Id.*, ¶¶ 15-18.

⁴² *Id.*, ¶¶ 8 & 21.

⁴³ *Id.*, ¶¶ 5-8.

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

9 It is preferable to reach an early resolution of a dispute because such resolutions save time
10 and money that would otherwise go to litigation. If this matter had settled after further litigation,
11 the settlement amount would have taken into account the additional costs incurred, and there might
12 have been less money available for Class Members after all was said and done. This is not just an
13 abstract contention. The risks and expenses of further litigation outweighed any benefit that might
14 have been gained otherwise. These risks of further litigation include a determination that the
15 claims were unsuitable for class treatment and/or representative adjudication, failure to obtain
16 certification, class de-certification after certification of a class, allowing a jury to decide the claims
17 asserted in the case, and the real possibility of no recovery after years of litigation. Additionally,
18 the parties were moving into the phase of the litigation where they would have to conduct a
19 significant amount of additional discovery, including and not limited to, additional depositions of
20 Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses,
21 such as managers, supervisors, and other current and former employees throughout the State of
22 California. Discovery would have certainly arisen, which would have cost the parties additional
23 time and money. In contrast, the Settlement provides real and significant benefits for the Class
24 here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with
25 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 Defendant 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 Gross Settlement Amount of \$261,180.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Gross Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$91,413.00, litigation costs and expenses in the amount of \$20,775.15, Class Representative Enhancement Payment in the amount of \$7,500.00, Settlement Administration Costs in the amount of \$6,200.00, and LWDA Payment in the amount of \$30,000.00 from the Gross Settlement Amount of \$261,180.00, the Net Settlement Amount is currently estimated to be \$105,291.85.⁴⁴ Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating 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 ninety-seven (97) Participating Class Members, representing 100% of the Class Members.⁴⁵ The highest Individual Settlement Payment to a Participating Class Member is currently estimated to be \$3,915.36 and the average Individual Settlement Payment is currently estimated to be \$1,041.93.⁴⁶ 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

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

⁴⁵ *Id.*, ¶ 16.

⁴⁶ *Id.*, ¶ 11; see n.25, *supra*.

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 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 or opted out of the Settlement.*⁵⁰ Specifically, no objections have been made as to the Gross Settlement Amount or requested Attorneys’ Fees and Costs, Class Representative 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’s 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).

⁴⁷ Aiwazian Decl., ¶ 21.

⁴⁸ *Id.*, ¶¶ 15-18.

⁴⁹ *Ibid.*

⁵⁰ Simpluris Decl., ¶¶ 13 & 14.

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. 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

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.

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.

When the case was originally filed, not only was it inescapably contingent, but the prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial economic loss if the results were not successful. This substantial risk is the reason that the courts

1 approve the use of the percentage method when a settlement is obtained by the efforts of class
2 counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing the risks
3 of engaging in litigation without certainty of compensation).

4 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
5 Amount of \$261,180.00 on a non-reversionary basis. The requested attorneys' fees are thirty-five
6 percent (35%) of the total value of the monetary settlement. In light of Class Counsel's successful
7 prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

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

15 The percentage method is consistent with, and is intended to mirror, the practice in the
16 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
17 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful
18 evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to
19 the class is to review the consideration agreed to be paid by the named plaintiff. If the named
20 plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the
21 members of the class, who will enjoy the benefits of the settlement without incurring the risks of
22 bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a
23 contingency fee of thirty-five percent (35%) of the recovery.⁵²

24 Furthermore, a percentage-fee award is not dependent on a determination of the actual
25 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
26 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
27 equitable that [the attorney's] compensation and expenses should come from the entire fund saved
28

⁵² Aiwasian Decl., ¶ 9.

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 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 \$91,413.00 (which is 35% of the Gross 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, Defendant's business, and its operations and employment policies, practices, and procedures.⁵⁵ During the litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; propounded formal written discovery requests and reviewed Defendant's responses thereto; worked with Plaintiff to review discovery requests and a notice of deposition that were served by Defendant; reviewed and analyzed 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

⁵³ Aiwasian Decl., ¶¶ 15-18.

⁵⁴ *Id.*, Exh. A.

⁵⁵ *Id.*, ¶ 6 & Exh. A.

⁵⁶ *Id.*, ¶ 6.

⁵⁷ *Ibid.*

litigation process. The Task and Time Chart, which is attached as **EXHIBIT A** to the accompanying Declaration of Edwin Aiwasian, 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 384.80 hours performing tasks and to obtain a significant recovery on behalf 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. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about Defendant's ability to obtain a denial of certification and to prevail on the merits. 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 Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwasian, 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

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⁵⁸ Aiwasian Decl., Exh. A.

⁵⁹ *Id.*, ¶ 11.

⁶⁰ *Id.*, ¶¶ 15-18.

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

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

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

16 As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay
17 a Gross Settlement Amount of \$261,180.00 to settle the matter. After deducting the attorneys'
18 fees (\$91,413.00), litigation costs and expenses (\$20,775.15), Class Representative Enhancement
19 Payment (\$7,500.00), Settlement Administration Costs (\$6,200.00), and LWDA Payment
20 (\$30,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement
21 Amount is approximately \$105,291.85.⁶¹ The Net Settlement Amount will be fully distributed in
22 accordance with the terms of the Settlement. The highest Individual Settlement Payment to a
23 Participating Class Member is currently estimated to be \$3,915.36 and the average Individual
24 Settlement Payment is currently estimated to be \$1,041.93.⁶² The Settlement offers significant
25 monetary relief to the Participating Class Members.

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⁶¹ Simpluris Decl., ¶ 12; see n.3, *supra*.

⁶² *Id.*, ¶ 11; see n.25, *supra*.

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

2 Plaintiff entered into a contingency fee agreement with Class Counsel, and the
3 representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel
4 took on the case without knowing whether any recovery would be obtained. Class Counsel has
5 invested 384.80 hours of time to obtain relief on behalf of Plaintiff and the Class.⁶³ Class Counsel
6 has also incurred litigation costs and expenses in the amount of \$20,775.15.⁶⁴

7 Class Counsel has borne all of the risks and costs of litigation and will not receive any
8 compensation until recovery is obtained.⁶⁵ Class Counsel is well-experienced in wage-and-hour
9 class action and complex litigation and used that experience to obtain a great result.⁶⁶ The skill
10 and determination that Class Counsel has shown, along with the results obtained, justify the
11 requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed,
12 and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

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

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

25 The results achieved, in light of the difficulties inherent in similar cases and the specific
26 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response

27 ⁶³ Aiwazian Decl., ¶ 11, Exh. A.

28 ⁶⁴ See Part VII, *infra*.

⁶⁵ Aiwazian Decl., ¶ 19.

⁶⁶ See *id.*, ¶¶ 15-18.

1 from the Class Members—no Class Members objected to or opted out of the Settlement.⁶⁷

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

7 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
8 in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted
9 in a settlement that provides for a Gross Settlement Amount of \$261,180.00.⁶⁸ The Gross
10 Settlement Amount will be fully paid out, in accordance with the terms of the Settlement
11 Agreement. The highest Individual Settlement Payment to a Participating Class Member is
12 currently estimated to be \$3,915.36 and the average Individual Settlement Payment is currently
13 estimated to be \$1,041.93.⁶⁹

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

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

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

23 While the percentage-of-the-benefit approach is endorsed as the better approximation of
24 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
25 method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining
26 that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time

27 ⁶⁷ Simpluris Decl., ¶¶ 13 & 14.

28 ⁶⁸ Aiwasian Decl., ¶¶ 5-8.

⁶⁹ Simpluris Decl., ¶ 11; see n.25, *supra*.

⁷⁰ Aiwasian Decl., ¶¶ 15-18.

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

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

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

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

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

Class Counsel had to bring together a large volume of data and documents that were obtained from Plaintiff, Defendant, and Class Members, 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 Aiwanian 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 384.80 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

⁷¹ See Aiwanian Decl., Exh. A.

⁷² Aiwanian Decl., ¶ 11.

reaching a settlement of \$261,180.00.

As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$600 per hour for services provided by Class Counsel.⁷³ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$600 for legal service performed, by 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 blended rate of \$600 per hour to 384.80 hours would place a reasonable value of \$230,880.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$91,413.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$91,413.00 to Class Counsel.

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⁷³ *Id.*, ¶ 12.

⁷⁴ For example, final approval of the class 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 Corp.* (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. Aiwasian Decl., ¶ 12.

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 \$25,000.00. As set forth in the Declaration of Edwin Aiwarzian, Class Counsel has incurred a total of \$20,775.15 in litigation costs and expenses.⁷⁵ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁷⁶ The cost savings of \$4,224.85 will be part of the Net Settlement Amount, which will be distributed to the Participating Class Members in accordance with the Settlement.⁷⁷ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$20,775.15 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 \$6,200.00.⁷⁸ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members; 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, Objections, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and preparing the associated tax forms; and transmitting payments, among other things.⁷⁹

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 \$6,200.00.

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⁷⁵ Aiwarzian Decl., ¶ 19.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Simpluris Decl., ¶ 17.

⁷⁹ *Id.*, ¶ 3.

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

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

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class 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 a \$50,000 enhancement payment to a single class representative).

The requested Class Representative Enhancement Payment is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and information, as well as providing the facts and evidence necessary to attempt to prove the allegations, including and not limited to, by way of working with Class Counsel to prepare responses to written discovery requests that were propounded on each of them by Defendant, preparing for and attending depositions, and reviewing his deposition transcript.⁸⁰ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information to support the pursuit of the class and PAGA claims.⁸¹ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendant, and gathering and reviewing documents.⁸² These services merit the requested Class Representative Enhancement Payment to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members to date.⁸³

The requested Class Representative Enhancement Payment was fully disclosed in the Class

⁸⁰ Aiwasian Decl., ¶ 20; Declaration of Reveriano Diaz (“Diaz Decl.”), ¶¶ 3-5.

⁸¹ Aiwasian Decl., ¶ 20; Diaz Decl., ¶¶ 3-5.

⁸² Aiwasian Decl., ¶ 20; Diaz Decl., ¶¶ 2-6.

⁸³ Diaz Decl., ¶ 9.

1 Notice that was mailed to the Class Members. No objections were made with regards to the
2 requested Class Representative Enhancement Payment. Accordingly, it is appropriate and just for
3 Plaintiff Reveriano Diaz to receive \$7,500.00 as a reasonable Class Representative Enhancement
4 Payment, in addition to his Individual Settlement Payment, for his services on behalf of the Class.

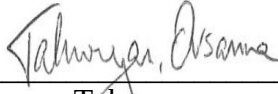
5 **X. CONCLUSION**

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

10 Dated: September 13, 2022

LAWYERS for JUSTICE, PC

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12 By:



Ovsanna Takvoryan
Attorneys for Plaintiff and the Class