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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE

JOSE CERON, individually, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

vs.

SEVEN NINETY-TWO COMPANY, INC.,
an unknown business entity; IHOP #792, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

JOSE CERON, individually, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

SEVEN NINETY-TWO COMPANY, INC.,
an unknown business entity; IHOP #792, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case Nos.: 21STCV05360 (lead)
(Consolidated with Case No. 21TRCV00365)

Honorable William F. Highberger
Department SSC10

CLASS ACTION

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

[Declaration of Class Counsel
(Brian J. St. John); Declaration of Class
Representative (Jose Ceron); Declaration of
Settlement Administrator (Jennifer Beliveau);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith

Date: October 29, 2024
Time: 10:00 a.m.
Department: SSC10

Class Action Filed: February 10, 2021
PAGA Action Filed: May 17, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 29, 2024, at 10:00 a.m., in Department
2 SSC10 of the above-entitled Court, located at 312 N Spring St, Los Angeles, California 90012,
3 Plaintiff Jose Ceron (“Plaintiff”) will and hereby does move for an order granting final approval
4 of:

5 1. The Joint Stipulation and Agreement for Class and Representative Action
6 Settlement and Release and Amendment No. 1 to Joint Stipulation and Agreement for Class and
7 Representative Action Settlement and Release (together, the “Settlement,” “Agreement,” or
8 “Settlement Agreement”) entered into between Plaintiff and Defendant Seven Ninety Two
9 Company, Inc. (“Defendant”) (together, the “Parties”), on the grounds that the Settlement is fair,
10 adequate, and reasonable because:

- 11 • A Net Settlement Amount of approximately **\$333,114.23** will be fully distributed to
12 the Class Members who do not timely opt out of the Class Settlement (“Settlement
13 Class Member”);
- 14 • **No Objections** have been submitted to the settlement administrator, Simpluris, Inc.
15 (“Simpluris” or “Settlement Administrator”);
- 16 • **No Request for Exclusions** were submitted to the Settlement Administrator;

17 2. Payment in the amount of **\$231,666.67** to Lawyers *for* Justice, PC (“Class
18 Counsel”), representing one-third (1/3) of the Gross Settlement Amount, for attorneys’ fees,
19 which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check;

20 3. Payment in the amount of **\$15,719.10** to Class Counsel for reimbursement of
21 litigation costs and expenses;

22 4. Payment in the amount of **\$7,000.00** to the Settlement Administrator, Simpluris,
23 Inc. (“Simpluris”), for Administration Expenses;

24 5. Payment in the amount of **\$7,500.00** to Plaintiff Jose Ceron, as a Service Award,
25 for his time and effort in representing the Class; and

26 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
27 California Labor Code section 2698, *et seq.*, in the amount of **\$100,000.00**, of which seventy-five
28 percent (75%), or **\$75,000.00**, will be paid to the California Labor and Workforce Development

Agency (“LWDA Payment”), and twenty-five percent (25%), or **\$25,000.00** ("Aggrieved Employee Amount"), will be distributed on a *pro rata* basis to all current and former hourly-paid or non-exempt employees of Defendant in the State of California at any time during the PAGA Period (“Aggrieved Employees”).

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

This Motion is based upon the following Memorandum of Points and Authorities; the Declaration of Class Counsel (Brian J. St. John), Class Representative (Jose Ceron), and Settlement Administrator (Jennifer Beliveau of Simpluris) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: October 7, 2024

LAWYERS for JUSTICE, PC

By: _____


Brian J. St. John
Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

I.	SUMMARY OF MOTION	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	3
III.	SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION	5
IV.	THE SETTLEMENT ADMINISTRATION PROCESS	7
V.	THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.....	9
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.	10
B.	The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.	12
C.	The Settlement Is Fair, Reasonable, and Adequate.	14
D.	The Class Was Represented by Competent Counsel.....	15
E.	There Are No Objections to the Settlement.....	15
VI.	THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.....	16
A.	Legal Standard for Attorneys’ Fees in a Class Action Settlement.....	16
B.	A Fee Award of a Percentage of the Entire Fund Is Appropriate.	17
C.	The Attorneys’ Fees Award Requested by Class Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.	20
1.	<i>Time & Labor.....</i>	21
2.	<i>The Skill Required to Perform Legal Services Properly.....</i>	22
3.	<i>The Value of the Settlement for the Class Members.</i>	23
4.	<i>Whether the Fee Is Fixed or Contingent.....</i>	24
5.	<i>The Amount Involved and the Results Achieved.</i>	25
6.	<i>The Reputation and Ability of the Attorneys.</i>	26
D.	The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Has Performed Work That Is of Significant Value Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.....	26
1.	<i>The Number of Hours Spent on the Litigation was Reasonable.</i>	27

1
2
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4
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6
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8
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11
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19
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24
25
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27
28

2. *The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Class Counsel’s Efforts and Experience.* 28

VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED. 30

VIII. THE ADMINISTRATION EXPENSES ARE FAIR AND REASONABLE AND SHOULD BE APPROVED. 30

IX. THE REQUESTED SERVICE PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED. 31

X. CONCLUSION 32

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135.....	10, 16
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195..	17
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472.....	18, 20
<i>Cates v. Chiang</i> (2013) 213 Cal.App.4th 791.....	25
<i>Cellphone Termination Fee Cases</i> (2009) 180 Cal.App.4th 1110.....	16
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	9, 10, 17
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78	29
<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545.....	17
<i>Crampton v. Takegoshi</i> (1993) 17 Cal.App.4th 308	18
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	9, 16
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126.....	18
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	15
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	17
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	16, 26, 28, 29
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480.....	16, 18, 26
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	16, 20
<i>Paul, Johnson, Alston & Hunt v. Graulity</i> (1989) 886 F.2d 268	18
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	18
<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4th 495.....	29
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	18
<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	18
<i>Vizcaino v. Microsoft</i> (9th Cir. 2002) 290 F.3d 1043.....	19
<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4th 440.....	27
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	9, 10, 16, 20, 29
<i>Winslow v. Harold G. Ferguson Corp.</i> (1944) 25 Cal.2d 274.....	20

Statutes

Cal. Lab. Code § 2698 1

Other Authorities

A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 19

California Practice Guide, *Civil Procedure Before Trial*, Chapter 14 16

Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47..... 15, 25

Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03 17

Court Awarded Attorney Fees, Report of the Third Circuit Task Force (October 8, 1985) 108
F.R.D. 237 25

R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A 18

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jose Ceron (“Plaintiff”) seeks final approval of: (1) the Gross Settlement Amount of \$695,000.00;¹ (2) attorneys’ fees in the amount of \$231,666.67, which is one-third (1/3) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$15,719.10 (“Attorneys’ Fees and Expenses”) to Lawyers for Justice PC (“Class Counsel”); (3) Administration Expenses in the amount of \$7,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Service Award in the amount of \$7,500.00 to Plaintiff Jose Ceron; and (5) allocation of \$100,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

Plaintiff seeks relief on behalf of the following Class:

All current and former non-exempt or hourly-paid employees who worked for Defendant within the State of California during the Class Period (“Class” or “Class Members”).²

This matter involved ongoing investigations, informal discovery, review and analysis of a large volume of documents and data in the course of litigation and mediation, and extensive settlement negotiations and mediation conducted by Eve Wagner, Esq. This case has required 428.30 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents one-third (1/3) 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 Service Award in the total amount of \$7,500.00, to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class, Aggrieved Employees, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$7,000.00 for

¹ Joint Stipulation and Agreement for Class and Representative Action Settlement and Release and Amendment No. 1 to Joint Stipulation and Agreement for Class and Representative Action Settlement and Release (together, the “Settlement Agreement”), ¶ 1.16; Declaration of Jennifer Beliveau (“Simpluris Decl.”) ¶ 10.

² *Id.*, ¶ 1.5 “Class Period” is defined as the period from February 10, 2017 up to and including May 15, 2022. See *id.*, ¶ 1.7.

Administration Expenses. Plaintiff also moves for final approval of the PAGA Payment, i.e., the amount of \$100,000.00 allocated to penalties under the Private Attorneys General Act (“PAGA”), of which seventy-five percent (75%), or \$75,000.00 (“LWDA Payment”), will be paid to the California Labor Workforce and Development Agency (“LWDA”), and twenty-five percent (25%), or \$25,000.00 (“Aggrieved Employee Amount”), will be distributed on a *pro rata* basis to all current and former hourly-paid or non-exempt employees of Defendant in the State of California at any time during the PAGA Period (“Aggrieved Employees”).³

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

The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length, good-faith negotiations by experienced counsel presided over by a highly-regarded mediator who is experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should grant final approval of the Settlement, and award the Attorneys’ Fees and Expenses, Service Award, Administration Expenses, and allocation for the PAGA Payment in the full amounts requested herein.

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

///

³ Settlement Agreement, ¶¶ 1.3 & 1.28; “PAGA Period” is defined as the period from March 11, 2020 up to and including the May 15, 2022. *See id.*, ¶ 1.29.

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

2 Defendant Seven Ninety Two Company, Inc. (“Defendant”) operates IHOP #792, a well-
3 known family-style franchisee restaurant of International House of Pancake, serving pancakes,
4 along with other breakfast, lunch, and dinner options. Plaintiff Jose Ceron is a former employee
5 of Defendant.

6 On February 10, 2021, Plaintiff filed a Class Action Complaint for Damages against
7 Defendant Seven Ninety-Two Company, Inc. in the Los Angeles County Superior Court
8 (“Court”), Case No. 21STCV05360, thereby commencing the above-captioned lawsuit (“Class
9 Action”).

10 On March 11, 2021, Plaintiff provided written notice by certified mail to the LWDA and
11 by online submission to Defendant of the specific provisions of the California Labor Code that
12 were allegedly violated by Defendant (“LWDA Notice”).

13 On May 17, 2021, Plaintiff filed a complaint for civil penalties and Enforcement under
14 the Private Attorneys General Act, California Labor Code §2698, *Et Seq.* in the Los Angeles
15 County Superior Court, Case No. 21TRCV00365, thereby commencing a PAGA representative
16 action (“PAGA Action”) (the PAGA Action and Class Action are collectively referred to as the
17 “Actions”).

18 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
19 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
20 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
21 and rest periods and associated premium pay, failing to timely pay wages during employment
22 and upon termination of employment, failing to provide compliant wage statements, failing to
23 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
24 thereby engaged in unfair business practices in violation of California Business and Professions
25 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff
26 contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
27 (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

28 ///

1 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
2 associated with any of the allegations in the Actions, and further deny that the Actions are
3 appropriate for class treatment or representative adjudication for any purpose other than for
4 settlement purposes only.

5 Prior to reaching Settlement, Class Counsel conducted significant investigation into the
6 facts of the case and engaged in informal discovery and review and analysis of a large volume of
7 information, documents, and data obtained from Plaintiff, Defendant, and other sources.

8 The Parties have actively litigated the Actions since the Class Action was commenced on
9 February 10, 2021 and the PAGA Action was commenced on May 17, 2021. On January 14,
10 2022, the Parties participated in a formal, full-day mediation conducted by Eve Wagner, Esq.
11 (the “Mediator”), a well-regarded mediator experienced in mediating complex labor and
12 employment matters. With the aid of the Mediator’s evaluation, the Parties ultimately reached
13 the Settlement described herein to resolve the Actions in their entirety.

14 On February 16, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action
15 Settlement (“Motion for Preliminary Approval”) and supporting documents. On June 5, 2024, a
16 hearing was held on Plaintiff’s Motion for Preliminary Approval wherein the Court granted
17 preliminary approval of the Settlement contingent on the Parties’ filing an amendment to the
18 Settlement and supplemental briefing regarding the Settlement’s escalator provision. Based on
19 the Court’s requests, on June 25, 2024, and June 27, 2024, the Parties’ submitted supplemental
20 briefing in support of the Motion for Preliminary Approval of Class Action Settlement, including
21 Amendment No. 1 to Joint Stipulation and Agreement for Class and Representative Action
22 Settlement and Release. On June 5, 2024, the Court entered an Order Granting Plaintiff’s
23 Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”),
24 thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed
25 administration procedures and associated deadlines.

26 Plaintiff now moves for final approval of the Settlement, Attorneys’ Fees and Expenses,
27 Service Award, Administration Expenses, and allocation for the PAGA Payment.

28 ///

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 \$695,000.00 on a non-reversionary basis, and separately the amount necessary to pay Employment and Payroll Taxes.⁴ 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 Expenses, consisting of attorneys' fees in the amount of \$231,666.67 and reimbursement of litigation costs and expenses in the amount of \$15,719.10, to Class Counsel; (2) Service Award in the amount of \$7,500.00 to Plaintiff Jose Ceron; (3) Administration Expenses in the amount of \$7,000.00 to Simpluris; and (4) PAGA Payment in the amount of \$100,000.00.⁵ The PAGA Payment in the amount of \$100,000.00 will be distributed 75% (i.e., \$75,000.00) to the State of California and 25% (i.e., \$25,000.00) will be distributed on a *pro rata* basis to the Aggrieved Employees.⁶ The Net Settlement Amount, which is estimated to be \$333,114.23, will be distributed to Settlement Class Members in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁷

The Settlement Administrator will calculate each Settlement Class Member's (i.e., Class Members who did not timely opt out of the Class Settlement) *pro rata* share of the Net Settlement Amount ("Individual Settlement Amount")⁸, in accordance with the Settlement Agreement and as follows: the Settlement Administrator shall divide the Net Settlement Amount by the total number of Workweeks to determine the amount each Settlement Class Member is entitled to for each Workweek (the "Weekly Amount"). The Settlement Administrator will multiply the Weekly Amount by the total number of Workweeks that each Settlement Class Member is credited with to arrive at his or her Individual Settlement Amount.⁹

⁴ Settlement Agreement, ¶¶ 1.15 & 1.16.

⁵ *Id.* ¶¶ 1.28, 1.40. 4.3, & 4.4.

⁶ *Id.* ¶ 1.28.

⁷ This amount is higher than the amount stated in Paragraph 14 of the accompanying Simpluris Declaration, because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$25,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$15,719.10 for reimbursement of litigation costs and expenses, and the difference of \$9,280.90 will remain part of the Net Settlement Amount.

⁸ Settlement Agreement, ¶ 1.19.

⁹ *Id.*, ¶ 6.2.

1 The Settlement Administrator will calculate each Aggrieved Employee's *pro rata* share
2 of the Aggrieved Employee Amount ("Individual PAGA Amount")¹⁰ as follows: The Settlement
3 Administrator shall divide the Aggrieved Employee Amount by the total number of Pay Periods
4 to determine the amount each Aggrieved Employee is entitled to for each Pay Period (the
5 "Weekly PAGA Amount"). The Settlement Administrator will multiply the Weekly PAGA
6 Amount by the total number of Pay Periods that each Aggrieved Employee is credited with to
7 arrive at his or her Individual PAGA Payment.¹¹

8 Class Members had forty-five (45) calendar days after the Settlement Administrator mails
9 the Class Notice to Class Members to dispute the number of Workweeks credited to each of
10 them, opt out of the Class Settlement, and/or object to the Class Settlement ("Response
11 Deadline").¹² The Response Deadline was August 19, 2024.¹³ The Settlement Administrator has
12 received zero (0) written requests for exclusion from the Class Settlement ("Request for
13 Exclusion") and zero (0) written objections to the Class Settlement ("Objection") from Class
14 Members.¹⁴

15 Each Settlement Class Member's Individual Class Payment will be allocated as follows:
16 10% shall be reported as wages on IRS Form W-2 and its state and local equivalents, and 90%
17 shall be reported as interest, penalties, and non-wage damages on IRS Form 1099 and its state
18 and local equivalents.¹⁵ Each Settlement Class Member will be issued payment of his or her
19 Individual Settlement Amount and the net payment is referred to as an "Individual Settlement
20 Payment."¹⁶ Defendant will pay the employer's share of payroll taxes and contributions with
21 respect to the Wage Portion of Individual Class Payments in addition to the Gross Settlement
22 Amount.¹⁷ Each Individual PAGA Payment will be allocated as one hundred percent (100%)
23 penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement

24 _____
¹⁰ Settlement Agreement, ¶ 1.18.

25 ¹¹ *Id.*, ¶ 6.2.

26 ¹² *Id.*, ¶ 1.39.

27 ¹³ *Simpluris Decl.*, ¶ 11.

28 ¹⁴ *Id.*, ¶ 12.

¹⁵ Settlement Agreement, ¶ 6.3.

¹⁶ *Id.*, ¶ 6.2.

¹⁷ *Id.*, ¶ 1.15.

Administrator.¹⁸

Within thirty (30) calendar days after the Effective Date, Defendant shall deposit the Gross Settlement Amount to a qualified settlement account established by the Settlement Administrator.¹⁹

No later than ten (10) calendar days after Defendant deposits the Gross Settlement Amount to the qualified settlement account established by the Settlement Administrator, the Settlement Administrator shall distribute the following payments: Individual Settlement Payments to Settlement Class Members, Individual PAGA Payments to Aggrieved Employees, Service Award to Class Representative, Attorneys' Fees and Expenses to Class Counsel, LWDA Payment to the LWDA, and Administration Expenses to itself, all in the Court-approved amounts.²⁰

Individual Settlement Payment and Individual PAGA Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their mailing.²¹ Checks that are not negotiated within the 180-day period will be canceled.²² Funds associated with cancelled checks will be transmitted to the State Controller's Office Unclaimed Property Division in the names of the Settlement Class Members and/or Aggrieved Employees whose checks are cancelled.²³

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 5, 2024 Preliminary Approval Order.

On or about June 28, 2024, Simpluris received the Revised Court-Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (hereafter "Class Notice").²⁴ On June 20, 2024, Simpluris received a mailing list from Defendant's counsel that contained

¹⁸ Settlement Agreement, ¶ 6.3.

¹⁹ *Id.*, ¶ 6.4.

²⁰ *Ibid.*

²¹ *Id.*, ¶ 6.5.

²² *Ibid.*

²³ *Ibid.*

²⁴ Simpluris Decl., ¶ 5.

each Class Members's full name, last known mailing address, last known telephone number, Social Security Number, Workweeks, PAGA Pay Periods, and start and end dates worked for Defendant during the Class Period and during the PAGA Period ("Class List").²⁵

The Class List contained information for one hundred and eighty-four (184) individuals identified as Class Members.²⁶ Two records were removed as duplicate records.²⁷ As a result, one hundred and eighty-two (182) individuals identified as Class Members remain on the Class List, one hundred eight (108) of which are Aggrieved Employees.²⁸

Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.²⁹

On July 5, 2024, Simpluris mailed the Class Notice via U.S. first class mail to one hundred eighty-two (182) individuals identified as Class Members in the Class List.³⁰

Nine (9) Class Notices were returned with a forwarding address and promptly re-mailed.³¹ Simpluris performed a skip-trace search on six (6) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for three (3) Class Members, and promptly re-mailed the Class Notice to the updated addresses.³² Ultimately, there are three (3) Class Notices that remain undeliverable.³³

The Settlement Administrator has received zero (0) Objections and zero (0) Requests for Exclusion from Class Members.³⁴

To date, there are one hundred eighty-two (182) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members, representing 100% of the class.³⁵ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$333,114.23 will be distributed to Settlement Class

²⁵ Simpluris Decl., ¶ 6.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ *Id.*, ¶ 7.

³⁰ *Id.*, ¶ 8.

³¹ *Id.*, ¶ 9.

³² Ibid.

³³ Ibid.

³⁴ *Id.*, ¶ 12.

³⁵ Ibid; Settlement Agreement ¶ 1.43.

Members in accordance with the terms of the Settlement.³⁶ The highest Individual Settlement Payment is currently estimated to be at least \$7,400.85 and the average Individual Settlement Payment is currently estimated to be at least \$1,779.30.³⁷ The highest Individual PAGA Amount is currently estimated to be \$702.49, and the average Individual PAGA Amount is currently estimated to be \$231.48.³⁸

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

³⁶ Simpluris Decl., ¶ 14; see n.7, *supra*.

³⁷ *Id.*, ¶ 15. The actual average and highest Individual Settlement Amount 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 is less than \$25,000 (the difference between the amount sought and the amount authorized under the Settlement, \$9,280.90, will be part of the Net Settlement Amount). See n.7, *supra*.

³⁸ *Id.*, ¶ 17.

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. *Ibid.*

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

Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope of the claims, and were preparing for class certification and trial prior to reaching the Settlement.³⁹ The parties conducted significant investigation and extensive informal discovery regarding the facts of the case, exchanging a large volume of information, documents, and data obtained from Plaintiff, Defendant, and other sources.⁴⁰ The volume of information, documents, and data reviewed and analyzed by Class Counsel included, and were not limited to: Plaintiff’s employment records, a detailed sampling of Plaintiff’s and other Class Members’ time data and pay records, Defendant’s Employee Handbook, Defendant’s operations and employment practices, forms, procedures, and policies (including, and not limited to, Compensation Policy, Confidentiality Agreement, Timekeeping Policy, Rest and Meal Periods policy, and Meal Period Waiver), among other information and documents.⁴¹ Class Counsel also developed damages, violation, and penalties valuation models in connection with mediation and settlement negotiations, and met and conferred with Defendant’s counsel on numerous occasions, e.g., to

³⁹ Declaration of Brian J. St. John (“St. John Decl.”), ¶ 6.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

1 discuss issues relating to the pleadings, case management, informal discovery, mediation, and
2 production of documents and data in the course of litigation and mediation and settlement
3 negotiations.⁴² Class Counsel also engaged in case strategy and analysis, drafted the pleadings,
4 mediation brief, and settlement-related papers, and prepared for and attended court proceedings
5 and mediation and settlement negotiations, among other tasks.⁴³

6 After conducting significant informal discovery and investigation into the facts of the
7 case, the Parties participated in a formal, full-day mediation, conducted by Eve Wagner, Esq., a
8 well-regarded mediator experienced in mediating complex labor and employment matters.⁴⁴
9 Prior to and during mediation and settlement negotiations, the Parties exchanged information,
10 data, and documents, and discussed various aspects of the case, including and not limited to, the
11 risks and delays of further litigation, the risks and expenses to the Parties of proceeding with
12 class certification, representative adjudication, and trial; the law relating to class certification,
13 manageability, off-the-clock theory, meal and rest periods, expense reimbursements,
14 recordkeeping and wage statement requirements, representative PAGA claims and penalties, and
15 wage-and-hour law and enforcement; the evidence produced and analyzed; and the possibility of
16 appeals, among other things.⁴⁵ During all settlement discussions, the parties conducted their
17 negotiations at arm's length in an adversarial position.⁴⁶ Arriving at a settlement that was
18 acceptable to the parties was not easy.⁴⁷ Defendant and its counsel felt very strongly about
19 Defendant's ability to prevail on the merits and to avoid class certification and representative
20 adjudication.⁴⁸ Meanwhile, Plaintiff and Class Counsel disagreed with these contentions and
21 believed that they would be able to obtain class certification and prevail at trial.⁴⁹ After
22 conducting significant informal discovery and investigations, extensive settlement negotiations,
23 and with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited

24 ⁴² St. John Decl., ¶ 6.

25 ⁴³ Ibid.

26 ⁴⁴ *Id.*, ¶ 8.

27 ⁴⁵ Ibid.

28 ⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

1 for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs
2 and risks to the parties that would attend further litigation.⁵⁰

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, trial, and/or appeals.
5 Class Counsel also reviewed and analyzed documents obtained from Defendant, Plaintiff, and
6 other sources, and performed significant research into the applicable law, which is constantly
7 evolving as it relates to class certification, representative adjudication, and trial; the law relating
8 to class certification, manageability, off-the-clock theory, meal and rest periods, expense
9 reimbursements, recordkeeping and wage statement requirements, representative PAGA claims
10 and penalties, and wage-and-hour law and enforcement, Plaintiff's claims and damages, and
11 Defendant's defenses, as well as facts discovered.⁵¹ The Settlement was based on this large
12 volume of facts, evidence, and investigation.⁵² Additionally, Class Counsel has extensive
13 experience in handling complex wage-and-hour cases, including significant experience in
14 employment class action litigation.⁵³

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

17 The Settlement, which provides for a Gross Settlement Amount of \$695,000.00,
18 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
19 litigating the claims through certification proceedings, trial, and/or appeals.⁵⁴ The Settlement
20 was calculated using information, data, and documents uncovered through extensive case
21 investigation, informal discovery, and the exchange of information in the context of preparing
22 for mediation and conducting ongoing settlement negotiations.⁵⁵ Had the action not settled,
23 Defendant would have vigorously challenged class certification, manageability of representative
24 adjudication, and liability. Defendant contended that individualized questions of fact

25 _____
26 ⁵⁰ St. John Decl., ¶ 8.

27 ⁵¹ *Id.*, ¶ 7.

28 ⁵² *Id.*, ¶¶ 6 & 8.

⁵³ *Id.*, ¶¶ 15-17.

⁵⁴ *Id.*, ¶¶ 9 & 20.

⁵⁵ *Id.*, ¶¶ 5-8.

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

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

25 It would be grossly inefficient for the members of the Class (consisting of approximately
26 1,305 current and former employees) to bring individual actions to recover from Defendant for
27 the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that
28 could be obtained by a Class Member would not be significant enough to provide him or her

1 with the incentive to sue. By granting final approval of the Settlement, the Court can approve a
2 resolution that provides a certain and substantial recovery for Class Members.

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

4 The Settlement, which provides for a Gross Settlement Amount of \$695,000.00,
5 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
6 using information, data, and documents uncovered through extensive case investigation, informal
7 discovery, and the exchange of information in the course of litigation, mediation, and settlement
8 negotiations. The Settlement takes into account the potential risks and rewards inherent in any
9 case and, in particular, in this matter. Moreover, considering all of the facts in the case, the
10 Gross Settlement Amount represents a considerable recovery.

11 Even after deducting attorneys' fees in the amount of \$231,666.67, litigation costs and
12 expenses in the amount of \$15,719.10, Service Award in the total amount of \$7,500.00,
13 Administration Expenses in the amount of \$7,000.00, and PAGA Payment in the amount of
14 \$100,000.00 from the Gross Settlement Amount of \$695,000.00, the Net Settlement Amount is
15 currently estimated to be \$333,114.23.⁵⁶ Under the Settlement Agreement, the Gross Settlement
16 Amount will be fully paid out without any reversion to Defendant, in accordance with the terms
17 of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid
18 a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to
19 them and each Aggrieved Employee will be paid a *pro rata* share of the 25% share of the PAGA
20 Payment, based on the number of Pay Periods during the PAGA Period credited to them. To
21 date, there are one hundred eighty-two (182) Settlement Class Members, representing 100% of
22 the Class.⁵⁷ The highest Individual Settlement Payment to a Settlement Class Member is
23 currently estimated to be \$7,400.85 and the average Individual Settlement Payment is currently
24 estimated to be \$1,779.30.⁵⁸ The highest Individual PAGA Amount to a Aggrieved Employee is
25 current estimated to be \$702.49 and the average Individual PAGA Amount is currently estimated
26

27 ⁵⁶ Simpluris Decl., ¶ 14; see n.7, *supra*.

28 ⁵⁷ *Id.*, ¶ 13.

⁵⁸ *Id.*, ¶ 15; See n.37, *supra*.

1 to be \$231.48.⁵⁹ These are significant individual recoveries, particularly in light of the risks of
2 litigation.

3 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational
4 basis [to warrant approval], particularly if recommended by experienced and competent class
5 counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
6 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to
7 distribute the Net Settlement Amount. In light of the above considerations, Class Counsel
8 believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest
9 of the Class Members, Aggrieved Employees, and the State of California.⁶⁰ Although the
10 recommendations of Class Counsel is not conclusive, the Court can properly take the
11 recommendations into account, particularly if Class Counsel appears to be competent, has
12 experience with this type of litigation, and significant discovery and investigation have been
13 completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) §
14 11.47. Accordingly, the Court should grant final approval of the Settlement.

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

16 Class Counsel has extensive experience in employment class action law and complex
17 wage-and-hour litigation.⁶¹ Lawyers for Justice, PC has been appointed class counsel in
18 numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in
19 California.⁶² Both parties’ counsel were capable of assessing the strengths and weaknesses of the
20 claims against Defendant and the benefits of the Settlement under the circumstances of the case
21 and in the context of a private, consensual settlement agreement.

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

23 The Settlement has been well received by the Class – ***not a single Class Member***
24 ***objected to or opted out of the Settlement.***⁶³ Specifically, no objections have been made as to
25 the Gross Settlement Amount or requested Attorneys’ Fees and Expenses, Service Award,

26 ⁵⁹ Simpluris Decl., ¶ 16.

27 ⁶⁰ St. John Decl., ¶ 20.

28 ⁶¹ Ibid.

⁶² *Id.*, ¶¶ 15-17.

⁶³ Simpluris Decl., ¶ 12.

Administration Expenses, and allocation for the PAGA Payment. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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

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

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement. 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 contingency fees in a range, up to 40 percent, 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, 34.⁶⁴ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. See *Vincent, supra*, 557 F.2d at 769.

When a litigant's efforts result in a settlement from which others may derive benefits, the litigant may require the passive beneficiaries to compensate those whose efforts brought about the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

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

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

⁶⁴ 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 See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

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

9 Under the terms of the Amended Settlement Agreement, Defendant will pay a Gross
10 Settlement Amount of \$695,000.00 on a non-reversionary basis. The requested attorneys’ fees
11 are one-third (1/3) of the total value of the monetary settlement. In light of Class Counsel’s
12 successful prosecution and resolution of the case, the requested attorneys’ fees are appropriate
13 and reasonable.

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

21 The percentage method is consistent with, and is intended to mirror, the practice in the
22 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
23 arrangements with their clients. A named plaintiff’s agreement to pay a contingent fee is
24 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
25 counsel’s work to the class is to review the consideration agreed to be paid by the named
26 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
27 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
28 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 agreement of at least one-third (1/3) of the recovery.⁶⁵

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

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, the Aggrieved Employees, and the State of California 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

⁶⁵ St. John Decl., ¶ 9.

the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$231,666.67 (which is 1/3 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.⁶⁶

As outlined in the Declaration of Brian J. St. John, Class Counsel has fully and actively participated in litigation of this matter.⁶⁷ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation informal discovery into the factual and legal issues, Defendant's business and its operations, and employment policies, practices, and procedures. Class Counsel engaged in the review and analysis of a large volume of information, documents, and data obtained from Defendant, Plaintiff, and other sources.⁶⁸ Class Counsel also researched applicable law, developed damages, violation, and penalties valuation models, and

⁶⁶ St. John Decl., ¶¶ 15-17.

⁶⁷ *Id.*, Exh. A.

⁶⁸ *Ibid.*

1 met and conferred with Defendant's counsel on numerous occasions e.g., to discuss issues
2 relating to the pleadings, case management, informal discovery, mediation, and production of
3 documents and data in the course of litigation and mediation and settlement negotiations.⁶⁹ Class
4 Counsel also drafted the pleadings, mediation brief, and settlement-related papers, and prepared
5 for and attended court proceedings and mediation and settlement negotiations, among other
6 tasks.⁷⁰

7 Counsel has dedicated staffing and monetary resources necessary to prosecute this matter
8 diligently and with maximum efficiency and has fully and actively participated in the litigation
9 process. The Attorney Task and Time Chart, which is attached as "EXHIBIT A" to the
10 accompanying Declaration of Brian J. St. John, sets forth in detail the hours that attorneys at
11 Lawyers for Justice, PC have spent performing tasks on behalf of Plaintiff, the Class, the
12 Aggrieved Employees, and the State of California.⁷¹ The Attorney Task and Time Chart is
13 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
14 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
15 Task and Time Chart, which sets forth the history of the work performed by Class Counsel,
16 commencing with the pre-filing analysis and research, and continuing up to settlement and final
17 approval. Attorneys at Lawyers for Justice, PC have spent **428.30 hours** performing tasks and to
18 obtain a significant recovery on behalf of Plaintiff, the Class, the Aggrieved Employees, and the
19 State of California.⁷² These hours were required to bring this matter to its successful conclusion.
20 In light of the value of time expended and the carrying of costs involved in litigating this case,
21 the requested attorneys' fees are fair, adequate, and reasonable.

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

23 The skill required to properly litigate the case is evident not only in the results achieved,
24 but in the steps necessary to reach the same. Defendant retained well-respected counsel to
25 represent its defenses. More specifically, Defendant and its counsel felt very strongly about

26 _____
27 ⁶⁹ St. John Decl., Exh. A.

28 ⁷⁰ Ibid.

⁷¹ Ibid.

⁷² *Id.*, ¶ 11.

1 Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiff and
2 Class Counsel believed that they would have obtained class certification and prevailed at trial.

3 Class Counsel undertook significant investigation, analysis, and research prior to filing
4 this case, during the litigation, and in connection with during mediation and settlement
5 negotiations. Class Counsel took steps to prepare the matter for class certification and
6 representative adjudication and had every intention of taking the case to trial on a class-wide
7 basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles
8 that had to be overcome, as demonstrated in the Declaration of Brian J. St. John, Class Counsel
9 used its extensive experience in the handling of class actions and complex wage-and-hour
10 litigation cases in order to obtain the Settlement with maximum efficiency.⁷³

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

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

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

26 As a result of this litigation and extensive settlement negotiations, Defendant agreed to
27 pay a Gross Settlement Amount of \$695,000.00 to settle the matter. After deducting the

28 ⁷³ *Id.*, ¶¶ 15-17.

attorneys' fees (\$231,666.67), litigation costs and expenses (\$15,719.10), Total Service Award (\$7,500.00), Administration Expenses (\$7,000.00), and PAGA Payment (\$100,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$333,114.23.⁷⁴ The Net Settlement Amount will be fully distributed to in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$7,400.85 and the average Individual Settlement Payment is currently estimated to be \$1,779.30.⁷⁵ The highest Individual PAGA Amount is currently estimated to be \$702.49, and the average Individual PAGA Amount is currently estimated to be \$231.48.⁷⁶ The Settlement offers significant monetary relief to the Settlement Class Members, Aggrieved Employees, and the State of California.

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

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested **428.30 hours** of time to obtain relief on behalf of Plaintiff, the Class, the Aggrieved Employees, and the State of California.⁷⁷ Class Counsel has also incurred litigation costs and expenses in the amount of \$15,719.10.⁷⁸

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁹ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁸⁰ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Expenses. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

⁷⁴ Simpluris Decl., ¶ 14; see n.7, *supra*.

⁷⁵ *Id.*, ¶ 15; see n.37, *supra*.

⁷⁶ *Id.*, ¶ 16.

⁷⁷ St. John Decl., ¶ 11, Exh. A.

⁷⁸ See Part VII, *infra*.

⁷⁹ St. John Decl., ¶ 19.

⁸⁰ See *id.*, ¶¶ 15-17.

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

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

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

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—not a single Class Member objected to or opted out of the Class Settlement.⁸¹

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, the Class, the Aggrieved Employees, and the State of California are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$695,000.00.⁸² The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual

⁸¹ Simpluris Decl., ¶ 12.

⁸² St. John Decl., ¶¶ 5-8.

Settlement Payment to a Settlement Class Member is currently estimated to be \$7,400.85 and the average Individual Settlement Payment is currently estimated to be \$1,779.30.⁸³ The highest Individual PAGA Amount is currently estimated to be \$702.49, and the average Individual PAGA Amount is currently estimated to be \$231.48.⁸⁴

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.⁸⁵

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

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

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

⁸³ Simpluris Decl., ¶ 15; see n.37, *supra*.

⁸⁴ *Id.*, ¶ 16.

⁸⁵ St. John Decl., ¶¶ 15-17.

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

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

5 As discussed above, the case was highly contested and required a significant amount of
6 time and labor. Defendant made it clear very early on that it disputed all of the allegations of the
7 case and disputed that the matter was appropriate for class or representative treatment.
8 Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved
9 gathering and analyzing data from Plaintiff, Defendant, and other sources. The handling of the
10 case involved a great amount of effort, and also required and involved the exercise of a high
11 level of skill, which Class Counsel has as a result of its extensive experience in employment
12 class actions and complex wage-and-hour litigation. Long and difficult battles would have
13 followed as the case moved toward certification and trial, including taking and defending
14 depositions of Defendant’s Person Most Knowledgeable designees, percipient witnesses, and
15 experts, propounding discovery requests and conducting additional document production, and
16 engaging in extensive motion practice. As Class Counsel geared up for these battles, Class
17 Counsel undertook intense preparation in an attempt to resolve the entire matter through
18 mediation.

19 Class Counsel had to bring together a large volume of information, data, and documents
20 obtained from Plaintiff, Defendant, and through other sources. Class Counsel conducted
21 extensive review and analysis of the information, documents, and data to strategize the action
22 and to prepare for mediation and engage in settlement discussions.

23 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Brian J. St. John
24 is a task and time chart that sets forth in detail the numerous tasks that attorneys at Lawyers *for*
25 Justice PC performed on behalf of Plaintiff, the Class, the Aggrieved Employees, and the State of
26 California and the time required for completing those tasks.⁸⁶ The chart demonstrates that
27 attorneys at Lawyers *for* Justice PC have spent a total of **428.30 hours** litigating the case and

28 ⁸⁶ See St. John Decl., Exh. A.

1 finalizing the Settlement.⁸⁷ In light of the facts and circumstances of the case, as well as the
2 results that Class Counsel has achieved on behalf of Plaintiff, the Class, the Aggrieved
3 Employees, and the State of California, Class Counsel has spent a reasonable number of hours on
4 this matter. In addition, Class Counsel will continue to perform work on this matter through the
5 date of final approval and in connection with the implementation of the Settlement.

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

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

15 Class Counsel has been actively involved in this case, prior to its commencement and all
16 the way up to the present, and Class Counsel's dedication to providing representation in this case
17 has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts
18 and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in
19 reaching a settlement of \$695,000.00.

20 As set forth in the Declaration of Brian J. St. John, the work performed in this matter, the
21 background of Lawyers for Justice, PC, as well as the individual backgrounds, training, and
22 experience of the attorneys who worked on this matter, support a reasonable hourly rate of
23 compensation of at least \$850 per hour for services provided by Class Counsel.⁸⁸ Lawyers for
24 Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$850
25 per hour for legal service performed, by courts of this state.⁸⁹ While the circumstances of every
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27 ⁸⁷ St. John Decl., ¶ 11.

28 ⁸⁸ *Id.*, ¶ 12.

⁸⁹ *Ibid.*

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 hourly rate of \$850 per hour to 428.30 hours would place a reasonable value of \$364,055.00 as Class Counsel's base lodestar, for the work performed in this matter. Taking into consideration the attorneys who performed work in this matter, and their hours and hourly rates, results in a reasonable value of \$364,055.00 as Class Counsel's base lodestar for the work performed in this matter. However, Class Counsel only seeks attorneys' fees in the amount of \$231,666.67, which is one-third (1/3) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 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 \$231,666.67 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 \$25,000.00. However, Class Counsel only seeks reimbursement of \$15,719.10 in litigation costs and expenses incurred in this matter.⁹⁰ 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.⁹¹ The cost savings of \$9,280.90 will be part of the Net Settlement Amount, which will be distributed to Settlement Class Members in accordance with the Settlement.⁹² Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$15,719.10 to Class Counsel.

VIII. THE ADMINISTRATION EXPENSES 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 \$7,000.00.⁹³ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Class Notice to the Class Members in English, Vietnamese, and Spanish; 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 Request for Exclusion, Objection, and Workweek Dispute (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Amounts and Individual PAGA Amounts and preparing the associated tax forms; and transmitting payments, among other things.⁹⁴

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 \$7,000.00.

⁹⁰ St. John Decl., ¶ 19 and Exh. B.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Simpluris Decl., ¶ 18.

⁹⁴ *Id.*, ¶¶ 2-3.

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

The Settlement provides for a Service Award in the amount of \$7,500.00 to Plaintiff Jose Ceron to compensate Plaintiff for the time and effort that he expended on behalf of the Class, Aggrieved Employees, and the State of California. The requested Service Award is both common and reasonable and should be awarded.

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

The requested Service Award is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁹⁵ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information to support the pursuit of the claims.⁹⁶ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendant, and gathering and reviewing documents.⁹⁷ These services merit the requested Service Award to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members to date.⁹⁸

The requested Service Award was fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Service Payment. Accordingly, it is appropriate and just for Plaintiff Jose Ceron to receive \$7,500.00 as a reasonable Service Award for his services on behalf of the Class, Aggrieved Employees, and the

⁹⁵ St. John Decl., ¶ 20; Declaration of Jose Ceron ("Ceron Decl."), ¶¶ 3-5.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ceron Decl., ¶ 8.

1 State of California, in addition to his Individual Settlement Payment.

2 **X. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
4 approval of the Settlement, and award Attorneys' Fees and Expenses, Service Award,
5 Administration Expenses, and allocation for the PAGA Payment, in their entirety, as sought
6 herein; and permit the filing of a memorandum that exceeds the page limit.

7
8 Dated: October 7, 2024

LAWYERS for JUSTICE, PC

9
10 By:



11 Brian J. St. John
12 *Attorneys for Plaintiff and the Class*
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