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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ERIC DRAKE, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

vs.

SYSCO SAN FRANCISCO, INC., a California corporation; SYSCO CORPORATION, a Delaware corporation; and DOES 1 through 100, inclusive,

Defendants.

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

Plaintiff,

vs.

SYSCO SAN FRANCISCO, INC., a California corporation; SYSCO CORPORATION, a Delaware corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG21102657 (Lead Case)
[Consolidated Case No.: RG21102653]

Honorable Michael Markman
Department 23

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

[Declaration of Class Counsel (Helene Mayer); Declaration of Class Representative (Eric Drake); Declaration of Settlement Administrator (Lisa Pavlik of Simpluris); and [Proposed] Final Approval Order and Judgment filed concurrently herewith]

Date:	May 8, 2025
Time:	10:00 a.m.
Department:	23
Reservation No.:	A-21102657-00

Class Action Filed:	June 23, 2021
PAGA Action Filed:	June 23, 2021
Trial Date	None Set

PLEASE TAKE NOTICE that on May 8, 2025, at 10:00 a.m., in Department 23 of the above-entitled Court, located at 1221 Oak Street, Oakland, California 94612, Plaintiff Eric Drake ("Plaintiff") will and hereby does move for an order granting final approval of:

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

- A Net Settlement Amount of approximately **$1,091,848.82** will be fully distributed to all Class Members other than those who have submitted timely and valid Request for Exclusions and thereby excluded themselves from the Class Settlement ("Settlement Class Members");
- **No Objections** were submitted to the settlement administrator, Simpluris, Inc. ("Settlement Administrator" or "Simpluris");
- **Three (3) valid Requests for Exclusion** were submitted to the Settlement Administrator;

2. Payment in the amount of **$735,000.00** to Lawyers *for* Justice, PC ("Class Counsel"), representing 35% of the Total Settlement Amount, for attorneys' fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check with a multiplier of 2.10;

3. Payment in the amount of **$20,651.18** to Class Counsel for reimbursement of litigation costs and expenses;

4. Payment in the amount of **$15,000.00** to the Settlement Administrator for Settlement Administration Costs;

5. Payment in the amount of **$12,500.00** to Plaintiff Eric Drake as a Class Representative Enhancement Award, for his time and effort in representing the Class; and

6. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq*., in the amount of $225,000.00, of which 75%, or **$168,750.00**, will be paid to the California Labor and Workforce Development Agency ("LWDA")

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("LWDA Payment") and 25%, or **$56,250.00**, will be distributed to PAGA Members ("Employee PAGA Portion").

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 Declarations of Class Counsel (Helene Mayer), Class Representative (Eric Drake), and Settlement Administrator (Lisa Pavlik 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: April 16, 2025

LAWYERS *for* JUSTICE, PC

By: Helene Mayer

Helene Mayer
Attorney for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Eric Drake ("Plaintiff") seeks final approval of: (1) the Total Settlement Amount of $2,100,000.00[1]; (2) attorneys' fees in the amount of $735,000.00, which is 35% of the Total Settlement Amount, and reimbursement of litigation costs and expenses in the amount of $20,651.18 (together the "Class Counsel's Fees and Costs") to Lawyers *for* Justice, PC ("Class Counsel"); (3) Settlement Administration Costs in the amount of $15,000.00 to Simpluris, Inc. ("Simpluris" or "Settlement Administrator"); (4) Class Representative Enhancement Award in the amount of $12,500.00 to Plaintiff; and (5) allocation of $225,000.00 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 of Defendant in the State of California employed during the Class Period ("Class").[2]

This matter involved ongoing investigations, informal discovery, review and analysis of a large volume of documents and data prior to and during a private, full-day mediation session conducted by Hon. Brian C. Walsh (ret.). This matter has required 412.40 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represents 35% of the Total Settlement Amount, is fully supported by the use of the percentage-fee method. The requested attorneys' fees are also supported under the lodestar cross-check method.[3]

Plaintiff moves for final approval of the Class Representative Enhancement Award in the amount of $12,500.00 to Plaintiff, to compensate Plaintiff for the time and effort that he expended spearheading the lawsuits on behalf of the Class, PAGA Members, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the

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[1] See First Amended Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"), ¶ 44. The Settlement Agreement is attached as Exhibit 1 to the Supplemental Declaration of Helene Mayer filed on June 11, 2024.

[2] Settlement Agreement, ¶ 5. "Class Period" is defined as the period from December 27, 2016 through December 14, 2023. *See id.*, ¶ 7.

[3] Applying a multiplier of 2.10, the total enhanced lodestar fees are $736,134.00, and Class Counsel seeks an attorneys' fees award of $735,000.00 (equal to 35% of the Total Settlement Amount).

amount of $15,000.00 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of $225,000.00 for the PAGA Penalties, of which 75%, or $168,750.00, will be paid to the California Labor Workforce and Development Agency ("LWDA") for its portion of the PAGA Penalties ("LWDA Payment"), and 25%, or $56,250.00, 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 employed during the PAGA Period ("PAGA Members") based on their pay periods ("Employee PAGA Portion").[4]

The requests for Class Counsel's Fees and Costs, Class Representative Enhancement Award, Settlement Administration Costs, and allocation for the PAGA Penalties were fully disclosed in the Notice of Class Action and Representative 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 any aspect of the Settlement, including the requested Class Counsel's Fees and Costs, Class Representative Enhancement Award, Settlement Administration Costs, or allocation for PAGA Penalties*.

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

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

[4] Settlement Agreement, ¶¶ 27 & 28. "PAGA Period" is defined as the time period from October 21, 2019 through December 14, 2023. *See id.*, ¶ 29.

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is the largest distributor of food and food service products in the market, distributing food and food service products to suppliers, business partners, and customers from Fort Bragg to Big Sur. Plaintiff is a former employee of Defendant.

On April 16, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Sysco San Francisco, Inc. and Sysco Corporation of the specific provisions of the California Labor Code that were alleged to be violated ("LWDA Notice").

On June 23, 2021, Plaintiff Drake filed a Class Action Complaint for Damages in Alameda County Superior Court, Case No. RG21102657 ("Class Action") against Sysco San Francisco, Inc. and Sysco Corporation, alleging: (1) failure to pay overtime pursuant to Labor Code sections 510, 1194, and 1198; (2) failure to provide meal period premiums in violation of sections 226.7 and 512(a); (3) failure to provide rest period premiums in violation of section 226.7; (4) failure to pay minimum wages pursuant to sections 1194, 1197, and 1197.1; (5) failure to timely pay wages upon termination in violation of sections 201, 202, and 203; (6) failure to timely pay wages during employment in violation of section 204; (7) failure to provide accurate and itemized wage statements in violation of section 226(a); (8) failure to keep requisite payroll records in violation of section 1174(d); (9) failure to reimburse business expenses in violation of sections 2800 and 2802; and, (10) violations of California Business and Professions Code §§ 17200, *et seq*.

On June 23, 2021, Plaintiff Drake also filed a Complaint for Enforcement under the Private Attorneys General Action, California Labor Code §§ 2698, *Et Seq.* ("PAGA Action") (together, the Class Action and PAGA Action are referred to as the "Actions") in Alameda County Superior Court, Case No. RG21102653 against Sysco San Francisco, Inc. and Sysco Corporation, alleging violations of California Labor Code §§ 2698, *et seq*. (California Labor Code Private Attorneys General Act of 2004).

On August 13, 2021, Defendant filed a Notice of Removal in both the Class Action and PAGA Action. On August 25, 2021, Defendant filed an Administrative Motion in the Class Action to consider whether Plaintiff's class and separate PAGA matters should be deemed related. On August 31, 2021, the Court deemed the Class Action and PAGA Action related.

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On October 12, 2021, the Parties stipulated to dismiss Defendant Sysco Corporation without prejudice in both matters.

On November 10, 2021, Plaintiff filed a Motion to Remand in both matters. On November 24, 2021, the Parties filed joint stipulations requesting both matters be remanded back to the Alameda County Superior Court. On November 29, 2021, pursuant to the stipulations of the Parties, the Court remanded the matters back to Alameda County Superior Court.

On April 9 2024, the Parties filed a joint stipulation seeking to have the Class Action and PAGA Action consolidated for purposes of settlement approval. On April 15, 2024, the Court ordered that the Class Action and PAGA Action be consolidated for purposes of settlement approval and entry of judgment, and the Class Action (Case No. RG21102657) will be deemed the lead case for administration and filing purposes.

The Parties have actively litigated the Actions since each matter was commenced on June 23, 2021. On September 7, 2023, the Parties participated in a formal, full-day mediation conducted by Hon. Brian C. Walsh (the "Mediator"), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

On July 22, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents ("Motion for Preliminary Approval"). On August 22, 2024, the Court issued a Minute Order raising certain points of inquiry regarding the settlement and requesting Plaintiff file supplemental briefing to address the points of inquiry. On September 25, 2024, Plaintiff filed the Supplemental Declaration of Helene Mayer in Support of Plaintiff's Motion for Preliminary Approval. On October 8, 2024 the Court entered an Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Class Counsel's Fees and Costs, Class Representative Enhancement Award, Settlement Administration Costs, and allocation for PAGA Penalties.

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III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant have agreed to pay a Total Settlement Amount of $2,100,000.00.[5] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Class Counsel's Fees and Costs, consisting of attorneys' fees in the amount of $735,000.00 and reimbursement of litigation costs and expenses in the amount of $20,651.18, to Class Counsel; (2) Class Representative Enhancement Award in the amount of $12,500.00 to Plaintiff; (3) Settlement Administration Costs in the amount of $15,000.00 to Simpluris; and (4) PAGA Penalties in the amount of $225,000.00.[6] The Net Settlement Amount, which is estimated to be $1,091,848.82 will be distributed in accordance with the Settlement Agreement.

The Settlement Administrator will determine each Settlement Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"), according to the following methodology: the Settlement Administrator will first determine the total number of Workweeks during the Class Period for each Class Member and the total aggregated number of Workweeks during the Class Period worked by all Class Members during the Class Period; then the Settlement Administrator will divide each Settlement Class Member's individual Workweeks during the Class Period by the total Workweeks during the Class Period of all Settlement Class Members and multiply the resulting fraction by the Net Settlement Amount.[7]

The Settlement Administrator will determine each PAGA Member's *pro rata* share of the Employee PAGA Portion ("Individual PAGA Payment"), according to the following methodology: the Settlement Administrator will determine the total number of pay periods during the PAGA Period for each PAGA Member and the total aggregated number of pay periods worked by all PAGA Members during the PAGA Period; then the Settlement Administrator will divide each PAGA Member's individual pay periods during the PAGA Period by the total pay periods of all PAGA Members during the PAGA Period and multiply the resulting fraction by the Employee

[5] Settlement Agreement, ¶ 44.
[6] *Id.*, ¶¶ 3, 9, 24, 28, & 42.
[7] *Id.*, ¶ 67(a).

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PAGA Portion.[8]

Class Members had 60 calendar days after the Class Notice was mailed to Class Members ("Response Deadline") to submit a Request for Exclusion from the Class Settlement, written Objection to the Class Settlement, and/or Workweeks or pay period dispute.[9] ***As of the date of this Motion, the Settlement Administrator has not received any written Objections to the Class Settlement, received (2) Workweek Disputes, and received only three (3) valid Requests for Exclusions from the Class Settlement.***[10]

Each Settlement Class Member's Individual Settlement Share will be allocated as follows: 20% as wages, which will be reported on an IRS Form W-2, and 80% as penalties, interest, and non-wage damages ("Non-Wage Portion"), which will be reported on an IRS form 1099.[11] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wage portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments.[12] Any payment for an Individual PAGA Payment will be allocated as 100% penalties and will be reported on an IRS Form-1099, if necessary; the Settlement Administrator will not undertake any withholding with respect to the Individual PAGA Amount.[13] The Employer's Share of Payroll Taxes will be paid separately and in addition to the Total Settlement Amount.[14]

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for 180 calendar days from the date the checks are issued, and thereafter, shall be canceled.[15] All funds associated with canceled checks will be transmitted to the *cy pres*, California Restaurant Foundation/Restaurants Care, in accordance with California Code of Civil Procedure section 384.[16]

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[8] Settlement Agreement, ¶ 67(b).
[9] *Id.*, ¶ 40.
[10] Declaration of Lisa Pavlik on Behalf of Simpluris, Inc. ("Simpluris Decl."), ¶¶ 12-14.
[11] Settlement Agreement, ¶ 67(c).
[12] *Id.*, ¶ 20.
[13] *Id.*, ¶ 67(c).
[14] *Id.*, ¶¶ 16 & 44.
[15] *Id.*, ¶ 84.
[16] Ibid.

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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 Preliminary Approval Order.

On or about October 8, 2024, Simpluris received the Court-approved Class Notice.[17]

On or about November 12, 2024, Simpluris received a mailing list from Defendant's Counsel that contained each Class Member's (1) last known full name; (2) last known mailing address; (3) social security number or employee ID; (4) start, end, and re-hire dates of employment as a Class Member during the Class Period; and (6) such other information as is necessary for the Settlement Administrator to be able to calculate individual Class Member Workweeks and the number of pay periods work during the PAGA Period (collectively, "Class List").

The Class List contained information for 1,203 individuals identified as Class Members.[18] Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and located 177 updated addresses using NCOA prior to the mailing of the Class Notice.[19]

On January 31, 2025, Simpluris mailed the Class Notice via U.S. First Class Mail, in English and Spanish, to all 1,203 individuals identified as Class Members in the Class List, of which 1,095 were identified as PAGA Members.[20]

A total of 156 Class Notices were returned to Simpluris as undeliverable.[21] If a Class Member's Class Notice was returned by the USPS as undeliverable and without a forwarding address, Simpluris performed an advanced address search (i.e., skip trace) on all of these addresses by using Accurint, a reputable research tool owned by Lexis-Nexis. Simpluris used the Class Member's name and previous address to locate a current address.[22] Through the advanced address searches and utilizing the USPS forwarding address database, Simpluris was able to locate 135

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[17] Simpluris Decl., ¶ 4.
[18] *Id.*, ¶ 5.
[19] *Id.*, ¶ 7.
[20] *Id.*, ¶ 8.
[21] *Id.*, ¶ 9.
[22] Ibid.

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updated addresses and Simpluris promptly mailed a Class Notice to those updated addresses. Ultimately, 20 Class Notices remain undeliverable.[23]

Simpluris did not receive any written Objections and received two (2) Workweek Disputes.[24] Simpluris sent the Workweeks Disputes to Defense Counsel for Defendant's review.[25] The Workweek Disputes were reviewed, and updated data was provided. Simpluris will review the members' records and update accordingly.[26] Simpluris received three (3) valid Requests for Exclusion.[27] Thus, there are 1,200 Settlement Class Members, representing 99.75% of the Class.

The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be $3,430.49, and the average Individual Settlement Share to a Settlement Class Member is currently estimated to be $908.87.[28] The highest Individual PAGA Payment to a PAGA Member is currently estimated to be $153.50 and the average Individual PAGA Payment is currently estimated to be $51.37.[29]

V. <u>THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.</u>

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.

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[23] Simpluris Decl., ¶ 9.
[24] *Id.*, ¶¶ 13-14.
[25] *Id.*, ¶ 14.
[26] Ibid.
[27] *Id.*, ¶ 12.
[28] *Id.*, ¶ 17.
[29] *Id.*, ¶ 19.

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"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 cases 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 Informal Discovery.**

The Parties actively litigated the case, as Class Counsel conducted significant investigation and informal discovery into the facts of the cases, to assess the veracity, strength, and scope of the claims, and was preparing the matter for class certification and trial prior to reaching the Settlement.[30]

The Parties conducted significant informal discovery and investigation into the facts of the cases.[31] The information, documents, and data reviewed and analyzed by Class Counsel included,

[30] Declaration of Helene Mayer ("Mayer Decl."), ¶¶ 6-9.
[31] Ibid.

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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 and supplements thereto, union agreements, company policy acknowledgments (including, but not limited to, Receipt of Associate Handbook and Acknowledgement of Receipt of California Meal Period and Rest Break Policy), forms (including, but not limited to, Meal Period Waivers), procedures, and policies (including, but not limited to Meal and Rest Break Policy) among other information and documents.[32] Class Counsel researched applicable law, developed liability and damages valuation models in connection with mediation and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, and production of various information, documents, and data in the course of litigation and in connection with the mediation and settlement negotiations.[33] Class Counsel reviewed and analyzed a large volume of information, data, and documents obtained from Plaintiff, Defendant, and other sources, in the course of litigation and in connection with mediation and settlement negotiations.[34] Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising pleadings, motion-related papers, and the mediation brief; preparing and appearing for court proceedings; and preparing for and attending the mediation session and engaging in extensive settlement negotiations, among other tasks.[35]

After conducting informal discovery and investigation into the facts of the cases, the Parties participated in a formal, full-day mediation on September 7, 2023 with respected and experienced mediator Hon. Brian C. Walsh., a well-regarded mediator experienced in mediating complex labor and employment matters. In the course of mediation and settlement negotiations, the Parties exchanged information, documents, and data, and discussed various aspects of the case, including and 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 class certification,

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[32] Mayer Decl., ¶¶ 6-9.
[33] Ibid.
[34] Ibid.
[35] Ibid.

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off-the-clock theory, meal and rest periods, representative PAGA actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[36] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[37] Arriving at a settlement that was acceptable to the Parties was not easy.[38] Defendant contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to class certification and representative adjudication.[39] Defendant and its counsel felt strongly about Defendant's ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiff and Class Counsel believed that they would be able to obtain relief in court, obtain class certification and prevail at trial.[40] After conducting significant informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the cases were well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the Parties that would attend further litigation.[41]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel analyzed a large volume of information, documents, and data obtained from Defendant, Plaintiff, and other sources, both prior to and after the mediation, and performed research regarding applicable law, which is evolving as it relates to class certification, off-the-clock theory, meal and rest periods, representative PAGA actions, wage-and-hour law and enforcement, Plaintiff's claims and allegations, and Defendant's defenses thereto, as well as facts discovered.[42] The Settlement was based on this large volume of facts, evidence, and investigation.[43] Additionally, Class Counsel has extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.[44]

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[36] Mayer Decl., ¶¶ 6-9.
[37] Ibid.
[38] Ibid.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] *Id.*, ¶¶ 14-18.

B. <u>The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.</u>

The Settlement, which provides for a Total Settlement Amount of $2,100,000.00, represents a fair, adequate, and reasonable resolution of the cases, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.[45] The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation.[46] Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability, assuming that its financial condition would have allowed it to avoid bankruptcy. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members, PAGA Members, and the State of California after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the

[45] Mayer Decl., ¶ 9.
[46] *Id*., ¶¶ 6-9.

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litigation where they would have to conduct a significant amount of discovery, including and not limited to, depositions of Defendant' Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Formal discovery would have certainly arisen, which would have cost the Parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Class Members, the PAGA Members, and the State of California here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

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

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

The Settlement, which provides for a Total Settlement Amount of $2,100,000.00, represents a fair, reasonable, and adequate resolution of the cases. The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of preparing for mediation. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the cases, the Total Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of $735,000.00, litigation costs and expenses in the amount of $20,651.18, Class Representative Enhancement Award in the amount of $12,500.00, Settlement Administration Costs in the amount of $15,000.00, and the PAGA Penalties of $225,000.00 from the Total Settlement Amount of $2,100,000.00, the Net Settlement Amount is currently estimated to be $1,091,848.82.[47] Under the Settlement Agreement, the Total

[47] Simpluris Decl., ¶ 16.

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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 worked credited to him or her.[48] As noted above, there are 1,200 Settlement Class Members, representing 99.75% of the Class Members, the highest Individual Settlement Payment to a Settlement Class Member is $3,430.49, the average Individual Settlement Payment is $908.87, the highest Individual PAGA Payment to an PAGA Member is $153.50, and the average Individual PAGA Payment is be $51.37.[49] These are significant individual recoveries, particularly in light of the risks of litigation and the unlikelihood of recovering funds from Defendant.

At the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and PAGA Members.[50] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. <u>The Class Was Represented by Competent Counsel.</u>

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.[51] Lawyers *for* Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in

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[48] Settlement Agreement, ¶ III.3.07.g.
[49] Simpluris Decl., ¶¶ 17 & 19.
[50] Mayer Decl., ¶ 21.
[51] *Id.*, ¶¶ 14-18.

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California.[52] Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. <u>There Are No Objections to the Settlement.</u>

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

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. <u>THE ATTORNEYS' FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.</u>

A. <u>Legal Standard for Class Counsel's Fees in a Class Action Settlement.</u>

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 Case*s (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, <u>California</u>

[52] Mayer Decl., ¶¶ 14-18.
[53] Simpluris Decl., ¶ 13.

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. Graulty* (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.[54] 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-

[54] 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.

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

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

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

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of $2,100,000.00 on a non-reversionary basis. The requested attorneys' fees are 35% 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 and should be approved on a percentage basis.

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The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. Named plaintiffs' agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiffs. If the named plaintiffs have employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiffs.

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, PAGA Members, 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.

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C. The Class Counsel's 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 $735,000.00 (which is 35% of the Total Settlement Amount) is commensurate with the time, effort, and expense dedicated to the cases, the contingent nature of Class Counsel's fee and the risks taken in commencing the cases, 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. Moreover, as demonstrated in the supporting declarations, Class Counsel has extensive experience in the handling of class actions and complex litigation cases.[55]

As outlined in the Declaration of Helene Mayer, Class Counsel has fully and actively participated in litigation of the Actions.[56] Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's

[55] Mayer Decl., ¶¶ 14-18.
[56] *Id.*, ¶¶ 6-9, 12, and Exh. A.

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business, and its operations and employment policies, practices, and procedures.[57] During the litigation of the Actions, Class Counsel had the opportunity to interview Plaintiff and other Class Members; reviewed and analyzed a large volume of pages of information, documents and data obtained from Defendant, Plaintiff, and other sources; and prepared liability, damages, penalties, and valuation calculations.[58] Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings and the production of information, documents and data, among other things; engaged in settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, a mediation session, and settlement negotiations.[59]

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 Helene Mayer, sets forth in detail the hours that Lawyers *for* Justice, PC has spent performing tasks on behalf of Plaintiff and the Class.[60] The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent 412.40 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, the PAGA Members, and the State of California.[61] 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 cases is evident not only in the results achieved, but in the steps necessary to reach those results. Defendant retained well-respected counsel to

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[57] Mayer Decl., ¶¶ 6-9.
[58] Ibid.
[59] Ibid.
[60] *Id.*, ¶ 12 & Exh. A.
[61] Ibid.

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

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Helene Mayer, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.[62]

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

The Settlement represents an excellent resolution of the Actions, given the risks inherent in litigating the cases through certification proceedings, trial, and/or appeals. Had the cases not 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 cases 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, the State of California, and PAGA 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 settlement negotiations, Defendant agreed to pay a Total Settlement Amount of $2,100,000.00 to settle the matter. After deducting the attorneys' fees

[62] Mayer Decl., ¶¶ 14-18.

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($735,000.00), litigation costs and expenses ($20,651.18), Class Representative Enhancement Award ($12,500.00), Settlement Administration Costs ($15,000.00), and PAGA Penalties ($225,000.00) from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately $1,091,848.82.[63]

4. Whether the Fee Is Fixed or Contingent.

Plaintiff entered into contingency fee agreements with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 412.40 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and PAGA Members.[64] Class Counsel has also incurred litigation costs and expenses in the amount of $20,651.18.[65]

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[66] Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.[67] The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel's Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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[63] Simpluris Decl., ¶ 16.
[64] Mayer Decl., ¶ 12 & Exh. A.
[65] *Id*., ¶ 19 & Exh B.
[66] Ibid.
[67] *Id*., ¶¶ 14-18.

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such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel had devoted to litigating the case would have been for naught, and would not have produced any fee or any reimbursement of costs or expenses.

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.[68]

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 Total Settlement Amount of $2,100,000.00 to be distributed under the terms of the Settlement rather than risk a defense verdict and or inability to collect even if obtaining a verdict for the Class.

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 these cases 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.[69]

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[68] Simpluris Decl., ¶ 13.
[69] Mayer Decl., ¶¶ 14-18.

D. <u>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.</u>

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 case 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. Long and difficult battles would have followed as

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the cases moved toward certification and trial, including engaging in extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter through mediation.

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Helene Mayer 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.[70] The chart demonstrates that Class Counsel has spent a total of 412.40 hours litigating the cases and finalizing the Settlement.[71] In light of the facts and circumstances of the cases, as well as the results that Class Counsel has achieved on behalf of Plaintiff, Class Members, the PAGA Members, and the State of California, 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.*

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[70] Mayer Decl., ¶ 12 & Exh. A.
[71] Ibid.

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Class Counsel has been actively involved in this matters, prior to their commencement and all the way up to the present, and Class Counsel's dedication to providing representation in these cases has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of $2,100,000.00.

As set forth in the Declaration of Helene Mayer, the professional backgrounds and experience of Class Counsel support a reasonable blended rate of $850 per hour for services provided by Class Counsel.[72] Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least that amount (and in some cases much more) for legal service performed, by courts of this state.[73] While the circumstances of every case are 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.

3. The Risks Involved, Skill Required, Complexity of the Matter, and Results Obtained Warrant Upward Enhancement of the Lodestar.

Even when courts have opted to award fees in settlement fund cases based on time reasonably expended on the action, courts have generally awarded these fees based on the actual time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this case.

Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved, the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers [...] is for contingency risk."). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which

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[72] Mayer Decl., ¶ 12.
[73] Ibid.

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they are paid on a fee-for-services basis." *Ketchum*, 24 Cal. 4th at 1132.

In determining whether or not to enhance the lodestar, California courts take into account multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See, *Cates* at 822-823. Multiple factors warrant enhancement in this case, including the following:

- The time and labor required
- The skill requisite to perform the legal services properly
- The preclusion of other employment by the attorney due to the acceptance of the case
- The contingent nature of the fee
- The amount involved and results obtained
- The experience, reputation, and ability of the attorney
- Awards in similar cases

Ketchum at 1134.

Adjustment of the base lodestar figure to compute an award of attorneys' fees for a claim under the California Labor Code is appropriate. See *Id.*, at 1135-1136; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. "The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba*, *supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum*, *supra*, 24 Cal.4th at 1131-1132. The lodestar figure is the "basic fee for comparable legal services in the community" based upon the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Id.*, at 1132-1133 (quotation marks and citation omitted).

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, and the case involved gathering and analyzing extensive information, documents, and data. The handling of this matter involved a great amount of effort, and required the exercise of a high-level of skill, which Class Counsel has as a result of extensive experience in employment class actions and wage-and-hour litigation. Class

Counsel has been actively involved in the prosecution of this matter, prior to its commencement and Class Counsel's work has continued all the way up to the present. Class Counsel's dedication to providing representation in this matter has precluded other employment.

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class Counsel was successful in achieving substantial results in the form of a settlement of $2,750,000.00. Also, Class Counsel's efforts throughout the case demonstrate dedication to the interests of the Class, State of California, and Aggrieved Employees.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time summarized above and detailed in the Attorney Task and Time Chart, which is attached as EXHIBIT A to the Declaration of Helene Mayer.[74] As indicated in the chart and Declaration of Helene Mayer, Class Counsel has worked 381.50 hours in the pursuit of this matter, and the base lodestar value for the services performed by Class Counsel is $324,785.00. Applying a multiplier of 2.10, the total enhanced lodestar fees are $350,540.00. Class Counsel seeks an attorneys' fee award of $735,000.00 (equal to 35% of the Total Settlement Amount based on the Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher**." *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores,*

[74] Mayer Decl., Exh. B.

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Inc. v. Visa U.S.A., Inc. (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

This matter involves an outstanding monetary recovery involving a ***Total Settlement Amount of $2,100,000.00*** (with a **Net Settlement Amount of *at least $1,091,848.82 to be paid to Settlement Class Members*** with an average payment of approximately $908.87 per Participating Class Member, a ***payment of $56,250.00 to PAGA Members*** with an average payment of $51.37 per PAGA Member, and ***payment of $168,750.00 to the State of California***)—support the percentage fee sought and the application of a lodestar multiplier.[75]

Therefore, application of a multiplier of 2.10 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of $735,000.00 to Class Counsel.

VII. <u>COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.</u>

The Settlement provides for reimbursement of litigation costs and expenses of up to $25,000.00. As set forth in the Declaration of Helene Mayer, Class Counsel seeks reimbursement of $20,651.18 in litigation costs and expenses incurred in this case.[76] 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.[77] The cost savings of $4,348.82 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement. Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of $20,651.18 to Class Counsel.

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[75] Simpluris Decl., ¶¶ 16-19.
[76] Mayer Decl., ¶ 19 & Exh. B.
[77] Settlement Agreement, ¶ III.3.07.c.

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

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are $15,000.00.[78] The costs incurred and to be incurred include, but are not limited to, (a) printing, mailing, and re-mailing (if necessary) of Notice Packets to Class Members; , (b) calculating/confirming the Workweeks from the information contained in the Class List, (c) calculating each Settlement Class Member Individual Settlement Share and Individual Settlement Payment, (d) calculating each PAGA Member's Individual PAGA Payment, (e) processing Objections and Exclusion Forms, (f) establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code, (g) calculating and remitting to the appropriate government agencies all employer and employee payroll tax obligations arising from the Settlement, (h) distributing payments due under the Settlement, (i) providing necessary reports and declarations, and (j) other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties or the Court.[79]

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of $15,000.00.

IX. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT AWARD IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement provides for a Class Representative Enhancement Award in the amount of $12,500.00 to Plaintiff to compensate Plaintiff for the time and effort that he expended on behalf of the Class, PAGA Members, and the State of California. The requested Class Representative Enhancement Award is both common and reasonable and should be awarded.

In determining whether to make enhancement 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

[78] Simpluris Decl., ¶ 20.
[79] *Id.*, ¶ 3.

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of time and effort 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 Class Representative Enhancement 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 to support the prosecution of the claims.[80] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information to support the pursuit of the cases.[81] Plaintiff spent numerous hours speaking with Class Counsel about his claims and describing their work experiences with Defendant.[82] Plaintiff also agreed to provide a full general release, which no Class Member has had to provide by virtue of this Settlement.

Accordingly, it is appropriate and just for Plaintiff to receive $12,500.00 as reasonable Class Representative Enhancement Award, for his services on behalf of the Class, PAGA Members, and the State of California, in addition to his individual settlement payments.

X. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Class Counsel's Fees and Costs, Class Representative Enhancement Award, Settlement Administration Costs, and allocation for the PAGA Penalties, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: April 16, 2025

LAWYERS *for* JUSTICE, PC

By: Helene Mayer

Helene Mayer
Attorney for Plaintiff and the Class

[80] Mayer Decl., ¶ 20; Declaration of Eric Drake ("Drake Decl."), ¶¶ 2-5.
[81] Mayer Decl., ¶ 20; Drake Decl., ¶¶ 2-5.
[82] Mayer Decl., ¶ 20; Drake Decl., ¶¶ 2-5.

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