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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

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

Plaintiff,

vs.

MED-DATA, INCORPORATED,
CARDON HEALTHCARE NETWORK,
INC., DIVERSIFIED HEALTHCARE
SERVICES, INC., ALEGIS REVENUE
GROUP, LLC, AND MEDNAX
SERVICES, INC.; and DOES 1 through
100, inclusive,

Defendants.

Case No.: RIC1901865

Honorable Craig C. Riemer
Department 1

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Samuel Elliott); Declaration of
Settlement Administrator (Cassandra Polites);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: August 12, 2022
Time: 9:00 a.m.
Department: 1

Complaint Filed: March 13, 2019
FAC Filed: September 9, 2021
SAC Filed: March 9, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 12, 2022 at 9:00 a.m., in Department 1 of
2 the above-entitled Court, located at 4050 Main Street, Riverside California 92501, Plaintiff
3 Samuel Elliott (“Plaintiff”) will and hereby does move for an order granting final approval of:

4 1. The Class Action and PAGA Settlement Agreement, Amendment No. 1 to Class
5 Action and PAGA Settlement Agreement, and Amendment No. 2 to Class Action and PAGA
6 Settlement Agreement (together, “Settlement,” “Agreement,” or “Settlement Agreement”) on
7 the grounds that the Settlement is fair, adequate, and reasonable because:

- 8 • A Net Settlement Sum of approximately **\$910,570.00** will be distributed to the Class
9 Members who did not timely opt out of the Settlement (“Settlement Class Member”);
10 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
11 (“Settlement Administrator”);
12 • **Only One Request for Exclusion** was submitted to the Settlement Administrator;

13 2. Payment in the amount of **\$547,750.00** to Lawyers *for* Justice, PC (“Class
14 Counsel”), representing thirty-five percent (35%) of the Settlement Sum, for attorneys’ fees,
15 which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check
16 with a multiplier of 1.54;

17 3. Payment in the amount of **\$11,607.46** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$10,073.00** to the Settlement Administrator, Simpluris,
20 Inc. (“Simpluris”), for Settlement Administration Costs;

21 5. Payment in the amount of **\$10,000.00** to Plaintiff Samuel Elliott, as Enhancement
22 Awards, for his time and effort in representing the Class; and

23 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
24 California Labor Code section 2698, *et seq.*, in the amount of **\$100,000.00**, of which seventy-
25 five percent (75%), or \$75,000.00, will be paid to the California Labor and Workforce
26 Development Agency and twenty-five percent (25%), or \$25,000.00, will be part of the Net
27 Settlement Sum for distribution to the Settlement Class Members.

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

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

9 Dated: July 21, 2022

LAWYERS for JUSTICE, PC

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

I. SUMMARY OF MOTION

Plaintiff Samuel Elliott (“Plaintiff”) seeks final approval of: (1) the Settlement Sum of \$1,565,000.00; (2) attorneys’ fees in the amount of \$547,750.00, which is thirty-five percent (35%) of the Settlement Sum, and reimbursement of litigation costs and expenses in the amount of \$11,607.46 (together, “Attorneys’ Fees and Costs”) to Lawyers *for* Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$10,073.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Award in the amount of \$10,000.00 to Plaintiff Samuel Elliott; and (5) allocation of \$100,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Allocation”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt who worked by Defendants within the State of California at any time during the period from March 13, 2015 through August 19, 2020 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by Hon. Michael Latin (Ret.), and extensive settlement negotiations. This matter has required 529.40 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the Settlement Sum, 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.²

Plaintiff moves for final approval of the Enhancement Award in the amount of \$10,000.00 , to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$10,073.00 for Settlement Administration Costs.

¹ Class Action and PAGA Settlement Agreement (“Original Agreement”), § 7.a & Exh. A.

² Applying a modest multiplier of 1.54, the total enhanced lodestar fees are \$547,993.60, and Class Counsel seeks an attorneys’ fees award of \$547,750.00 (equal to 35% of the Settlement Sum).

1 Plaintiff also moves for final approval of the allocation of \$100,000.00 for the PAGA Allocation,
2 of which \$75,000.00 will be paid to the California Labor Workforce and Development Agency
3 (“LWDA”) for its portion of the PAGA Allocation (“LWDA Payment”), and \$25,000.00 will
4 be part of the Net Settlement Sum that will be distributed to Class Members who did not submit
5 a timely and valid request to be excluded from the Settlement (“Settlement Class Members”).

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

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

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

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

25 Defendants Med-Data, Incorporated, Cardon Healthcare Network, Inc., Diversified
26 Healthcare Services, Inc., Alegis Revenue Group, LLC, and Mednax Services, Inc.
27 (“Defendants”) provides financial account management, patient collection, and revenue cycle
28

1 management services for hospitals and medical organizations. Plaintiff Samuel Elliott is a
2 former employee of Defendant.

3 On March 13, 2019, Plaintiff filed a Class Action Complaint for Damages in the
4 Riverside County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
5 (“Action”).

6 On June 7, 2019, Defendant Med-Data, Incorporated filed an Answer to Plaintiff’s
7 Unverified Class Action Complaint, and thereafter, on July 7, 2019, Defendant Med-Data,
8 Incorporated filed a First Amended Answer to Plaintiff’s Unverified Class Action Complaint.

9 On September 9, 2021 Plaintiff filed a First Amended Class Action Complaint for
10 Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698,
11 *Et Seq.* (“Operative Complaint”). On October 8, 2021 Defendant Med-Data, Incorporated filed
12 a Second Amended Answer to Plaintiff’s First Unverified Class Action Complaint.

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

23 Defendants have denied, and continues to deny, any liability and wrongdoing of any kind
24 associated with any of the allegations in the Action, and further denies that the Action is
25 appropriate for class treatment or representative adjudication for any purpose other than for
26 settlement purposes only. More specifically, Defendants assert that the proposed class lacks a
27 well-defined community of interest, requiring individualized questions and proof. Defendants
28 further points out that the Company policies at issue in this case are, on their face, compliant

with California state law. Defendants also pointed to the lack of evidence of any meal and/or rest periods that were not provided. Furthermore, Defendants asserts that its payroll systems ensure compliance with the specific overtime requirements for California. In addition, Defendants raised the issue that after a diligent search, they were unable to locate any instances or evidence of any employee not receiving reimbursement for any expense requests submitted by the employee. Finally, Defendants assert that Plaintiff's PAGA claim is not manageable pursuant to *Wesson v. Staples the Office Superstore, LLC*.

The Parties have actively litigated the Action since it was commenced on March 13, 2019. On February 28, 2020 and August 18, 2020, the Parties participated in two formal, full-day mediations conducted by Hon. Michael Latin (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On November 4, 2021, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On November 30, 2021, the Court issued an Order in which the Court raised certain points of inquiry. On December 20, 2021, Plaintiff filed supplemental papers in support of the Motion for Preliminary Approval. On January 5, 2022, the Court issued an Order in which the Court raised additional points of inquiry. On January 27, 2022, the Parties submitted supplemental briefing in support of the Motion for Preliminary Approval. On March 2, 2022, the Court issued an Order in which the Court raised additional points of inquiry. On March 22, 2022, Plaintiff filed additional supplemental briefing in support of the Motion for Preliminary Approval. On April 6, 2022, the Court entered an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, and allocation for PAGA Allocation.

///

1 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

2 Under the terms of the Settlement Agreement, Defendants have agreed to pay a
3 Settlement Sum of \$1,565,000.00.³ Subject to approval by the Court, the Net Settlement Sum
4 will be calculated by deducting the following amounts from the Settlement Sum: (1) Attorneys'
5 Fees and Costs, consisting of attorneys' fees in the amount of \$547,750.00 and reimbursement
6 of litigation costs and expenses in the amount of \$11,607.46, to Class Counsel; (2) Enhancement
7 Award in the amount of \$10,000.00 to Plaintiff Samuel Elliott; (3) Settlement Administration
8 Costs in the amount of \$10,073.00 to Simpluris; and (4) LWDA Payment in the amount of
9 \$75,000.00.⁴ The Net Settlement Sum, which is estimated to be \$910,570.00, will be distributed
10 in accordance with the Settlement Agreement, and there is no reversion to Defendants.⁵

11 The Settlement Administrator will calculate each Settlement Class Member's share of
12 the Net Settlement Sum ("Individual Settlement Share"), by dividing the number of weeks he
13 or she worked for Defendants during the period between March 13, 2015 and August 19, 2020
14 ("Workweeks") by the total number of Workweeks all Settlement Class Members worked
15 during the Class Period, and multiply the resulting figure by the Net Settlement Sum.⁶

16 Class Members had forty-five (45) calendar days after the initial mailing of the Class
17 Notice to Class Members to dispute the number of Workweeks credited to each of them, opt out
18 of the Settlement, and/or object to the Settlement ("Response Deadline").⁷ The Response
19 Deadline was July 17, 2021.⁸ The Settlement Administrator has received only one (1) written
20 requests for exclusion from the Settlement and/or Exclusion Form ("Requests for Exclusion")
21 and has received zero (0) Objection Forms or written objections to the Settlement ("Objections")
22 from Class Members.⁹

23 ³ Original Agreement; § 3.

24 ⁴ *Id.*, §§ 3.a-d; Amendment No. 1 to Class Action and PAGA Settlement Agreement, ¶ A.

25 ⁵ This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Cassandra
26 Polites Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because
27 the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in
28 the maximum amount of \$25,000.00, which is allocated under the Settlement. However, Class Counsel seeks the
amount of only \$11,607.46 for reimbursement of litigation costs and expenses, and the difference of \$13,392.54
will remain part of the Net Settlement Sum.

⁶ Original Agreement, § 3.f.

⁷ *Id.*, §§ 7.f, 7.g, 7.h, & 7.i.

⁸ Simpluris Decl., ¶ 6, Exh. A.

⁹ *Id.*, ¶¶ 9 & 11.

Individual Settlement Shares will be allocated as one-third wages, to be reported on IRS Form W-2; and two-thirds interest, penalties, and non-wage damages to be reported on IRS Form 1099 (if applicable).¹⁰ Individual Settlement Shares will be paid out to Settlement Class Members subject to reduction for the employee's and employer's share of taxes, withholdings, and contribution with respect to the wages portion of the Individual Settlement Shares.¹¹

Any and all Individual Settlement Share checks issued to Settlement Class Members will remain valid for 120 calendar days from the date of mailing.¹² Thereafter, Individual Settlement Share checks that are not negotiated within the 120-day period will be void, and the funds associated with such voided checks will be distributed to Voluntary Legal Services Program – Employment Law Clinic.¹³

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 April 6, 2022 Preliminary Approval Order.

On April 7, 2022, Simpluris received the Court-approved text for the Class Notice.¹⁴

On April 20, 2022, Simpluris received a mailing list from Defendants' counsel that contained the names, last known addresses, Social Security numbers, and number of Workweeks or dates of employment as non-exempt employees in California from March 13, 2015 through August 19, 2020 for individuals identified as Class Members ("Class List").¹⁵ The Class List contained information for 451 individuals identified as Class Members.¹⁶ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.¹⁷

On June 2, 2022, Simpluris mailed the Class Notice via first class mail to 451 individuals

¹⁰ Original Agreement, § 3.e.

¹¹ *Ibid.*

¹² *Id.*, § 7.l.

¹³ *Id.*, § 7.m.

¹⁴ Simpluris Decl., ¶ 4.

¹⁵ *Id.*, ¶ 5.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

identified as Class Members in the Class List.¹⁸

As of the date of this Motion, eighteen (18) Class Notices were returned as undeliverable without forwarding addresses.¹⁹ Simpluris performed a skip-trace search on the eighteen (18) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for two (2) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²⁰ Ultimately, sixteen (16) Class Notices remain undeliverable because an updated address was not located through skip-tracing.²¹

As of the date of this Motion, the Settlement Administrator has not received any Objections and only (1) Requests for Exclusion from Class Members.²²

To date, there are 450 Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²³ Pursuant to the terms of the Settlement, the Net Settlement Sum of approximately \$910,570.00 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁴ The highest Individual Settlement Share is currently estimated to be at least \$5,939.73 and the average Individual Settlement Share is currently estimated to be at least \$1,817.33.²⁵

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

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

the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of

¹⁸ Simpluris Decl., ¶ 6.

¹⁹ *Id.*, ¶ 8.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, ¶¶ 9 & 11.

²³ *Id.*, ¶ 9.

²⁴ *Id.*, ¶ 12; see also, n.5, *supra*.

²⁵ *Id.*, ¶ 12. The actual average and highest Individual Settlement Shares will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Sum is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$25,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$13,392.54, will be part of the Net Settlement Sum). See n.5, *supra*.

the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

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

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

The parties actively litigated the case since it was commenced on March 13, 2019. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for class certification, representative

1 adjudication, and trial.²⁶ The parties conducted extensive informal discovery and investigation
2 into the facts of the case, and also informally exchanged information and data in preparation for
3 mediation.²⁷ Class Counsel also interviewed and obtained information from Plaintiff and Class
4 Members, including and not limited to the names of potential witnesses, and reviewed and
5 analyzed thousands of pages of documents and data produced by Defendants and obtained
6 through other sources.²⁸ The documents and data reviewed and analyzed by Class Counsel
7 included, and were not limited to, employment records of Plaintiff and Class Members, a
8 detailed sampling of Class Members' employment records of Plaintiff and another Class
9 Member, a detailed sampling of Class Members' time and pay data (including, but not limited
10 to, Timecard Reports, Check Vouchers, and Wage and Tax Reports), multiple iterations of
11 Defendants' employee handbooks and guides, Defendants' policy acknowledgements
12 (including, but not limited to, Med-Data Employee Handbook's Acknowledgement of Receipt
13 and Review and Diversified Healthcare Resources' Handbook Acknowledgement), job
14 descriptions, Defendants' operations and employment practices, forms (including, but not
15 limited to, Med-Data Meal Break Waiver – Employee Shift 6 Hours or Less), and policies
16 (including, but not limited to, Cardon Outreach's Travel & Expense Reimbursement Policies
17 and Procedures, Med-Data National Travel & Expense Reimbursement Policies and Procedures,
18 and Rest and Meal Breaks policies, among other documents and data.²⁹ Class Counsel researched
19 applicable law, developed damages, violation, and penalties valuation models in preparation for
20 the two (2) mediation sessions, and met and conferred with Defendants' counsel on numerous
21 occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, and
22 production of documents and data prior to the mediations.³⁰

23 After conducting significant informal discovery and investigation into the facts of the
24 case, the parties participated in a formal, full-day mediation conducted by Hon. Michael Latin
25 (Ret.), a well-regarded mediator experienced in mediating complex labor and employment
26

27 ²⁶ Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6.

28 ²⁷ *Ibid.*

29 ²⁸ *Ibid.*

30 ²⁹ *Ibid.*

³⁰ *Ibid.*

1 matters.³¹ Prior to and during mediation and settlement discussions, the parties exchanged
2 information and data, and discussed various aspects of the case, including and not limited to, the
3 risks and delays of further litigation, the risks and expenses to the parties of proceeding with
4 class certification, representative adjudication, and trial, the law relating to off-the-clock theory,
5 meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the
6 evidence produced and analyzed, and the possibility of appeals, among other things.³² During
7 all settlement discussions, the parties conducted their negotiations at arm's length in an
8 adversarial position.³³ Arriving at a settlement that was acceptable to the parties was not easy.³⁴
9 Defendants and their counsel felt very strongly about Defendants' ability to prevail on the merits
10 and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class
11 certification would be obtained and Plaintiff would prevail at trial.³⁵ After conducting
12 significant informal discovery and investigations, extensive settlement negotiations, and with
13 the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for
14 settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and
15 risks to the parties that would attend further litigation.³⁶

16 The Settlement takes into account the strengths and weaknesses of each side's position
17 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.
18 Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.³⁷
19 Class Counsel also reviewed and analyzed thousands of pages of documents produced by
20 Defendants and obtained through other sources, and performed significant research into the law
21 concerning certification, off-the-clock theory, meal and rest periods, representative PAGA
22 claims, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses, as well as
23 facts discovered.³⁸ The Settlement was based on this large volume of facts, evidence, and
24

25 ³¹ Aiwazian Decl., ¶ 8.

26 ³² *Ibid.*

27 ³³ *Ibid.*

28 ³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Id.*, ¶ 6.

³⁸ *Ibid.*

investigation.³⁹ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴⁰

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

The Settlement, which provides for a Settlement Sum of \$1,565,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴¹ 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.⁴² Had the action not settled, Defendants would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendants contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendants 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, Defendants 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 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,

³⁹ Aiwazian Decl., ¶¶ 6 & 8.

⁴⁰ *Id.*, ¶¶ 17-22.

⁴¹ *Id.*, ¶¶ 8 & 26.

⁴² *Id.*, ¶¶ 6-8.

1 allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery
2 after years of litigation. Additionally, the parties were moving into the phase of the litigation
3 where they would have to conduct a significant amount of additional discovery, including and
4 not limited to, depositions of Defendants' Person Most Knowledgeable designees, expert
5 witnesses, and percipient witnesses, such as managers, supervisors, and other current and former
6 employees throughout the State of California. Discovery disputes would have certainly arisen,
7 which would have cost the parties additional time and money. In contrast, the Settlement
8 provides real and significant benefits for the Class Members here and now, while avoiding the
9 further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

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

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

17 The Settlement, which provides for a Settlement Sum of \$1,565,000.00, represents a fair,
18 reasonable, and adequate resolution of the case. The Settlement was calculated using
19 information and data uncovered through extensive case investigation, informal discovery, and
20 the exchange of information in the context of mediation. The Settlement takes into account the
21 potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,
22 considering all of the facts in the case, the Settlement Sum represents a considerable recovery.

23 Even after deducting attorneys' fees in the amount of \$547,750.00, litigation costs and
24 expenses in the amount of \$11,607.46, Enhancement Award in the amount of \$10,000.00,
25 Settlement Administration Costs in the amount of \$10,073.00, and LWDA Payment in the
26 amount of \$75,000.00 from the Settlement Sum of \$1,565,000.00, the Net Settlement Sum is
27 currently estimated to be \$910,570.00.⁴³ Under the Settlement Agreement, the Settlement Sum

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⁴³ Simpluris Decl., ¶ 12; see n.5, *supra*.

will be paid out without any reversion to Defendants, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Sum, based on the number of Workweeks credited to him or her. To date, there are 450 Settlement Class Members, representing 100% of the Class Members.⁴⁴ The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least \$5,939.73 and the average Individual Settlement Share is currently estimated to be at least \$1,817.33.⁴⁵ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Sum. 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.⁴⁶ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁴⁷ Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁴⁸ Both parties’ counsel were capable of assessing the strengths and weaknesses

⁴⁴ Simpluris Decl., ¶ 9.

⁴⁵ *Id.*, ¶ 12; see n.25, *supra*.

⁴⁶ Aiwasian Decl., ¶ 26.

⁴⁷ *Id.*, ¶¶ 17-22.

⁴⁸ *Ibid.*

of the Class Members’ claims against Defendants and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Settlement*.⁴⁹ Specifically, no objections have been made as to the Settlement Sum or requested Attorneys’ Fees and Costs, Enhancement Award, Settlement Administration Costs, or the allocation for PAGA Allocation. 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

⁴⁹ Simpluris Decl., ¶ 11.

1 at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions
2 because “it better approximates the workings of the marketplace than the lodestar approach.”
3 *Lealao, supra*, 82 Cal.App.4th at 49.

4 California law provides that an attorneys’ fees award should be equivalent to fees paid
5 in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert*
6 *Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to
7 a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
8 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
9 in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small
10 will “chill the private enforcement essential to the vindication of many legal rights and obstruct
11 the representative actions that often relieve the courts of the need to separately adjudicate
12 numerous claims.” *Lealao, supra*, 82 Cal.App.4th at 53.

13 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
14 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
15 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126
16 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long
17 as the method chosen is applied consistently using percentage figures and/or rates that accurately
18 reflect the marketplace. In cases where class members present claims against a settlement
19 amount and the settlement agreement provides that the defendant agrees to paying the attorneys
20 a percentage of the same, use of that percentage method is appropriate. *Lealao, supra*, 82
21 Cal.App.4th at 32.

22 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
23 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
24 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
25 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
26 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
27 (awarding approximately 53% of the settlement amount as attorneys’ fees). California courts
28 routinely approve class action attorneys’ fees awards “averag[ing] around one-third of the

recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also* *Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

B. A Fee Award of a Percentage of the Entire Fund Is Appropriate.

California and federal courts have long recognized that an appropriate method for determining the award of attorneys’ fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulity* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁰ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent, supra*, 557 F.2d at 769.

When a litigant’s efforts result in a settlement from which others may derive benefits, the litigant may require the passive beneficiaries to compensate those whose efforts brought 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).

⁵⁰ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

When the case was originally filed, not only was it inescapably contingent, but the prospect of a long, drawn-out battle with defendants 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, Defendants will pay a Settlement Sum of \$1,565,000.00 on a non-reversionary basis. The requested attorneys’ fees are thirty-five percent (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. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁵¹

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

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff and the Class, and the results achieved justify an attorneys’ fees award that is the equivalent of the standard

⁵¹ Aiwazian Decl., ¶ 9.

market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. Thus, the requested attorneys' fees are appropriate.

C. The Attorneys' Fees Award Requested by Class Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$547,750.00 (which is 35% of the Settlement Sum) 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.⁵²

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⁵² Aiwazian Decl., ¶¶ 17-22.

As outlined in the Declaration of Edwin Aiwazian, Class Counsel has fully and actively participated in litigation of this case.⁵³ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and their operations and employment policies, practices, and procedures.⁵⁴ During the litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; reviewed and analyzed thousands of pages of pages of documents and data produced by Defendants and obtained through other sources; and prepared damages, violations, and penalties valuation calculations.⁵⁵ Class Counsel also met and conferred with Defendants' counsel over the issues relating to pleadings, case management, discovery, and production of documents and data, among other things; engaged in extensive settlement negotiations with Defendants' counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁵⁶

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff and the Class.⁵⁷ The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent **529.40** hours performing tasks and to obtain a significant recovery on behalf of Plaintiff and the Class.⁵⁸ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

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⁵³ Aiwazian Decl., Exh. A.

⁵⁴ *Id.*, ¶ 6 & Exh. A.

⁵⁵ *Id.*, ¶ 6.

⁵⁶ *Ibid.*

⁵⁷ *Id.*, Exh. A.

⁵⁸ *Id.*, ¶ 13.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendants retained well-respected counsel to represent their defenses. More specifically, Defendants and their counsel felt very strongly about Defendants' ability to obtain a denial of certification and to prevail on the merits. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁵⁹

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

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

The Settlement at this stage is preferred over continued litigation because such resolutions save time and money that would otherwise go to litigation. The risks and expenses of 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

⁵⁹ Aiwazian Decl., ¶¶ 17-22.

proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Settlement Class Members while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

As a result of this litigation and extensive settlement negotiations, Defendants agreed to pay a Settlement Sum of \$1,565,000.00 to settle the matter. After deducting the attorneys' fees (\$547,750.00), litigation costs and expenses (\$11,607.46), Enhancement Award (\$10,000.00), Settlement Administration Costs (\$10,073.00), and LWDA Payment (\$75,000.00) from the Settlement Sum, it is currently estimated that the Net Settlement Sum is approximately \$910,570.00.⁶⁰ The Net Settlement Sum will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least \$5,939.73 and the average Individual Settlement Share is currently estimated to be at least \$1,817.33.⁶¹ The Settlement offers significant monetary relief to the Settlement Class Members.

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

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 529.40 hours of time to obtain relief on behalf of Plaintiff and the Class.⁶² Class Counsel has also incurred litigation costs and expenses in the amount of \$11,607.46.⁶³

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁴ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁶⁵ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' 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.

⁶⁰ Simpluris Decl., ¶ 12; see n.5, *supra*.

⁶¹ *Id.*, ¶ 12; see n.25, *supra*.

⁶² Aiwasian Decl., ¶ 13, Exh. A.

⁶³ See Part VII, *infra*.

⁶⁴ Aiwasian Decl., ¶ 22=3.

⁶⁵ See *id.*, ¶¶ 16-21.

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

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

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

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

15 The results achieved, in light of the difficulties inherent in similar cases and the specific
16 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
17 from the Class Members—no Class Members objected to the Settlement.⁶⁶

18 The court in *Camden* noted that, “a key element of the common fund case is that fees are
19 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
20 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
21 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
22 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

23 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
24 in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted
25 in a settlement that provides for a Settlement Sum of \$1,565,000.00.⁶⁷ The Settlement Sum will
26 be paid out, in accordance with the terms of the Settlement Agreement. The highest Individual
27 Settlement Share to a Settlement Class Member is currently estimated to be at least \$5,939.73
28 and the average Individual Settlement Share is currently estimated to be at least \$1,817.33.⁶⁸

⁶⁶ Simpluris Decl., ¶ 11.

⁶⁷ Aiwasian Decl., ¶¶ 5-8.

⁶⁸ *Id.*, ¶ 12; see n.25, *supra*.

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.⁶⁹

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.

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

⁶⁹ Aiwazian Decl., ¶¶ 17-22.

1 time and labor. Defendants made it clear very early on that they disputed all of the allegations
2 of the case and disputed that the matter was appropriate for class or representative treatment.
3 Defendants raised affirmative defenses and denied liability, and the pursuit of this matter
4 involved gathering and analyzing data not only from Defendants but also from the Class
5 Members. The handling of the case involved a great amount of effort, and also required and
6 involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive
7 experience in employment class actions and complex wage-and-hour litigation. Long and
8 difficult battles would have followed as the case moved toward certification and trial, including
9 taking and defending depositions of Defendants' Person Most Knowledgeable designees,
10 percipient witnesses, and experts, propounding discovery requests and conducting additional
11 document production, and engaging in extensive motion practice. As Class Counsel geared up
12 for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire
13 matter through mediation.

14 Class Counsel had to bring together a large volume of data and documents that were
15 produced by Defendants and obtained from Plaintiff and Class Members and through other
16 sources. Class Counsel conducted extensive review and analysis of these documents and data
17 to strategize the action and to prepare for and attend mediation and engage in settlement
18 discussions.

19 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
20 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
21 on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁷⁰ The
22 chart demonstrates that Class Counsel has spent a total of 529.40 hours litigating the case and
23 finalizing the Settlement.⁷¹ In light of the facts and circumstances of the case, as well as the
24 results that Class Counsel has achieved on behalf of Plaintiff and the Class Members, Class
25 Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will
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27

28 ⁷⁰ See Aiwazian Decl., Exh. A.

⁷¹ Aiwazian Decl., ¶ 12.

continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

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

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$1,565,000.00.

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Class Counsel support reasonable hourly rates of compensation between \$400 and \$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 \$650 for legal service performed, by courts of this state.⁷³ While the circumstances of every case is unique, the

⁷² Aiwazian Decl., ¶ 13.

⁷³ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate

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 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

of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of \$780.77; final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved an hourly rate of \$845.64. Aiwanian Decl., ¶ 12.

- 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. Defendants raised defenses and denied liability, and the case involved gathering and analyzing documents and data not only from Defendants but also from the Class Members. The handling of this matter involved a great amount of effort, and required the exercise of 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 the representation of the Class Members 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 \$1,565,000.00. Also, Class Counsel's efforts throughout the case demonstrate dedication to the interests of the Class Members.

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 Task and Time Chart, which is attached as EXHIBIT A to the Declaration of Edwin Aiwazian.⁷⁴ As indicated in the chart and Declaration of Edwin Aiwazian, Class Counsel has worked 529.40 hours in the pursuit of this matter, and the base lodestar value for the services performed by Class Counsel is \$355,840.00. Applying a modest multiplier of 1.54, the total enhanced lodestar fees are \$547,993.60.⁷⁵ Class Counsel seeks an attorneys' fee award of \$547,750.00 (equal to 35% of the Settlement Sum 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, 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**).

⁷⁴ Aiwazian Decl., Exh. B.

⁷⁵ Aiwazian Decl., ¶ 13; see n.2, *supra*.

Therefore, application of a modest multiplier of 1.54 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 \$547,750.00 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$25,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$11,607.46 in litigation costs and expenses.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 \$13,392.54 will be part of the Net Settlement Sum, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁷⁸ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$11,607.46 to Class Counsel.

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

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$10,073.00.⁷⁹ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Objections, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and preparing the associated tax forms; and transmitting payments, among other things.⁸⁰

⁷⁶ Aiwazian Decl., ¶ 23.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Simpluris Decl., ¶ 14.

⁸⁰ *Id.*, ¶ 3.

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 \$10,073.00.

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

The Settlement provides for an Enhancement Award in the amount of \$10,000.00 to Plaintiff Samuel Elliott to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Enhancement Award is both common and reasonable and should be awarded.

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

The requested Enhancement Award is fair and appropriate because Plaintiff has been, and continues to be, actively engaged in the litigation of his case, constantly checking in on the status of court proceedings in his lawsuit and 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.⁸¹ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information that would benefit the Class.⁸² Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendants, and gathering and reviewing documents.⁸³ These services merit the requested Enhancement Award to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members and the State of California to date.⁸⁴

The requested Enhancement Award was fully disclosed in the Class Notice that was

⁸¹ Aiwazian Decl., ¶ 25; Declaration of Samuel Elliott ("Elliott Decl."), ¶¶ 3-5.

⁸² Aiwazian Decl., ¶ 25; Elliott Decl., ¶¶ 3-5.

⁸³ Aiwazian Decl., ¶ 25; Elliott Decl., ¶¶ 2-6.

⁸⁴ Elliott Decl., ¶ 10.

1 mailed to the Class Members. No objections were made with regards to the requested
2 Enhancement Award. Accordingly, it is appropriate and just for Plaintiff Samuel Elliott to
3 receive \$10,000.00 as a reasonable Enhancement Award, in addition to his Individual Settlement
4 Share, for his services on behalf of the Class and the State of California.

5 **X. CONCLUSION**

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

10 Dated: July 21, 2022

LAWYERS for JUSTICE, PC

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12 By:



13 Edwin Aiwanian
14 Attorneys for Plaintiff and the Class
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