

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Yasmin Hosseini (SBN 326399)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

PEDRO GERMAN, 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,

v.

FRESH LINK LOGISTICS, LLC, a California
limited liability company; and DOES 1 through
100, inclusive,

Defendant.

Case No.: BC719412

Honorable Lawrence P. Riff
Department SSC7

CLASS ACTION

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

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

Date: December 27, 2022
Time: 11:00 a.m.
Department: SSC7

Complaint Filed: August 28, 2018
FAC Filed: January 14, 2019
SAC Filed: October 21, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 27, 2022 at 11:00 a.m., in Department SSC7
2 of the above-entitled Court, located at Spring Street Courthouse, 312 North Spring Street, Los
3 Angeles, California 90012, Plaintiff Pedro German (“Plaintiff”) will and hereby does move for an
4 order granting final approval of:

5 1. The First Amended Stipulation of Settlement and Release (“Settlement,”
6 “Agreement,” or “Settlement Agreement”) on the grounds that the Settlement is fair, adequate,
7 and reasonable because:

- 8 • A Net Fund Value of approximately **\$212,536.59** will be fully distributed to the Class
9 Members who did not submit timely and valid opt out of the Class Settlement
10 (“Settlement Class Member”);
- 11 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
12 (“Settlement Administrator”);
- 13 • **One (1) Request for Exclusion** was submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$161,875.00** to Lawyers for Justice, PC (“Class
15 Counsel”), representing thirty-five percent (35%) of the Gross Fund Value, for attorneys’ fees,
16 which is reasonable and justified on a percentage-basis;

17 3. Payment in the amount of **\$35,492.41** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$7,596.00** to the Settlement Administrator, Simpluris,
20 Inc. (“Simpluris”), for Settlement Administration Costs;

21 5. Payment in the amount of **\$5,000.00** to Plaintiff Pedro German, as a Service Award,
22 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 **\$40,000.00**, of which seventy-five
25 percent (75%), or \$30,000.00, will be paid to the California Labor and Workforce Development
26 Agency and twenty-five percent (25%), or \$10,000.00, will be distributed on a *pro rata* basis to
27 the Aggrieved Employees.

28 ///

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

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

9 Dated: December 2, 2022

LAWYERS for JUSTICE, PC

10
11 By:



Edwin Aiwarzian
Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	2
III.	SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION.	5
IV.	THE SETTLEMENT ADMINISTRATION PROCESS.....	7
V.	THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT	8
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.....	9
B.	The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.	12
C.	The Settlement Is Fair, Reasonable, and Adequate.....	14
D.	The Class Was Represented by Competent Counsel.	15
E.	There Are No Objections to the Settlement.....	15
VI.	THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.	16
A.	Legal Standard for Attorneys’ Fees in a Class Action Settlement.	16
B.	A Fee Award of a Percentage of the Entire Fund Is Appropriate.....	17
C.	The Attorneys’ Fees Award Requested by Class Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.	20
	1. Time & Labor.	21
	2. The Skill Required to Perform Legal Services Properly.	22
	3. The Value of the Settlement for the Class Members.	23
	4. Whether the Fee Is Fixed or Contingent.	24
	5. The Amount Involved and the Results Achieved.	25
	6. The Reputation and Ability of the Attorneys.	25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Has Performed Work That Is of Significant Value Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.
..... 26

1. The Number of Hours Spent on the Litigation was Reasonable. 26

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

VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED..... 29

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

IX. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED..... 30

X. CONCLUSION 32

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	9, 15
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195 .	17
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472.....	17, 20
<i>Cates v. Chiang</i> (2013) 213 Cal.App.4th 791.....	25
<i>Cellphone Termination Fee Cases</i> (2009) 180 Cal.App.4th 1110.....	16
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	8, 9, 17
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78.....	29
<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545.....	17
<i>Crampton v. Takegoshi</i> (1993) 17 Cal.App.4th 308.....	18
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	9, 16
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126.....	17
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127	
F.Supp.2d 418	15
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494.....	17
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	16, 26, 28, 29
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480.....	16, 18, 26
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	16, 20
<i>Paul, Johnson, Alston & Hunt v. Grauly</i> (1989) 886 F.2d 268	17
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	17
<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4th 495	29
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800.....	17
<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	17, 18
<i>Vizcaino v. Microsoft</i> (9th Cir. 2002) 290 F.3d 1043	19
<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4th 440	26
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	9, 15, 20, 29
<i>Winslow v. Harold G. Ferguson Corp.</i> (1944) 25 Cal.2d 274.....	19

Statutes

Cal. Lab. Code § 2698..... 1

Other Authorities

A. Conte, *Attorney Fee Awards* (2d Ed., 1993)..... 18

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

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

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

Court Awarded Attorney Fees, Report of the Third Circuit Task Force (October 8, 1985) 108

F.R.D. 237..... 25

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Pedro German (“Plaintiff”) seeks final approval of: (1) the Gross Fund Value of \$462,500.00; (2) Attorneys’ Fees in the amount of \$161,875.00, which is thirty-five percent (35%) of the Gross Fund Value, and reimbursement of litigation costs and expenses (“Attorneys’ Costs”) in the amount of \$35,492.41 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$7,596.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Service Award in the amount of \$5,000.00 to Plaintiff Pedro German and (5) allocation of \$40,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Settlement Amount”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly non-exempt employees employed by Defendant Fresh-Link Logistics, LLC in California at any time during the period August 28, 2014 to June 18, 2021, and certified by entry of order by the Court for settlement purposes only (“Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of information, documents, and data prior to and during mediation conducted by Eve Wagner, Esq., and extensive settlement negotiations. This matter has required 695.80 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the Gross Fund Value, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.

Plaintiff moves for final approval of the Service Award in the amount of \$5,000.00 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 \$7,596.00 for Settlement Administration Costs. Plaintiff also moves for final

¹ First Amended Stipulation of Settlement and Release (“Settlement Agreement”), Exh. 1, § II.d.

1 approval of the allocation of \$40,000.00 for the PAGA Settlement Amount, of which \$30,000.00
2 will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its
3 portion of the PAGA Settlement Amount (“LWDA Payment”), and \$10,000.00 will be divided
4 and distributed on a *pro rata* basis to all current and former hourly non-exempt employees
5 employed by Defendant Fresh-Link Logistics, LLC in California at any time during the period
6 May 5, 2020 to June 18, 2021 (“Aggrieved Employees”).

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

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

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

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

26 Defendant Fresh-Link Logistics, LLC (“Defendant”) is a premium supplier of time-and-
27 temperature-sensitive transportation services in Southern California. Plaintiff Pedro German is a
28 former employee of Defendant.

1 On August 28, 2018, Plaintiff filed a Class Action Complaint for Damages in the Los
2 Angeles County Superior Court (“Court”) against Defendant and former co-defendant Field Fresh
3 Foods, Inc. (“Field Fresh”) (Defendant Fresh-Link Logistics, LLC and Field Fresh are together
4 referred to as “Defendants”), thereby commencing the lawsuit (“Litigation”).

5 On December 20, 2018, Plaintiff served multiple sets of discovery requests on Defendants,
6 including Requests for Production of Documents (Set One), Special Interrogatories (Sets One, and
7 Two), and Form Interrogatories-General (Set One). Thereafter, on January 23, 2019, April 18,
8 2019, April 24, 2019, May 24, 2019, and June 28, 2019, Defendants provided responses to
9 Plaintiff’s discovery requests.

10 On January 14, 2019, Plaintiff filed a First Amended Class Action Complaint for Damages.

11 On March 5, 2019, Defendant propounded multiple sets of discovery including Requests
12 for Production of Documents, (Set One) and Special Interrogatories, (Set One), on Plaintiff and
13 noticed the deposition of Plaintiff. On April 29, 2019 and June 24, 2019, Plaintiff provided
14 responses to Defendant’s discovery requests.

15 On June 14, 2019, Defendants filed an Answer to Plaintiff’s First Amended Class Action
16 Complaint, and thereafter, on June 17, 2019, Defendants filed an Amended Answer to Plaintiff’s
17 First Amended Class Action Complaint.

18 On August 16, 2019, Plaintiff propounded additional sets of discovery requests on
19 Defendants, including Requests for Production of Documents (Set Two), Special Interrogatories
20 (Set Three), and noticed the depositions of Defendants’ person(s) most knowledgeable regarding
21 organization structure, job duties, and wage and hour practices of Defendants. Thereafter, on
22 September 17, 2019, Defendants provided responses to Plaintiff’s additional discovery requests.

23 On November 6, 2019, Class Counsel deposed Defendants’ designated persons most
24 knowledgeable and on November 12, 2019 counsel for Defendant deposed Plaintiff.

25 On October 21, 2021, Plaintiff filed a Second Amended Class Action Complaint for
26 Damages, dismissing Field Fresh from the lawsuit without prejudice and adding a claim for
27 enforcement under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
28 (“Operative Complaint”).

1 Plaintiff's core allegation is that Defendant has violated the California Labor Code by
2 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of,
3 *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and
4 rest periods and associated premium pay, failing to timely pay wages during employment and upon
5 termination of employment, failing to provide compliant wage statements, failing to maintain
6 requisite payroll records, and failing to reimburse necessary business expenses, and thereby
7 engaged in unfair business practices in violation of California Business and Professions Code
8 section 17200, et seq. and conduct that gives rise to civil penalties pursuant to PAGA. Plaintiff
9 contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
10 (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

11 On November 4, 2021, Defendant filed an Answer to Plaintiff's Second Amended
12 Complaint.

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

17 The parties have actively litigated the matter since it was commenced August 28, 2018.
18 The parties conducted significant formal and informal discovery, took and defended depositions
19 of Defendant's Person Most Knowledgeable witness and Plaintiff, and exchanged a large volume
20 of information, documents, and data. On February 18, 2021, the parties participated in a formal,
21 full-day mediation conducted by Eve Wagner, Esq., a well-regarded mediator experienced in
22 mediating complex labor and employment matters. After conducting significant formal and
23 informal discovery and investigation into the facts of the case and with the aid of the mediator's
24 evaluation, the parties ultimately reached the Settlement described herein to resolve the case in its
25 entirety.

26 On November 29, 2021, Plaintiff filed a Motion for Preliminary Approval of Class Action
27 Settlement and supporting documents. On March 15, 2022, the Court issued a Checklist for
28 Preliminary Approval and requesting additional information in support of the Motion for

Preliminary Approval . On June 3, 2022, Plaintiff filed supplemental papers in support of the Motion for Preliminary Approval. On June 16, 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, Service Award, Settlement Administration Costs, and allocation for PAGA Settlement Amount.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Fund Value of \$462,500.00 on a non-reversionary basis.² Subject to approval by the Court, the Net Fund Value will be calculated by deducting the following amounts from the Gross Fund Value: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$161,875.00 and reimbursement of litigation costs and expenses in the amount of \$35,492.41, to Class Counsel; (2) Service Award in the amount of \$5,000.00 to Plaintiff Pedro German, (3) Settlement Administration Costs in the amount of \$7,596.00 to Simpluris; and (4) PAGA Settlement Amount in the amount of \$40,000.00.³ The Net Fund Value, which is estimated to be \$212,536.59, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁴

The Settlement Administrator will calculate each Settlement Class Member's share of the Net Fund Value ("Individual Settlement Share"), by dividing the final Net Fund Value by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and then multiplying each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.⁵

² Settlement Agreement; § II.n.

³ *Id.*, §§ II.b., II.c., II.z., II.hh. & II.kk.

⁴ This amount is higher than the amount stated in Paragraph 15 of the accompanying Declaration of Lindsay Kline Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$40,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$35,492.41 for reimbursement of litigation costs and expenses, and the difference of \$4,507.59 will remain part of the Net Fund Value.

⁵ Settlement Agreement, § IV.c.

The Settlement Administrator will calculate each Aggrieved Employees' share of the 25% portion of the PAGA Settlement Amount ("Individual PAGA Payment"), by dividing the 25% portion of the PAGA Settlement Amount attributed to Aggrieved Employees, i.e. \$10,000.00, by the PAGA Workweeks worked by all Aggrieved Employees during the PAGA Period ("Total PAGA Workweeks") resulting in the PAGA Workweek Value and then multiplying the PAGA Workweek Value by the number of PAGA Workweeks worked by each individual Aggrieved employee during the PAGA Period.⁶

Class Members had sixty (60) calendar days after the initial mailing of the Class Notice to Class Members to dispute the number of Workweeks credited to each of them, opt out of the Class Settlement, and/or object to the Class Settlement ("Response Deadline").⁷ The Response Deadline was September 30, 2022.⁸ The Settlement Administrator has received only one (1) written request for exclusion from the Class Settlement ("Request for Exclusion") and no objections to the Class Settlement ("Objections") from Class Members.⁹

Each Individual Settlement Share will be allocated as follows: one-third (1/3) as wages, to be reported on an IRS Form W-2; and the remaining two-thirds percent (2/3) as penalties and interest, to be reported on IRS Form 1099.¹⁰ Individual Settlement Shares will be paid out to Settlement Class Members subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and the net payment is referred to as "Individual Settlement Payment."¹¹ Defendant will pay employer-side payroll taxes on the wage portion of the Individual Settlement Shares separate and in addition to the Gross Fund Value.¹² Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form 1099, if necessary.¹³

The Settlement Administrator will have the option to pay the Individual Settlement

⁶ Settlement Agreement, § IV.d

⁷ *Id.*, § IV.e.

⁸ Simpluris Decl., ¶ 10.

⁹ *Id.*, ¶¶ 11 & 12.

¹⁰ Settlement Agreement, § IV.g.

¹¹ *Id.*, § I.p.

¹² *Id.*, § III.a.

¹³ *Ibid.*

1 Payment and Individual PAGA Payment by way of a single check.¹⁴ Individual Settlement
2 Payment checks and Individual PAGA Payment checks will be negotiable for one hundred eighty
3 (180) calendar days from the date of issuance.¹⁵ Thereafter, Individual Settlement Payment checks
4 and Individual PAGA Payment checks that are not negotiated within the 180-day period will be
5 cancelled, and the funds associated with such voided checks will be distributed to the California
6 State Controller's Office Unclaimed Property Division in the name and respective payment
7 amounts for the Settlement Class Members and/or Aggrieved Employees whose checks were
8 cancelled.¹⁶

9 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

10 The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps to
11 effectuate the notice and settlement administration process, as set forth in the Court's June 16,
12 2022 Preliminary Approval Order.

13 On June 17, 2022, Simpluris received the Court-approved text for the Class Notice.¹⁷

14 On June 25, 2022, Simpluris received list from Defendant's counsel that contained the full
15 names, last-known mailing addresses, last-known telephone numbers, Social Security Numbers
16 and dates of employment for each Class Member and Aggrieved Employee during the Class Period
17 and PAGA Period ("Class Data List").¹⁸ The Class Data List contained information for one
18 hundred seventeen (117) individuals identified as Class Members and forty-two (42) individuals
19 identified as Aggrieved Employees.¹⁹ Simpluris processed the names and addresses through the
20 National Change of Address Database ("NCOA") and updated the Class Data List with any
21 updated addresses located.²⁰

22 On August 1, 2022, Simpluris mailed the Class Notice via first class mail one hundred
23 seventeen (117) Class Members and forty-two (42) Aggrieved Employees in the Class Data List.²¹

24 As of the date of this Motion, twelve (12) Class Notices were returned as undeliverable

25 ¹⁴ *Id.*, § IV.g.

26 ¹⁵ Settlement Agreement, § V.e.

27 ¹⁶ *Ibid.*

28 ¹⁷ Simpluris Decl., ¶ 5.

¹⁸ *Id.*, ¶ 6.

¹⁹ *Ibid.*

²⁰ *Id.*, ¶ 7.

²¹ *Id.*, ¶ 8.

without forwarding addresses and zero (0) Class Notices were returned as undeliverable with forwarding addresses.²² Simpluris performed a skip-trace search on the twelve (12) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for nine (9) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²³ Ultimately, three (3) Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Class Notice was returned as undeliverable a second time.²⁴

As of the date of this Motion, the Settlement Administrator has not received any Objections to the Class Settlement and received one (1) Request for Exclusion from the Class Settlement.²⁵

To date, there are one hundred and sixteen (116) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁶ Pursuant to the terms of the Settlement, the Net Fund Value of approximately \$212,536.59 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁷ The highest Individual Settlement Payment is currently estimated to be \$6,175.32 and the average Individual Settlement Payment is currently estimated to be \$1,793.35.²⁸ The highest Individual PAGA Payment is currently estimated to be \$280.26 and the average Individual PAGA Payment is currently estimated to be \$238.09.²⁹

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

²² Simpluris Decl., ¶ 9.

²³ *Id.*

²⁴ *Ibid.*

²⁵ *Id.*, ¶¶ 11 & 12.

²⁶ *Id.*, ¶ 14.

²⁷ *Id.*, ¶ 15; see also, n.4, *supra*.

²⁸ *Id.*, ¶ 16. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Simpluris Declaration because the Net Fund Value is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$40,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$4,507.59, will be part of the Net Fund Value). See n.4, *supra*.

²⁹ *Id.*, ¶ 17.

amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

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

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

The parties actively litigated the case since it was commenced on August 28, 2018. 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.³⁰ The case has involved significant investigations, extensive research into
2 legal and factual issues (including the federal exemptions applicable to commercial drivers, who
3 made up a large portion of the putative class), extensive motion practice (including successfully
4 opposing Defendant's attempts to demurrer, move to strike, and obtain summary judgment and
5 summary adjudication), significant formal and informal discovery (including joint employer and
6 alter ego issues), and also formally and informally exchanged information and data in preparation
7 for a mandatory settlement conference and mediation.³¹ Class Counsel propounded multiple sets
8 of written discovery requests in various forms; reviewed Defendant's responses and objections to
9 discovery requests and deposition notices; worked with Plaintiff to provide responses and
10 objections to discovery requests and deposition notices that were served on Plaintiff by
11 Defendants; and prepared and served numerous deposition notices.³² Class Counsel prepared for
12 and took the deposition of Defendant's Person Most Knowledgeable witnesses and prepared for
13 and defended the deposition of Plaintiff.³³ Class Counsel also interviewed and obtained
14 information from Plaintiff and Class Members, including and not limited to the names of potential
15 witnesses, and reviewed and analyzed a large volume of information, documents, and data
16 obtained from Plaintiff, Defendants, and other sources.³⁴ The documents and data reviewed and
17 analyzed by Class Counsel included, and were not limited to, employment records of Plaintiff, a
18 detailed sampling of Class Members' time and pay data and records, multiple iterations of
19 Defendant's Employee Handbook, company policy acknowledgements, internal memoranda, job
20 descriptions, new hire orientation video and training documents, Defendant's operations and
21 employment policies, practices, procedures, and forms (including but not limited to Defendant's
22 Good Manufacturing Practices, Meal and Rest Period Acknowledgement, Employee Performance
23 Review, and Voicemail and Email Policy), among other information and documents.³⁵ Class
24 Counsel researched applicable law, evaluated liability, damages, and penalties issues in
25 preparation for the mandatory settlement conference and prepared liability, damages, and penalties

26 ³⁰ Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6.

27 ³¹ Ibid.

28 ³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ *Id.*, ¶ 6.

1 valuation models in preparation for mediation, and met and conferred with Defendant's counsel
2 on numerous occasions, e.g., to discuss issues relating to the pleadings, case management,
3 discovery, *Belaire-West* process and production of documents and data prior to the mandatory
4 settlement conference and mediation.³⁶

5 After conducting significant formal and informal discovery and investigation into the facts
6 of the case, the parties participated in a court-supervised mandatory settlement conference
7 conducted by Hon. Lisa Hart Cole, and also participated in a formal, full-day mediation conducted
8 by Eve Wagner, Esq.—both neutrals are well-regarded and experienced in mediating complex
9 labor and employment matters.³⁷ In the course of settlement discussions and mediation, the parties
10 exchanged information and data, and discussed various aspects of the case, including and not
11 limited to, the risks and delays of further litigation, the risks and expenses to the parties of
12 proceeding with class certification, representative adjudication, and trial, the law relating to off-
13 the-clock theory, meal and rest periods, arbitration agreements, representative PAGA claims, joint
14 employer/alter ego, wage-and-hour enforcement, federal and state transportation regulations, and
15 federal preemption, the evidence produced and analyzed, and the possibility of appeals, among
16 other things.³⁸ During all settlement discussions, the parties conducted their negotiations at arm's
17 length in an adversarial position.³⁹ Arriving at a settlement that was acceptable to the parties was
18 not easy.⁴⁰ Defendants and their counsel felt very strongly about Defendants' ability to prevail on
19 the merits (including, and not limited to, demonstrating that Field Fresh Foods, Inc. could not be
20 held liable) and to obtain a denial of class certification, while Plaintiff and Class Counsel believed
21 that class certification would be obtained and Plaintiff would prevail at trial.⁴¹ After conducting
22 significant formal and informal discovery and investigations, extensive settlement negotiations,
23 and with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for
24

25
26 ³⁶ Ibid.

27 ³⁷ Aiwazian Decl., ¶ 8.

28 ³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

1 settlement given the legal issues relating to Plaintiff's principal claims, factual circumstances, as
2 well as the costs and risks to the parties that would attend further litigation.⁴²

3 The Settlement takes into account the strengths and weaknesses of each side's position and
4 the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class
5 Counsel interviewed, and obtained information from Plaintiff and other Class Members.⁴³ Class
6 Counsel also reviewed and analyzed a large volume of information, documents, and data obtained
7 from Plaintiff, Defendants, and other sources, and performed significant research into the
8 applicable law, which is constantly evolving as it relates to certification, off-the-clock theory, meal
9 and rest periods, arbitration agreements, PAGA claims and penalties, joint employer/alter ego,
10 wage-and-hour enforcement, federal and state transportation regulations, federal preemption,
11 Plaintiff's claims and damages, and, as well as facts discovered.⁴⁴ The Settlement was based on
12 this large volume of facts, evidence, and investigation.⁴⁵ Additionally, Class Counsel has extensive
13 experience in handling complex wage-and-hour matters, including significant experience in
14 employment class action litigation.⁴⁶

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

17 The Settlement, which provides for a Gross Fund Value of \$462,500.00, represents a fair,
18 adequate, and reasonable resolution of the case, given the risks inherent in litigating class and
19 representative claims through certification proceedings, trial, and/or appeals.⁴⁷ The Settlement was
20 calculated using information and data uncovered through extensive case investigation, formal and
21 informal discovery, and the exchange of information in the context of mediation.⁴⁸ Had the action
22 not settled, Defendant would have vigorously challenged class certification, manageability of
23 representative adjudication, and liability. Defendants contended that Defendant Fresh Foods, Inc.
24 was a separate business and not an employer of the putative class, and they further contended that

25 _____
26 ⁴² Ibid.

⁴³ Aiwazian Decl., ¶ 6.

⁴⁴ Ibid.

27 ⁴⁵ *Id.*, ¶¶ 6 & 8.

⁴⁶ *Id.*, ¶¶ 15-18.

28 ⁴⁷ *Id.*, ¶¶ 8 & 21.

⁴⁸ *Id.*, ¶¶ 5-8.

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

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

24 It would be grossly inefficient for such a large class of current and former employees to
25 bring individual actions to recover from Defendant for the alleged violations of wage-and-hour
26 laws. Moreover, the potential individual recovery that could be obtained by a Class Member would
27 not be significant enough to provide him or her with the incentive to sue. By granting final
28

approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

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

The Settlement, which provides for a Gross Fund Value of \$462,500.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Gross Fund Value represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$161,875.00, attorneys' costs and expenses in the amount of \$35,492.41, Service Award of \$5,000.00, Settlement Administration Costs in the amount of \$7,596.00, and PAGA Settlement Amount in the amount of \$40,000.00 from the Gross Fund Value of \$462,500.00, the Net Fund Value is currently estimated to be \$212,536.59.⁴⁹ Under the Settlement Agreement, the Gross Fund Value will be fully paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Fund Value, based on the number of Workweeks credited to him or her. To date, there are 116 Settlement Class Members, representing 99.15% of the Class Members.⁵⁰ The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$6,175.32 and the average Individual Settlement Payment is currently estimated to be \$1,793.35.⁵¹ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$280.26 and the average Individual PAGA Payment is currently estimated to be \$238.09.⁵² 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)

⁴⁹ Simpluris Decl., ¶ 15; see n.4, *supra*.

⁵⁰ Simpluris Decl., ¶ 14.

⁵¹ *Id.*, ¶ 16; see n.28, *supra*.

⁵² *Id.*, ¶ 17.

127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Fund Value. 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.⁵³ 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.⁵⁴ 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.⁵⁵ Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Class Settlement and only one (1) Class Member requested exclusion from the Class Settlement.*⁵⁶ Specifically, no objections have been made as to the Gross Fund Value or requested Attorneys' Fees and Costs, Service Award, Settlement Administration Costs, or the allocation for the PAGA Settlement Amount. 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,

⁵³ Aiwarzian Decl., ¶ 21.

⁵⁴ *Id.*, ¶¶ 15-18.

⁵⁵ *Ibid.*

⁵⁶ Simpluris Decl., ¶¶ 11 & 12.

reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety.
Dunk, supra, 48 Cal.App.4th at 1802.

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

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

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The “experienced trial judge is the best judge of the value of professional services rendered in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49.

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

“The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175

Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao*, *supra*, 82 Cal.App.4th at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁷ 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.

⁵⁷ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

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

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

23 When the case was originally filed, not only was it inescapably contingent, but the prospect
24 of a long, drawn-out battle with a defendant represented by experienced counsel, was almost a
25 certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial
26 economic loss if the results were not successful. This substantial risk is the reason that the courts
27 approve the use of the percentage method when a settlement is obtained by the efforts of class
28

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 Gross Fund Value of \$462,500.00 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 litigation, the requested attorneys' fees are appropriate and reasonable.

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁵⁸

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

⁵⁸ Aiwazian Decl., ¶ 9.

for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be calculated on the basis of the total fund made available rather than the actual payments made to the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, Aggrieved Employees, and the State of California, and the results achieved justify an attorneys’ fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. Thus, the requested attorneys’ fees are appropriate.

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

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform 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 \$161,875.00 (which is 35% of the Gross Fund Value) 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 and Aggrieved Employees. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁵⁹

As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively participated in litigation of this case.⁶⁰ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁶¹ During the litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; propounded formal written discovery requests and reviewed Defendants' responses and objections to discovery requests and depositions notices; worked with Plaintiff to provide responses to discovery requests and deposition notices that were served on Plaintiff by Defendants; preparing for and taking the depositions of Defendants' Person Most Knowledgeable witnesses; preparing for and defending the depositions of Plaintiff; reviewed and analyzed a large volume of information, documents, and data obtained from Plaintiff, Defendants, and other sources; and prepared damages/valuation calculations.⁶² Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, case management, discovery, *Belaire-West* process, and production of documents and data, among other things; engaged in extensive settlement negotiations with

⁵⁹ Aiwarzian Decl., ¶¶ 15-18.

⁶⁰ *Id.*, Exh. A.

⁶¹ *Id.*, ¶ 6 & Exh. A.

⁶² *Id.*, ¶ 6.

Defendant's counsel; and prepared for and attended court proceedings, mandatory settlement conference, mediation, and settlement negotiations.⁶³

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Edwin Aiwasian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff, the Class, Aggrieved Employees, and the State of California.⁶⁴ 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 695.80 hours performing tasks and to obtain a significant recovery in the case.⁶⁵ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendants and their counsel felt very strongly about Defendants' ability to obtain a denial of certification and to prevail on the merits (including, and not limited to, demonstrating that Field Fresh Foods, Inc. could not be held liable). 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 the mandatory settlement conference and 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

⁶³ Ibid.

⁶⁴ Aiwasian Decl., Exh. A.

⁶⁵ *Id.*, ¶ 11.

appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwarzian, 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.⁶⁶

///

///

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

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

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Gross Fund Value of \$462,500.00 to settle the matter. After deducting the attorneys' fees (\$161,875.00), litigation costs and expenses (\$35,492.41), Service Award (\$5,000.00), Settlement Administration Costs (\$7,596.00), and PAGA Settlement Amount (\$40,000.00) from the Gross Fund Value, it is currently estimated that the Net Fund Value is approximately \$212,536.59.⁶⁷ The

⁶⁶ Aiwarzian Decl., ¶¶ 15-18.

⁶⁷ Simpluris Decl., ¶ 15; see n.4, *supra*.

Net Fund Value will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$6,175.32 and the average Individual Settlement Payment is currently estimated to be \$1,793.35.⁶⁸ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$280.26 and the average Individual PAGA Payment is currently estimated to be \$238.09.⁶⁹ 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 **695.80** hours of time to obtain relief on behalf of Plaintiff, the Class, Aggrieved Employees, and the State of California.⁷⁰ Class Counsel has also incurred litigation costs and expenses in the amount of \$35,492.41.⁷¹

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷² Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷³ 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.

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.

⁶⁸ Simpluris Decl., ¶ 16; see n.28, *supra*.

⁶⁹ *Id.*, ¶ 17.

⁷⁰ Aiwasian Decl., ¶ 11, Exh. A.

⁷¹ See Part VII, *infra*.

⁷² Aiwasian Decl., ¶ 19.

⁷³ See *id.*, ¶¶ 15-18.

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

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

7 The results achieved, in light of the difficulties inherent in similar cases and the specific
8 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
9 from the Class Members—no Class Members objected to the Class Settlement and one (1) Class
10 Member opted out of the Class Settlement.⁷⁴

11 The court in *Camden* noted that, “a key element of the common fund case is that fees are
12 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
13 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
14 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
15 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

16 Here, the results achieved and obtained in the case are reasonable in light of the risks
17 inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that
18 provides for a Gross Fund Value of \$462,500.00.⁷⁵ The Gross Fund Value will be fully paid out,
19 in accordance with the terms of the Settlement Agreement. The highest Individual Settlement
20 Payment to a Settlement Class Member is currently estimated to be \$6,175.32 and the average
21 Individual Settlement Payment is currently estimated to be \$1,793.35.⁷⁶ The highest Individual
22 PAGA Payment to an Aggrieved Employee is currently estimated to be \$280.26 and the average
23 Individual PAGA Payment is currently estimated to be \$238.09.⁷⁷

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

25 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
26 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel

27 ⁷⁴ Simpluris Decl., ¶¶ 11 & 12.

28 ⁷⁵ Aiwasian Decl., ¶¶ 5-8.

⁷⁶ Simpluris Decl., ¶ 16; see n.28, *supra*.

⁷⁷ *Id.*, ¶ 17.

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.⁷⁸

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 time and labor. Defendant made it clear very early on that it disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering

⁷⁸ Aiwasian Decl., ¶¶ 15-18.

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 has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward certification and trial, including taking and defending depositions of Defendant's Person Most Knowledgeable designees, percipient witnesses, and experts, propounding additional discovery requests and conducting additional document production, and 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, data, and documents obtained from Plaintiff, Defendants, and other sources. Class Counsel conducted extensive review and analysis of these documents and data to strategize the action and to prepare for and attend a mandatory settlement conference and mediation, and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁷⁹ The chart demonstrates that Class Counsel has spent a total of 695.80 hours litigating the case and finalizing the Settlement.⁸⁰ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiff and the Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said

⁷⁹ See Aiwazian Decl., Exh. A.

⁸⁰ Aiwazian Decl., ¶ 11.

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 \$462,500.00.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$700 per hour for services provided by Class Counsel.⁸¹ Lawyers for Justice, PC has been awarded attorneys’ fees, compensating the firm at the rate of at least \$700 for legal service performed, by courts of this state.⁸² While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys’ fees.

⁸¹ Aiwarzian Decl., ¶ 12.

⁸² 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 of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys’ fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney’s fees involved an hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys’ fees involved an hourly rate of \$845.64. Aiwarzian Decl., ¶ 12.

Applying the rate of \$700 per hour to 695.80 hours would place a reasonable value of \$481,600.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$161,875.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez*, *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$161,875.00 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 \$40,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks

reimbursement of \$35,492.41 in litigation costs and expenses incurred in this matter.⁸³ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁸⁴ The cost savings of \$4,507.59 will be part of the Net Fund Value, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸⁵ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$35,492.41 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 \$7,596.00.⁸⁶ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Class Notice to the Class Members in both English and Spanish; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Objections, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares, Individual PAGA Payments, and preparing the associated tax forms; and transmitting payments, among other things.⁸⁷

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$7,596.00.

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

The Settlement provides for a Service Award in the amount of \$5,000.00 to Plaintiff Pedro German to compensate Plaintiff for the time and effort that he expended on behalf of the Class, Aggrieved Employees, and the State of California. The requested Service Award is both common and reasonable and should be awarded.

⁸³ Aiwazian Decl., ¶ 19.

⁸⁴ *Id.*, ¶ 19.

⁸⁵ *Ibid.*

⁸⁶ Simpluris Decl., ¶ 15.

⁸⁷ *Id.*, ¶ 8.

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

8 The requested Service Award is fair and appropriate because Plaintiff spent a substantial
9 amount of time and effort producing relevant documents and past employment records, as well as
10 providing the facts and evidence necessary to attempt to prove the allegations, including and not
11 limited to, by way of working with Class Counsel to prepare responses and supplemental responses
12 to written discovery requests that were propounded on him by Defendant, preparing for and
13 attending his deposition, and reviewing his deposition transcript.⁸⁸ Plaintiff was available
14 whenever Class Counsel needed him and actively tried to obtain, and gave, information that would
15 facilitate the pursuit of the class and PAGA claims.⁸⁹ Plaintiff spent numerous hours speaking with
16 Class Counsel about his claims, describing his work experiences with Defendant, and gathering
17 and reviewing documents.⁹⁰ These services merit the requested Service Award to Plaintiff, who
18 has not received any compensation for his efforts in the case to date.⁹¹

19 The requested Service Award was fully disclosed in the Class Notice that was mailed to
20 the Class Members and Aggrieved Employees. No objections were made with regards to the
21 requested Service Award. Accordingly, it is appropriate and just for Plaintiff Pedro German to
22 receive \$5,000.00 as a reasonable Service Award, in addition to his Individual Settlement Payment
23 and Individual PAGA Payment, for his services on behalf of the Class, Aggrieved Employees, and
24 the State of California.

25 ///

26 ///

27 ⁸⁸ Aiwazian Decl., ¶ 20; Declaration of Pedro German (“German Decl.”), ¶¶ 3-5.

28 ⁸⁹ Aiwazian Decl., ¶ 20; German Decl., ¶¶ 3-5.

⁹⁰ Aiwazian Decl., ¶ 20; German Decl., ¶¶ 2-6.

⁹¹ Aiwazian Decl., ¶ 20; German Decl., ¶ 9.

X. CONCLUSION

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

Dated: December 2, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiff and the Class