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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

SHAUN GONZALES, 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.

CHAMPION FIRE SYSTEMS, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CIVSB2028336

Honorable David S. Cohn
Department S26

CLASS ACTION

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

[Declarations of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Shaun Gonzales);
Declaration of Settlement Administrator
(Lindsay Kline); and [Proposed] Final
Approval Order and Judgment filed
concurrently herewith]

Date: September 29, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: December 28, 2020
FAC Filed: May 3, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 29, 2022 at 10:00 a.m., in Department
2 S26 of the above-entitled Court, located at San Bernardino Justice Center, 247 West 3rd Street,
3 San Bernardino, California 92415, Plaintiff Shaun Gonzales (“Plaintiff”) will and hereby does
4 move for an order granting final approval of:

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

- 8 • A Net Settlement Amount of approximately **\$126,623.45** will be fully distributed to
9 the Class Members who did not timely opt out of the Settlement (“Settlement Class
10 Members”);
11 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
12 (“Settlement Administrator”);
13 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$107,250.00** to Lawyers for Justice, PC (“Class
15 Counsel”), representing thirty-three percent (33.33%) of the Maximum Settlement Amount, for
16 attorneys’ fees, which is reasonable and justified on a percentage-basis.

17 3. Payment in the amount of **\$5,626.55** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$3,000.00** to the Settlement Administrator, Simpluris,
20 Inc. (“Simpluris”), for Administration Costs;

21 5. Payment in the amount of **\$12,500.00** to Plaintiff Shaun Gonzales, as
22 Enhancement Payment, for his time and effort in representing the Class, State of California, and
23 PAGA Group Members; and

24 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
25 California Labor Code section 2698, *et seq.*, in the amount of **\$70,000.00**, of which seventy-five
26 percent (75%), or \$52,500.00, will be paid to the California Labor and Workforce Development
27 Agency and twenty-five percent (25%), or \$17,500.00 will distributed to PAGA Group
28 Members (i.e., “Employee PAGA Amount”).

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

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declarations of Class Counsel (Edwin Aiwarzian), Class Representative (Shaun Gonzales), and
6 Settlement Administrator (Lindsay Kline 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 Dated: September 6, 2022

LAWYERS for JUSTICE, PC

10
11 By:



Annabel Blanchard
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Shaun Gonzales (“Plaintiff”) seeks final approval of: (1) the Maximum Settlement Amount of \$325,000.00; (2) attorneys’ fees in the amount of \$107,250.00, which is thirty-three percent (33.33%) of the Maximum Settlement Amount (“Attorneys’ Fees”), and reimbursement of litigation costs and expenses in the combined amount of \$5,626.55 (“Litigation Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Administration Costs in the amount of \$3,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$12,500.00 to Plaintiff Shaun Gonzales; and (5) allocation of \$70,000.00 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 Defendant within the State of California at any time during the period from December 28, 2016 through June 2, 2022 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, informal discovery, review and analysis of a large volume of documents and extensive settlement negotiations. This matter has required 307.9 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-three percent (33.33%) 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 Enhancement Payment in the amount of \$12,500.00, to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class, PAGA Group Members, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$3,000.00 for Administration Costs. Plaintiff also moves for final approval of the allocation of \$70,000.00 for the PAGA Penalties, of which \$52,500.00 will be paid to the California Labor

¹ Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), ¶ I.C.

1 and Workforce Development Agency (“LWDA”) for its portion of the PAGA Penalties
2 (“LWDA Payment”), and \$17,500.00 will be distributed to all current and former hourly-paid
3 or non-exempt employees who worked for Defendant within the State of California at any time
4 during the PAGA Period (“PAGA Group Member”) on a *pro rata* basis (“Employee PAGA
5 Amount”).

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

12 The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length,
13 good-faith negotiations by experienced counsel. Accordingly, the Court should grant final
14 approval of the Settlement, and award Attorneys’ Fees and Litigation Costs, Enhancement
15 Payment, Administration Costs, and PAGA Penalties in the amounts as fully disclosed to the
16 Class and as requested herein.

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

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

24 Defendant Champion Fire Systems Inc. (“Defendant”) is a fire protection equipment
25 supplier located in Rancho Cucamonga, California. Plaintiff Shaun Gonzales is a former
26 employee of Defendant.

27 On December 16, 2020, Plaintiff sent a letter to the Labor and Workforce Development
28 Agency, pursuant to California Labor Code section 2699.3, providing notice of his intent to seek

civil penalties under the Private Attorneys General Act, California Labor Code section 2698, et seq., for Defendant alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders, including inter alia, Wage Orders 4-2001, and 16-2001 (“LWDA Letter”).

On December 28, 2020, Plaintiff filed a Class Action Complaint for Damages in the San Bernardino County Superior Court (“Court”), Case No. CIVSB2028336, thereby commencing the above-captioned action (the “Litigation”).

On February 22, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*, San Bernardino County Case No. CIVSB2105666, thereby commencing a PAGA representative action (the “PAGA Case”).

On May 3, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Operative Complaint”) in the Litigation, which added Plaintiff’s PAGA cause of action (asserted in the PAGA Case) to the Litigation. Thereafter, the PAGA Case was dismissed on June 22, 2021.

Plaintiff’s core allegation is that Defendant has 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 all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.) (PAGA). Plaintiff contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Litigation, and further denies that the Litigation 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 the Litigation was commenced on December 28, 2020. After settlement discussions and negotiations, the Parties ultimately reached the Settlement described herein to resolve the Litigation in its entirety.

On May 11, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On June 2, 2022, a hearing was held on Plaintiff's Motion for Preliminary Approval of Class Action Settlement. On June 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, Litigation Costs, Enhancement Payment, Administration Costs, and allocation for PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Maximum Settlement Amount of \$325,000.00.² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Attorneys' Fees and Litigation Costs, consisting of attorneys' fees in the amount of \$107,250.00 and reimbursement of litigation costs and expenses in the amount of \$5,626.55, to Class Counsel; (2) Enhancement Payment in the amount of \$12,500.00 to Plaintiff Shaun Gonzales; (3) Administration Costs in the amount of \$3,000.00 to Simpluris; and (4) PAGA Penalties in the amount of \$70,000.00.³ The Net Settlement Amount, which is estimated to be \$126,623.45, will be distributed in accordance with the Settlement Agreement.⁴

² Settlement Agreement, ¶ VIII.A.

³ *Id.*, ¶¶ IX, XIV, XV, XVII.

⁴ This amount is higher than the amount stated in Paragraph 16 of the accompanying Declaration of Lindsay Kline ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$7,000.00, which is allocated

The Settlement Administrator will calculate each Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Payment"), by dividing the Net Settlement Amount by the total number of weeks that a Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period (based on the number of workweeks in the Class List that Defendant provides to the Settlement Administrator ("Workweeks") of all Settlement Class Members ("Class Workweek Point Value"), and multiplying each Settlement Class Member's individual Workweeks by the Class Workweek Point Value to arrive at his or her Individual Settlement Payment.⁵

The Settlement Administrator will calculate each PAGA Group Member's share of the Employee PAGA Amount ("Individual PAGA Payment") by dividing the Employee PAGA Amount by the total number of Workweeks worked for Defendant during the PAGA Period ("PAGA Workweeks") of all PAGA Group Members ("PAGA Workweek Point Value") and multiplying each PAGA Group Member's individual PAGA Workweeks by the PAGA Workweek Point Value to arrive at his or her Individual PAGA Payment.⁶

Class Members had forty-five (45) calendar days after the initial mailing of the Class Notice to the Class Members to submit Workweeks Disputes, Requests for Exclusion, and/or written objections ("Response Deadline").⁷ The Response Deadline was August 22, 2022.⁸ The Settlement Administrator has not received any written requests for exclusion from the Settlement ("Requests for Exclusion") or objections to the Settlement from Class Members.⁹

Individual Settlement Payments to Settlement Class Members shall be deemed twenty percent (20%) wages, to be reported on IRS Form W-2; and eighty percent (80%) penalties, interest, and non-wage damages, to be reported on IRS Form 1099 (if applicable).¹⁰ The employer's share of payroll taxes and contributions on the wages portion of Individual

under the Settlement. However, Class Counsel seek the amount of only \$5,626.55 for reimbursement of litigation costs and expenses, and the difference of \$1,373.45 will remain part of the Net Settlement Amount.

⁵ Settlement Agreement, ¶¶ I.V. & XII.A.2 & 3.

⁶ *Id.*, ¶ XII.B. 2 & 3.

⁷ *Id.*, ¶ X.A.5.

⁸ Simpluris Decl., ¶ 10, Exh. A.

⁹ *Id.*, ¶¶ 11 & 12.

¹⁰ Settlement Agreement, ¶ XVI.C.

Settlement Payments will be paid by Defendant in addition to, and not as a deduction from, the Maximum Settlement Amount.¹¹ The Individual PAGA Payments to PAGA Group Members shall be deemed one hundred percent (100%) penalties to be reported on IRS Form 1099 (if applicable).¹²

Any checks issued by the Settlement Administrator to Settlement Class Members and PAGA Group Members will be valid and negotiable for one hundred and eighty (180) days after issuance, and thereafter, the checks will be cancelled.¹³ The funds remaining and associated with cancelled Individual Settlement Payment and/or Individual PAGA Payment checks will be paid to Legal Aid at Work.¹⁴

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 June 2, 2022 Preliminary Approval Order.

On June 8, 2022, Simpluris received the Court-approved text for the Class Notice.¹⁵

On June 17, 2022, Simpluris received a mailing list from Defendant's counsel that contained the names, last known addresses, last known telephone numbers, number of Workweeks working during the Class Period, number of Workweeks during the PAGA Period, Social Security numbers, and last known email addresses ("Class List").¹⁶ The Class List contained information for 61 individuals identified as Class Members.¹⁷ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.¹⁸

On July 8, 2022, Simpluris mailed the Class Notice via first class mail to 61 individuals identified as Class Members in the Class List.¹⁹

¹¹ *Id.*, ¶ XVI.F.

¹² *Id.*, ¶ XVI.D.

¹³ *Id.*, ¶ XII.D.3.

¹⁴ *Ibid.*

¹⁵ *Simpluris Decl.*, ¶ 5.

¹⁶ *Id.*, ¶ 6.

¹⁷ *Ibid.*

¹⁸ *Id.*, ¶ 7.

¹⁹ *Simpluris Decl.*, ¶ 8.

As of the date of this Motion, (3) (Class Notices were returned as undeliverable, none of which had a forwarding addresses.²⁰ Simpluris performed a skip-trace search on the three (3) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for two (2) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²¹ Ultimately, one (1) Class Notice remains undeliverable because an updated address was not located through skip-tracing.²²

As of the date of this Motion, not a single dispute regarding Workweeks was received by the Settlement Administrator.²³

As of the date of this Motion, the Settlement Administrator has not received any Objections or Requests for Exclusion from Class Members.²⁴

To date, there are 61 Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁵ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$126,623.45 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁶ The highest Individual Settlement Payment is currently estimated to be at least \$6,208.83 and the average Individual Settlement Payment is currently estimated to be at least \$1,946.72.²⁷ The highest Individual PAGA Payment is currently estimated to be at least \$925.05 and the average Individual PAGA Payment is currently estimated to be at least \$460.53.²⁸

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²⁰ *Id.*, ¶ 9.

²¹ *Ibid.*

²² *Ibid.*

²³ *Id.*, ¶ 13.

²⁴ *Id.*, ¶¶ 11 & 12.

²⁵ *Id.*, ¶ 14.

²⁶ Simpluris Decl., ¶ 16; see also, n.4, *supra*.

²⁷ *Id.*, ¶ 18. The actual average and highest Settlement Shares will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$7,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e. \$1,373.45, will be part of the Net Settlement Amount). See n.4, *supra*.

²⁸ Simpluris Decl., ¶ 19.

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

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

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

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated,

that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the case since it was commenced on December 28, 2020. Counsel for the Parties used the pre-settlement time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing for class certification and trial.²⁹ The Parties conducted significant investigation and informal discovery regarding the facts of the cases.³⁰ Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.³¹

Prior to and during the settlement discussions, the Parties meaningfully evaluated the cases and various aspects of the cases, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³² During all settlement discussions, the Parties conducted their negotiations at arm’s length in an adversarial position.³³ Arriving at a settlement that was acceptable to the Parties was not easy.³⁴ Defendant and its counsel felt very strongly about Defendant’s ability to prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class certification would be obtained and Plaintiff would prevail at trial.³⁵ After conducting investigations, informal discovery exchange information, and extensive settlement negotiations the Parties have

²⁹ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Id.*, ¶ 8.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Aiwazian Decl., ¶ 8.

1 agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's
2 principal claims, as well as the costs and risks to both sides that would attend further litigation.³⁶

3 The Settlement takes into account the strengths and weaknesses of each side's position
4 and the uncertainty of how the case might have concluded at certification and trial. Counsel for
5 the Parties have also invested time researching and investigating the applicable law, which is
6 constantly evolving as it relates to certification, representative PAGA claims, off -the-clock
7 theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims and
8 damages, and Defendant's defenses thereto, as well as facts discovered.³⁷ The Settlement was
9 based on this large volume of facts, evidence, and investigation.³⁸ Additionally, Class Counsel
10 have extensive experience in handling complex wage-and-hour matters, including significant
11 experience in employment class action litigation.³⁹

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

14 The Settlement, which provides for a Maximum Settlement Amount of \$325,000.00,
15 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
16 litigating class and representative claims through certification proceedings, trial, and/or
17 appeals.⁴⁰ The Settlement was calculated using information and data uncovered through
18 extensive case investigation and informal discovery.⁴¹ Had the action not settled, Defendant
19 would have vigorously challenged class certification, manageability of representative
20 adjudication, and liability. Defendant contended that individualized questions of fact
21 predominate over any common issues, and these issues would pose challenges to certification
22 and representative adjudication. Defendant would have likely argued again at trial, if any, that
23 Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On
24 the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury

25 ³⁶ Ibid.

26 ³⁷ *Id.*, ¶ 6.

27 ³⁸ *Id.*, ¶¶ 6 & 8.

28 ³⁹ *Id.*, ¶¶ 15-18.

⁴⁰ *Id.*, ¶¶ 8 & 21.

⁴¹ *Id.*, ¶¶ 5-8.

1 to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for
2 trial would have been expensive for all parties.

3 It is preferable to reach an early resolution of a dispute because such resolutions save
4 time and money that would otherwise go to litigation. If this matter had settled after further
5 litigation, the settlement amount would have taken into account the additional costs incurred,
6 and there might have been less money available for Class Members after all was said and done.
7 This is not just an abstract contention. The risks and expenses of further litigation outweighed
8 any benefit that might have been gained otherwise. These risks of further litigation include a
9 determination that the claims were unsuitable for class treatment and/or representative
10 adjudication, failure to obtain certification, class de-certification after certification of a class,
11 allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery
12 after years of litigation. Discovery would have certainly arisen, which would have cost the
13 Parties additional time and money. In contrast, the Settlement provides real and significant
14 benefits for the Class here and now, while avoiding the further expenses, risks, and delay of
15 prolonged litigation with only the possibility of recovery.

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

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

23 The Settlement, which provides for a Maximum Settlement Amount of \$325,000.00,
24 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
25 using information and data uncovered through case investigation and informal discovery. The
26 Settlement takes into account the potential risks and rewards inherent in any case and, in
27 particular, in this matter. Moreover, considering all of the facts in the case, the Maximum
28 Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$107,250.00, litigation costs and expenses in the amount of \$5,626.55, an Enhancement Payment in the amount of \$12,500.00, Administration Costs in the amount of \$3,000.00 and PAGA Penalties in the amount of \$70,000.00 from the Maximum Settlement Amount of \$325,000.00, the Net Settlement Amount is currently estimated to be \$126,623.45.⁴² Under the Settlement Agreement, the Maximum Settlement Amount will be fully paid out, 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 61 Settlement Class Members, representing 100% of the Class Members.⁴³ The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be at least \$6,208.83 and the average Individual Settlement Payment is currently estimated to be at least \$1,946.72.⁴⁴ The highest Individual PAGA Payment is currently estimated to be at least \$925.05 and the average Individual PAGA Payment is currently estimated to be at least \$460.53.⁴⁵ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁴⁶ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, have experience with this type of litigation, and discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class*

⁴² Simpluris Decl., ¶ 16; see n.4, *supra*.

⁴³ Simpluris Decl., ¶ 14.

⁴⁴ *Id.*, ¶ 18; see n.28, *supra*.

⁴⁵ *Id.*, ¶ 19

⁴⁶ Aiwasian Decl., ¶ 21.

1 *Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the
2 Settlement.

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

4 Class Counsel has extensive experience in employment class action law and complex
5 wage-and-hour litigation.⁴⁷ Lawyers *for* Justice, PC have been appointed class counsel in
6 numerous complex wage-and-hour cases, and have recovered millions of dollars for individuals
7 in California.⁴⁸ Both Parties' counsel were capable of assessing the strengths and weaknesses of
8 the Class Members' claims against Defendant and the benefits of the Settlement under the
9 circumstances of the case and in the context of a private, consensual settlement agreement.

10 **E. There Are No Objections to the Settlement.**

11 The Settlement has been well received by the Class – ***not a single Class Member***
12 ***objected to or opted out of the Settlement.***⁴⁹ Specifically, no objections have been made as to
13 the Maximum Settlement Amount or requested Attorneys' Fees and Litigation Costs,
14 Enhancement Payment, Administration Costs, or the allocation for PAGA Penalties. California
15 courts have consistently found that a small number of objectors indicates the class' support for
16 a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final
17 approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53
18 (final approval granted despite 9 objectors).

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

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27 ⁴⁷ Aiwazian Decl., ¶¶ 15-18.

28 ⁴⁸ Ibid.

⁴⁹ Simpluris Decl., ¶¶ 11 & 12.

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. Graulity* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁰ 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

⁵⁰ 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 about the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-
2 7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of
3 the other parties enjoying the benefit of the settlement). Both state and federal courts have
4 embraced this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17
5 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

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

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

21 When the case was originally filed, not only was it inescapably contingent, but the
22 prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was
23 almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked
24 substantial economic loss if the results were not successful. This substantial risk is the reason
25 that the courts approve the use of the percentage method when a settlement is obtained by the
26 efforts of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49
27 (discussing the risks of engaging in litigation without certainty of compensation).
28

Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement Amount of \$325,000.00. The requested attorneys' fees are thirty-three percent (33.33%) of the total value of the monetary settlement. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. A named Plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of at least thirty-three percent (33.33%) of the recovery.⁵¹

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.*

⁵¹ Aiwazian Decl., ¶ 9.

(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 have 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 \$107,250.00 (which is 33% 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 have achieved, and the value of the settlement that Class Counsel have 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, PAGA Group Members, and the State of California. Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation matters.⁵²

As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively participated in litigation of this case.⁵³ 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.⁵⁴ During the litigation of the action, Class Counsel had the opportunity to interview Plaintiff and other Class Members.⁵⁵ Class Counsel also met and conferred with Defendant's counsel over the issues relating to drafting pleadings; conducting informal discovery; and preparing and appearing for court proceedings and settlement negotiations among other things; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, and settlement negotiations.⁵⁶

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 Aiwasian, sets forth in detail the hours that Class Counsel

⁵² Aiwasian Decl., ¶¶ 15-18.

⁵³ *Id.*, Exh. A.

⁵⁴ *Id.*, ¶ 6 & Exh. A.

⁵⁵ *Id.*, ¶ 6.

⁵⁶ *Id.*, ¶ 6.

has spent performing tasks on behalf of Plaintiff and the Class.⁵⁷ 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 Lawyers for Justice, PC, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel have spent **307.9** hours, performing tasks and to obtain a significant recovery on behalf of Plaintiff and the Class.⁵⁸ 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 and the PAGA 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 their extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁵⁹

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

⁵⁷ Aiwasian Decl., Exh. A.

⁵⁸ *Id.*, ¶ 11.

⁵⁹ *Id.*, ¶¶ 15-18.

settled, Defendant would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendant, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the case for trial would have been expensive for the parties.

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

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Maximum Settlement Amount of \$325,000.00 to settle the matter. After deducting the attorneys' fees (\$107,250.00), litigation costs and expenses (\$5,626.55), Enhancement Payment (\$12,500.00), Administration Costs (\$3,000.00), and PAGA Penalties (\$70,000.00) from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$126,623.45.⁶⁰ 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 at least \$6,208.83 and the average Individual Settlement Payment is currently estimated to be at least \$1,946.72.⁶¹ The highest Individual PAGA Payment is currently estimated to be at least \$925.05 and the average Individual PAGA Payment is currently estimated to be at least \$460.53.⁶² 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

⁶⁰ Simpluris Decl., ¶ 18; see n.4, *supra*.

⁶¹ *Id.*, ¶ 19; see n.28, *supra*.

⁶² *Ibid.*

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 have collectively invested 307.9 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 \$5,626.55⁶⁴

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

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

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

Cates v. Chiang (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class Counsel litigated the case on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel have 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

⁶³ Aiwazian Decl., ¶ 11, Exh. A.

⁶⁴ See Part VII, *infra*.

⁶⁵ Aiwazian Decl., ¶ 19.

⁶⁶ See *id.*, ¶¶ 15-18.

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 resulted in a settlement that provides for a Maximum Settlement Amount of \$325,000.00.⁶⁸ The Maximum Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be at least \$6,208.83 and the average Settlement Share is currently estimated to be at least \$1,946.72.⁶⁹ The highest Individual PAGA Payment is currently estimated to be at least \$925.05 and the average Individual PAGA Payment is currently estimated to be at least \$460.53.

6. The Reputation and Ability of the Attorneys.

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

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⁶⁷ Simpluris Decl., ¶¶ 11 & 12.

⁶⁸ Aiwasian Decl., ¶¶ 5-8.

⁶⁹ *Id.*, ¶ 18; see n.28, *supra*.

⁷⁰ Aiwasian Decl., ¶¶ 15-18.

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

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

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

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

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

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel have as a result of their extensive experience in employment class actions and complex wage-and-hour litigation.

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 charts demonstrate that Lawyers for Justice, PC have spent a total of 307.9 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 have achieved on behalf of Plaintiff and the Class Members, Class Counsel have 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 have 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 their efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$325,000.00.

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Lawyers for Justice, PC support a reasonable hourly rate of compensation of at least \$600 per hour for services provided by Class Counsel.⁷³ Lawyers for Justice, PC has been

⁷¹ See Aiwazian Decl., Exh. A.

⁷² Aiwazian Decl., ¶ 11.

⁷³ *Id.*, ¶ 12.

awarded attorneys' fees, compensating the firm at the 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 rate of \$600 per hour to 307.9 hours would place a reasonable value of \$184,740.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$107,250.00, which is thirty-three percent (33.33%) 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

⁷⁴ For example, final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved a higher hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved a higher hourly rate of \$831.38; approval of the Private Attorneys General Act settlement in *Roberta Robles v. Altamed Health Services Corporation* (Los Angeles County Superior Court Case No. BC639623) was granted on October 31, 2018, and the award of attorneys' fees involved a higher hourly rate of \$602.22; final approval of the class and representative action settlement in *Samuel Guerra, et al. v. Graphic Packaging International, Inc.* (Sacramento County Superior Court Case No. 34-2016-00203789) was granted on June 5, 2018, and the award of attorneys' fees involved a higher hourly rate of \$600; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved a higher hourly rate of \$780.77; final approval of the class and representative action settlement in *Rebekah Perez, et al. v. Nestlé USA, Inc., et al.* (Alameda County Superior Court Case No. RG15773654) was granted on August 18, 2017; final approval of the class and representative action settlement in *Elizabeth Ortiz, et al. v. Ghirardelli Chocolate Company* (Alameda County Superior Court Case No. RG15764300) was granted on July 19, 2017; final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved a higher hourly rate of \$845.64; final approval of the class and representative action settlement in *Mark Aceves v. Cambro Manufacturing Company* (Orange County Superior Court Case No. 30-2015-00810013-CU-OE-CXC) was granted on April 14, 2017; final approval of the class and representative action settlement in *East West Bank Wage and Hour Cases* (San Francisco County Superior Court Case No. CJC-13-004839) was granted on November 18, 2016; approval of the Private Attorneys General Act settlement in *Tatiana Kemp v. The Irvine Company Apartment Communities, Inc.* (Orange County Superior Court Case No. 30-2015-00775439) was granted on November 4, 2016; and final approval of the class and representative action settlement in *Kevin Coonce v. Ferguson Enterprises, Inc.* (Sacramento County Superior Court Case No. 34-2021-00136285) was granted on May 22, 2014, and the award of attorneys' fees involved a higher hourly rate of \$625. Aiwazian Decl., ¶ 12.

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

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys’ fees in the amount of \$107,250.00 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$7,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$5,626.55 in litigation costs and expenses.⁷⁵ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.⁷⁶ The cost savings of \$1,373.45 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁷⁷ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$5,626.55 to Class Counsel.

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⁷⁵ Aiwazian Decl., ¶ 19.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

VIII. THE 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 \$3,000.00.⁷⁸ The costs incurred and to be incurred include, but are not limited to, distributing and responding to inquiries about the Class Notice, determining the timeliness, validity, and/or completion of any objections, Requests for Exclusion, and/or Workweeks Disputes, and calculating all amounts to be paid from the Net Settlement Amount, among other things.⁷⁹

This total costs requested are less than the maximum amount allocated under the Settlement Agreement.⁸⁰ The cost savings of \$1,000.00 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement. 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 \$3,000.00.

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

The Settlement provides for an Enhancement Payment in the amount of \$12,500.00 to Plaintiff Shaun Gonzales to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested 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.

⁷⁸ Simpluris Decl., ¶ 20.

⁷⁹ *Id.*, ¶ 3.

⁸⁰ Settlement Agreement, ¶ IX.

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

3 The requested Enhancement Payment is fair and appropriate because Plaintiff spent a
4 substantial amount of time and effort producing relevant documents and past employment
5 records, as well as providing the facts and evidence necessary to attempt to prove the
6 allegations.⁸¹ Plaintiff was available whenever Class Counsel needed him and actively tried to
7 obtain, and gave, information that would benefit the Class.⁸² Plaintiff spent numerous hours
8 speaking with Class Counsel about his claims, describing his work experiences with Defendant,
9 and gathering and reviewing documents.⁸³ These services merit the requested Enhancement
10 Payment to Plaintiff, who has not received any compensation for his efforts on behalf of the
11 Class Members to date.⁸⁴

12 The requested Enhancement Payment was fully disclosed in the Class Notice that was
13 mailed to the Class Members. No objections were made with regards to the requested
14 Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Shaun Gonzales to
15 receive \$12,500.00 as a reasonable Enhancement Payment, in addition to his Individual
16 Settlement Payment and Individual PAGA Payment, for his services on behalf of the Class,
17 PAGA Group Members, and the State of California.

18 **X. CONCLUSION**

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

23 Dated: September 6, 2022

LAWYERS for JUSTICE, PC

24 By: _____


Annabel Blanchard
Attorneys for Plaintiff

25 _____
26
27 ⁸¹ Aiwazian Decl., ¶ 20; Declaration of Shaun Gonzales ("Gonzales Decl."), ¶¶ 3-5.

⁸² Aiwazian Decl., ¶ 20; Gonzales Decl., ¶¶ 3-5.

⁸³ Aiwazian Decl., ¶ 20; Gonzales Decl., ¶¶ 2-6.

⁸⁴ Gonzales Decl., ¶ 9.