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

ELIAS RIOS, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

vs.

MOUNTAIN VIEW CHILD CARE, INC.
DBA TOTALLY KIDS SPECIALTY
HEALTHCARE; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CIVSB2121987

Honorable Christian Towns
Department S26

CLASS ACTION

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

[Declaration of Class Counsel
(Helene Mayer); Declaration of Class
Representative (Elias Rios); Declaration of
Settlement Administrator (Simpluris, Inc.);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: April 2, 2025
Time: 8:30 a.m.
Department: S26

Complaint Filed: July 29, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 2, 2025, at 8:30 a.m., in Department S26 of the
2 above-entitled Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Elias
3 Rios (“Plaintiff” or “Class Representative”) will and hereby does move for an order granting final
4 approval of:

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

- 8 • A Net Settlement Amount of approximately **\$856,929.95** will be fully distributed to all
9 Class Members who do not submit a timely and valid Request for Exclusion
10 (“Settlement Class Members”);
11 • **No objections or Requests for Exclusion** were submitted to the settlement
12 administrator, Simpluris, Inc. (“Simpluris” or “Settlement Administrator”);

13 2. Payment in the amount of **\$507,500.00** to Lawyers for Justice, PC (“Class
14 Counsel”), representing 35% of the Gross Settlement Amount, for the Attorneys’ Fees, which is
15 reasonable and justified on a percentage-basis, and also on a lodestar cross-check with a multiplier
16 of 1.35;

17 3. Payment in the amount of **\$24,605.05** to Class Counsel for Litigation Costs;

18 4. Payment in the amount of **\$13,465.00** to the Settlement Administrator for the
19 Administration Costs;

20 5. Payment in the amount of **\$10,000.00** to Plaintiff Elias Rios as an Incentive Award,
21 for her time and effort in representing the Class; and

22 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
23 California Labor Code section 2698, *et seq.*, in the amount of **\$37,500.00** (“PAGA Penalties”), of
24 which 75%, or **\$28,125.00** will be paid to the California Labor and Workforce Development
25 Agency (“LWDA”) (“LWDA Payment”) and 25%, or **\$9,375.00**, will be distributed to Aggrieved
26 Employees on a *pro rata* basis, based on the Aggrieved Employees’ PAGA Workweeks during
27 the PAGA Period (“Employee PAGA Amount”).

28 ///

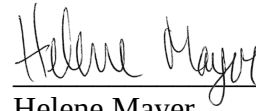
1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of
2 Court, which requires approval by the Court of a class action settlement, and permits the Court to
3 extend the page limit for memoranda.

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declarations of Class Counsel (Helene Mayer), Class Representative (Elias Rios), and Settlement
6 Administrator (Simpluris, Inc.) in support thereof; the pleadings and other records on file with the
7 Court in this matter; and such evidence and oral argument as may be presented at the hearing on
8 this Motion.

9
10 Dated: March 10, 2025

LAWYERS for JUSTICE, PC

11
12 By:



Helene Mayer

Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Elias Rios (“Plaintiff” or “Class Representative”) seeks final approval of: (1) the Gross Settlement Amount of \$1,450,000.00¹; (2) attorneys’ fees in the amount of \$507,500.00 which is 35% of the Gross Settlement Amount (“Attorneys’ Fees”)², and reimbursement of litigation costs and expenses in the amount of \$24,605.05 (“Litigation Costs”) to Lawyers for Justice, PC (“Class Counsel”)³; (3) Administration Costs in the amount of \$13,465.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”)⁴; (4) Incentive Award in the amount of \$10,000.00 to Plaintiff⁵ and (5) allocation of \$37,500.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).⁶

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from July 29, 2017 through October 16, 2024 (“Class” or “Class Members”).⁷

This matter involved ongoing investigations, extensive formal and informal discovery, review and analysis of a large volume of documents and data prior to and during the mediation conducted by Jeffrey Krivis, Esq., and settlement negotiations thereafter. This matter has required 444.20 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents 35% of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to 50% of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.⁸

Plaintiff moves for final approval of the Incentive Award in the amount of \$10,000.00 to compensate Plaintiff for the time and effort that he expended spearheading the lawsuit on behalf

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

² *Id.*, § XIV.

³ Declaration of Helene Mayer (“Mayer Decl.”), ¶ 19.

⁴ Declaration of Lindsay Romo Regarding Notice and Settlement Administration (“Simpluris Declaration” or Simpluris Decl.”), ¶ 20.

⁵ Settlement Agreement, § XV.

⁶ *Id.*, § I.Z.

⁷ *Id.*, §§ I.D & I.E.

⁸ Applying a reasonable rate of \$850 to 444.20 hours of work performed by Lawyers for Justice, PC, the base lodestar fees are \$377,570.00. Applying a multiplier of 1.35, the total enhanced lodestar fees are \$509,719.50, and Class Counsel seeks an attorneys’ fees award of \$507,500.00 (equal to 35% of the Gross Settlement Amount).

of the Class, Aggrieved Employees, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$13,465.00 for Administration Costs. Furthermore, Plaintiff moves for final approval of the allocation of \$37,500.00 for the PAGA Penalties, of which 75%, i.e., \$28,125.00, will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA Penalties (“LWDA Payment”), and 25%, i.e., \$9,375.00, will be distributed to all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from July 17, 2020 through October 16, 2024 (“Aggrieved Employees”).⁹

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

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

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

///

⁹ Settlement Agreement, § I.B.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Founded in 1993, Defendant provides acute inpatient and outpatient rehabilitation, subacute programs, and intermediate programs for infants, children, adolescents, and young adults at Totally Kids Rehabilitation Hospital. Defendant is headquartered in Loma Linda, California. Plaintiff Elias Rios is a former employee of Defendant.

On July 15, 2021, Plaintiff provided written notice to the LWDA and to Mountain View Child Care, Inc., and Doug Padgett, pursuant to California Labor Code section 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code section 2698, et seq., for Mountain View Child Care, Inc., and Doug Padgett's alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders, including inter alia, Wage Orders 4-2001, and 5-2001 ("LWDA Letter"), thereby initiating LWDA Case No. LWDA-CM-838133-21.

On July 29, 2021, Plaintiff filed a Class Action Complaint for Damages, Case No. CIVSB2121987 in San Bernardino County Superior Court, which is a wage and hour class action against Mountain View Child Care, Inc., thereby commencing the above-captioned lawsuit ("Class Action").

On September 20, 2021, Plaintiff filed a Complaint Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., Case No. CIVSB2127153 in San Bernardino County Superior Court, alleging a single representative cause of action under Private Attorneys General Act, California Labor Code section 2698, et seq. ("PAGA") action against Mountain View Child Care, Inc., and Doug Padgett, ("PAGA Action") (together, the Class Action and PAGA Action are referred to as the "Litigation").

On December 21, 2021, Mountain View Child Care, Inc. filed an Answer to the Class Action.

On May 24, 2024, Mountain View Child Care, Inc., and Doug Padgett filed an Answer to the PAGA Action.

///

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

On January 20, 2022, Plaintiff propounded (in the Class Action) multiple sets of discovery including Requests for Production of Documents (Set One); Special Interrogatories (Sets One and Two); and Form Interrogatories - General (Set One), on Defendant Mountain View Child Care, Inc., and noticed the deposition of Mountain View Child Care, Inc.'s person most knowledgeable regarding job duties and organizational structure. Thereafter, on June 8, 2022, Mountain View Child Care, Inc. responded to Plaintiff's discovery requests.

On February 16, 2022, Plaintiff propounded (in the PAGA Action) multiple sets of discovery including Requests for Production of Documents (Set One); Special Interrogatories (Sets One and Two); and Form Interrogatories – General (Set One), on Defendant Mountain View Child Care, Inc., and Requests for Production of Documents (Set One); Special Interrogatories (Sets One and Two); and Form Interrogatories – General (Set One) on Mountain View Child Care, Inc. and Doug Padgett, and noticed the deposition of Mountain View Child Care, Inc.'s person most knowledgeable regarding job duties and organizational structure. Thereafter, on June 15, 2022, Mountain View Child Care, Inc. and Doug Padgett responded to Plaintiff's discovery requests.

The Parties engaged in significant motion practice, including fully briefing Defendant's demurrer as well as Defendant's motion for summary judgment. Plaintiff prevailed on both motions. Then, after engaging in extensive informal discovery and document and data production,

on December 14, 2022, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq. (the “Mediator”), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the Mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Litigation in its entirety.

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

On September 13, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents (“Motion for Preliminary Approval”).

On October 8, 2024, the Court held a hearing on the Motion for Preliminary approval and on October 16, 2024 issued an Order Granting Preliminary Approval of Class Action and PAGA 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 Attorneys’ Fees, Litigation Costs, Incentive Award, Administration Costs, and the PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$1,450,000.00, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes.¹⁰ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Attorneys’ Fees and Litigation Costs, consisting of attorneys’ fees in the amount of \$507,500.00.00 and reimbursement of litigation costs and expenses in the amount of \$24,605.05, to Class Counsel; (2) Incentive Award in the amount of \$10,000.00 to Plaintiff; (3) Administration Costs in the amount of \$13,465.00 to Simpluris; and (4) PAGA Penalties in the amount of \$37,500.00.¹¹ The

¹⁰ Settlement Agreement, §§ I.L, VIII.A, & XVI.F.

¹¹ Settlement Agreement, §§ IX, XIV, XV, & XVII; Mayer Decl., ¶ 19; Simpluris Decl., ¶ 20.

Net Settlement Amount, which is estimated to be \$856,929.95, will be distributed in accordance with the Settlement Agreement and there is no reversion to Defendant.¹²

The Settlement Administrator will determine each Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Payment"), according to the following methodology: (1) Defendant will calculate the number of Workweeks of each Settlement Class Member during the Class Period and include this information in the Class List; (2) the value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks of all Settlement Class Members ("Class Workweek Point Value"); (3) each Settlement Class Member's individual Workweeks will be multiplied by the Class Workweek Point Value to arrive at his or her Individual Settlement Payment.¹³

The Settlement Administrator will determine each Aggrieved Employee's *pro rata* share of 25% the PAGA Penalties ("Individual PAGA Payment"), according to the following methodology: (1) Defendant will calculate the number of Workweeks of each Aggrieved Employee during the PAGA Period ("PAGA Workweeks") and include this information in the Class List; (2) the value of each PAGA Workweek shall be determined by the Settlement Administrator by dividing the Employee PAGA Amount by the total number of PAGA Workweeks of all Aggrieved Employees ("PAGA Workweek Point Value"); (3) each PAGA Group Member's individual PAGA Workweeks will be multiplied by the PAGA Workweek Point Value to arrive at his or her Individual PAGA Payment.¹⁴

Class Members had 45 calendar days from the initial mailing of the Class Notice ("Response Deadline") to submit a Request for Exclusion, Workweeks Dispute, or written objection.¹⁵ The Response Deadline was January 20, 2025.¹⁶ ***As of the date of this Motion, the Settlement Administrator has not received any written objections to the Class Settlement or***

¹² Simpluris Decl., ¶ 16.

¹³ Settlement Agreement, §§ XII.A.1 - XII.A.3.

¹⁴ *Id.*, §§ XII.B.1 - XII.B.3.

¹⁵ *Id.*, § X.A.5.

¹⁶ Simpluris Decl., ¶ 11.

1 *requests to be excluded from the Class Settlement (“Requests for Exclusion”) from Class*
2 *Members.*¹⁷

3 Each Individual Settlement Payment will be allocated as follows: 20% as wages, which
4 will be reported on an IRS Form W-2; and 40% penalties and 40% interest, which will be reported
5 on an IRS Form 1099.¹⁸ The Settlement Administrator shall calculate and deduct from those
6 amounts the employee’s share of any applicable taxes and/or other required withholdings, and then
7 will pay the resulting amount to Class Members in the manner set forth in the Settlement
8 Agreement.¹⁹ Defendant will pay all employer’s share of payroll taxes and contributions with
9 respect to the wage portions of the Individual Settlement Payments (“Employer Taxes”) to the
10 Settlement Administrator separately and apart from the Gross Settlement Amount.²⁰ Any payment
11 for an Individual PAGA Payment will be allocated as 100% penalties, will not be subject to taxes
12 or withholdings, and will be reported on an IRS Form-1099, if necessary.²¹

13 The Individual Settlement Payment and Individual PAGA Payment checks will be
14 negotiable for one hundred eighty (180) calendar days after the date of mailing, and thereafter, will
15 be canceled.²² The funds and any accrued interests associated with such voided checks will be
16 transmitted to the child advocacy organization, Court Appointed Special Advocates (“CASA”).²³
17 All Settlement Class Members and Aggrieved Employees shall be bound by the terms and
18 conditions of the Settlement Agreement regardless of whether or not they cash or otherwise
19 negotiate their Individual Settlement Payment check and/or Individual PAGA Payment check.²⁴

20 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

21 The Court-appointed Settlement Administrator, Simpluris, Inc., has taken all necessary
22 steps to effectuate the notice and settlement administration process, as set forth in the Court’s
23 Preliminary Approval Order.

24 ///

25 ¹⁷ Simpluris Decl., ¶¶ 12-13.

26 ¹⁸ Settlement Agreement, § XVI.C.

27 ¹⁹ *Id.*, § XVI.A.

28 ²⁰ *Id.*, § VII.A.

²¹ *Id.*, § XVI.D.

²² *Id.*, § XII.D.3.

²³ *Ibid.*

²⁴ *Id.*, § X.C.3.

On November 20, 2024, Defendant’s counsel provided Simpluris the Class List containing each Class (1) full name; (2) last known address; (3) last known telephone number; (4) the number of Workweeks worked during the Class Period; (5) number of Workweeks during the PAGA Period; (6) Social Security number; and (7) last known email address (collectively, “Class List”).²⁵ The Class List contained data for 847 individuals.²⁶ The mailing addresses contained in the Class Information were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service.²⁷ The NCOA contains requested changes of address filed with the U.S. Postal Service.

On December 5, 2024, Simpluris mailed the Class Notice via U.S. First Class Mail to the 847 individuals contained in the Class List.²⁸

A total of 31 Class Notices were returned to Simpluris.²⁹ Simpluris performed a computerized skip trace on the seven returned Class Notices that did not have a forwarding address, in an effort to obtain an updated address for the purpose of re-mailing the Class Notice.³⁰ As a result of this skip trace, a new forwarding address provided by the Post Office, or a forwarding address provided by the Class Member, 23 updated addresses were obtained and the Class Notices were promptly re-mailed to those Class Members, via U.S. First Class Mail.³¹ A total of 8 Class Notices have been deemed undeliverable, with no updated address found notwithstanding the skip tracing efforts.³²

As of the date of this Motion, the Settlement Administrator has not received any objections.³³ As of the date of this Motion, the Settlement Administrator has not received any Requests for Exclusion from Class Members.³⁴ As of the date of this Motion, the Settlement

²⁵ Simpluris Decl., ¶ 6.

²⁶ *Ibid.*

²⁷ *Id.*, ¶ 7.

²⁸ *Id.*, ¶ 8.

²⁹ *Id.*, ¶ 9.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Id.*, ¶ 13.

³⁴ *Id.*, ¶ 12.

Administrator received one (1) Workweeks Dispute, which was rejected by the Settlement Administrator based on Defendant's records.³⁵

To date, there are 847 Class Members who did not submit a timely and valid Request for Exclusion ("Settlement Class Members"), and who will be paid their portion of the Net Settlement Amount and 617 Aggrieved Employees who will be paid their portion of the Employee PAGA Fund.³⁶ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$856,929.95 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.³⁷ The highest Individual Settlement Payment is currently estimated to be \$4,742.36 and the average Individual Settlement Payment is currently estimated to be \$1,011.72.³⁸ The highest Individual PAGA Payment is currently estimated to be \$51.28 and the average Individual PAGA Payment is currently estimated to be \$15.19.³⁹

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AND PAGA 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 plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

³⁵ Simpluris Decl., ¶ 14.

³⁶ *Id.*, ¶ 15.

³⁷ *Id.*, ¶ 16.

³⁸ *Id.*, ¶ 17.

³⁹ *Id.*, ¶ 19.

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% of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the cases were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The Parties actively litigated the case since the Action commenced on July 29, 2021. Class Counsel conducted significant investigation and formal and informal discovery into the facts of the case, to assess the veracity, strength, and scope of the claims, and was preparing for class certification and trial prior to reaching the Settlement.⁴⁰

The Parties conducted significant formal and informal discovery and investigation into the facts of the case, and also informally exchanged a large volume of information, documents, and data throughout the course of the litigation and in connection with the mediation and settlement negotiations.⁴¹ The volume of data and documents that Class Counsel reviewed and analyzed

⁴⁰ Mayer Decl., ¶ 6.

⁴¹ *Id.*, ¶¶ 6 & 7.

1 included, and were not limited to: Plaintiff's employment records, a detailed sampling of Plaintiff's
2 and other Class Members' time data and pay records, Defendant's Employee Handbook, company
3 policy acknowledgements, forms, procedures, and policies, among other information and
4 documents.⁴² Class Counsel propounded multiple sets of formal written discovery requests on
5 Mountain View Child Care, Inc. and Doug Padgett, reviewed discovery responses, and noticed the
6 deposition of Mountain View Child Care, Inc.'s Person Most Knowledgeable designees regarding
7 organizational structure and job duties.⁴³ Class Counsel analyzed violations, damages, penalties,
8 and other valuation issues in the course of litigation and in connection with the mediation and
9 settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions,
10 e.g., to discuss issues relating to the pleadings, discovery, and the production of information,
11 documents, and data in the course of litigation and the mediation and settlement negotiations.⁴⁴
12 Class Counsel had the opportunity to interview and obtain information from Plaintiff and other
13 Class Members, and reviewed and analyzed a volume of information, data, and documents
14 obtained from Plaintiff, Defendant, and other sources.⁴⁵ Other work performed by Class Counsel
15 included, and was not limited to drafting Plaintiff's pleadings and the mediation brief; opposing
16 Defendants' demurrer and subsequent motion for summary judgment, preparing for and attending
17 court proceedings, settlement negotiations, and the mediation; and other tasks.⁴⁶

18 After conducting significant formal and informal discovery and investigation into the facts
19 of the cases, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis,
20 Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.⁴⁷
21 In the course of mediation and settlement negotiations, the Parties exchanged information,
22 documents, and data, and discussed various aspects of the case, including and not limited to, the
23 risks and delays of further litigation; the risks to the Parties of proceeding with class certification
24 and/or representative adjudication; the law relating to off-the-clock theory, meal and rest periods,
25 PAGA representative claims, and wage-and-hour law and enforcement; the evidence produced and

26 ⁴² Mayer Decl., ¶ 6.

27 ⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ *Id.*, ¶ 8.

analyzed; and the possibility of appeals, among other things.⁴⁸ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁹ Arriving at a settlement that was acceptable to the Parties was not easy.⁵⁰ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to avoid class certification.⁵¹ Defendant and its counsel felt strongly about Defendant's ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁵² After conducting significant formal and informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the case was well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the Parties that would attend further litigation.⁵³

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel analyzed a large volume of information, documents, and data obtained from Defendant, Plaintiff, and other sources, and performed research regarding applicable law, which is evolving as it relates to certification, representative PAGA claims, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts discovered.⁵⁴ The Settlement was based on this large volume of facts, evidence, and investigation.⁵⁵ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.⁵⁶

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

⁴⁸ Mayer Decl., ¶ 8.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ *Id.*, ¶ 7.

⁵⁵ *Id.*, ¶¶ 6-8.

⁵⁶ *Id.*, ¶¶ 13-18.

Settlement.

The Settlement, which provides for a Gross Settlement Amount of \$1,450,000.00, 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.⁵⁷ 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 and ongoing settlement negotiations.⁵⁸ Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

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

⁵⁷ Mayer Decl., ¶ 21.

⁵⁸ *Id.*, ¶¶ 6-8.

1 and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only
2 the possibility of recovery.

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

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

10 The Settlement, which provides for a Gross Settlement Amount of \$1,450,000.00,
11 represents a fair, reasonable, and adequate resolution of the case.⁵⁹ The Settlement was calculated
12 using information and data uncovered through extensive case investigation, formal and informal
13 discovery, and the exchange of information in the context of preparing for mediation and
14 conducting ongoing settlement negotiations. The Settlement takes into account the potential risks
15 and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the
16 facts in the case, the Gross Settlement Amount represents a considerable recovery.

17 After deducting the Attorneys' Fees in the amount of \$507,500.00; the Litigation Costs in
18 the amount of \$24,605.05; Incentive Award in the amount of \$10,000.00 to Plaintiff;
19 Administration Costs in the amount of \$13,465.00; and the PAGA Penalties of \$37,500.00 from
20 the Gross Settlement Amount of \$1,450,000.00, the Net Settlement Amount is currently estimated
21 to be \$856,929.95.⁶⁰ Under the Settlement Agreement, the Gross Settlement Amount will be fully
22 paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each
23 Settlement Class Member will be paid a share of the Net Settlement Amount, based on the number
24 of Workweeks credited to him or her, and each Aggrieved Employee will be paid a share of 25%
25 of the PAGA Penalties, based on the number of PAGA Workweeks during the PAGA Period
26 credited to him or her.⁶¹ To date, there are 847 Settlement Class Members, representing 100% of

27 ⁵⁹ Mayer Decl., ¶ 21.

28 ⁶⁰ Simpluris Decl., ¶ 16.

⁶¹ Settlement Agreement, §§ XII.A & XII.B.

the Class Members.⁶² The highest Individual Settlement Payment is currently estimated to be \$4,742.36, and the average Individual Settlement Payment is currently estimated to be \$1,011.72.⁶³ The highest Individual PAGA Payment is currently estimated to be \$51.28 and the average Individual PAGA Payment is currently estimated to be \$15.19.⁶⁴ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and Aggrieved Employees.⁶⁵ 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.⁶⁶ 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.⁶⁷ 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.

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⁶² Simpluris Decl., ¶ 15.

⁶³ *Id.*, ¶ 17.

⁶⁴ *Id.*, ¶ 19.

⁶⁵ Mayer Decl., ¶ 21.

⁶⁶ *Id.*, ¶¶ 13-18.

⁶⁷ *Ibid.*

1 **E. There Are No Objections to the Class Settlement.**

2 The Settlement has been well received by the Class – ***not a single Class Member objected***
3 ***to the Class Settlement.***⁶⁸ Specifically, no objections have been made as to the Gross Settlement
4 Amount or requested Attorneys’ Fees, Litigation Costs, Incentive Award, Administration Costs,
5 or the PAGA Penalties. California courts have consistently found that a small number of objectors
6 indicates the class’s support for a settlement and strongly favors final approval. *Wershba, supra*,
7 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*,
8 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

13 **VI. THE ATTORNEYS’ FEES REQUESTED IS FAIR AND REASONABLE AND**
14 **SHOULD BE APPROVED.**

15 **A. Legal Standard for Attorneys’ Fees in a Class Action Settlement.**

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

28 ⁶⁸ Simpluris Decl., ¶ 13.

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 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 1/3rd of common fund of \$19 million).

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

2 California and federal courts have long recognized that an appropriate method for
3 determining the award of attorneys' fees is based on a percentage of the total value of benefits
4 made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van*
5 *Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886
6 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v.*
7 *Priest* (1977) 20 Cal.3d 25, 34.⁶⁹ The purpose of this equitable doctrine is to spread litigation costs
8 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
9 burden alone. See *Vincent, supra*, 557 F.2d at 769.

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

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

24 Courts have consistently recognized that class and representative action litigation is
25 increasingly necessary to protect the rights of individuals whose injuries and/or damages are too
26 small to economically justify legal action on an individual basis. Accordingly, in determining a
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28 ⁶⁹ 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.

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

Under the terms of the Settlement Agreement, Defendant will pay a maximum Gross Settlement Amount of \$1,450,000.00 on a non-reversionary basis. The requested attorneys’ fees are 35% of the Gross Settlement Amount. 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.

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. The 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

1 named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable
2 for the members of the class, who will enjoy the benefits of the settlement without incurring the
3 risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed
4 to a contingency fee of at least 35% of the recovery.⁷⁰

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

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

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

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28 ⁷⁰ Mayer Decl., ¶ 9.

C. **The Attorneys' Fees Requested 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 Attorneys' Fees in the amount of \$507,500.00 (which is 35% of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel have achieved, and the value of the settlement that Class Counsel have obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declarations, Class Counsel has extensive experience in the handling of class actions and complex litigation cases.⁷¹

As outlined in the Declaration of Helene Mayer, Class Counsel has fully and actively participated in litigation of the case.⁷² Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's

⁷¹ Mayer Decl., ¶¶ 13-18.

⁷² *Id.*, Exh. A.

business, and its operations and employment policies, practices, and procedures.⁷³ During the litigation of the action, Class Counsel had the opportunity to interview Plaintiff and other Class Members; reviewed and analyzed a large volume of pages of information, documents and data obtained from Defendant, Plaintiff, and other sources; and analyzed the violations, damages, penalties, and other valuation issues.⁷⁴ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, law and motion practice, discovery, and the production of information, documents and data, among other things; engaged in settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁷⁵

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Helene Mayer, sets forth in detail the hours that Lawyers *for* Justice, PC has spent performing tasks on behalf of Plaintiff and the Class.⁷⁶ 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 444.20 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, the Aggrieved Employees, and the State of California.⁷⁷ 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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⁷³ Mayer Decl., ¶ 5.

⁷⁴ *Id.*, ¶¶ 6 & 7.

⁷⁵ *Id.*, ¶ 6.

⁷⁶ *Id.*, Exh. A.

⁷⁷ *Id.*, ¶¶ 11-12.

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

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

7 Class Counsel undertook significant investigation, analysis, and research prior to filing this
8 case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter
9 for class certification and representative adjudication and had every intention of taking the case to
10 trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite
11 all of the obstacles that had to be overcome, as demonstrated in the Declaration of Helene Mayer,
12 Class Counsel used its extensive experience in the handling of class actions and complex wage-
13 and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁷⁸

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

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

21 The Settlement at this stage is preferred over continued litigation because such resolutions
22 save time and money that would otherwise go to litigation. The risks and expenses of further
23 litigation outweighed any benefit that might have been gained otherwise. The Settlement provides
24 an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation
25 involving expert discovery, trial preparation, class certification proceedings, and appellate review
26 of those proceedings. The Settlement offers present relief and/or recovery to Settlement Class
27

28 ⁷⁸ Mayer Decl., ¶¶ 13-18.

Members, the State of California, and Aggrieved Employees while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

As a result of this litigation and settlement negotiations, Defendant agreed to pay a Gross Settlement Amount of \$1,450,000.00 to settle the matter. After deducting the Attorneys' Fees (\$507,500.00), Litigation Costs (\$24,605.05), Incentive Award (\$10,000.00), Administration Costs (\$13,465.00), and the PAGA Penalties (\$37,500.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$856,929.95.⁷⁹ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment is currently estimated to be \$4,742.36 and the average Individual Settlement Payment is currently estimated to be \$1,011.72.⁸⁰ The highest Individual PAGA Payment is currently estimated to be \$51.28 and the average Individual PAGA Payment is currently estimated to be \$15.19.⁸¹ The Settlement offers significant monetary relief to the Settlement Class Members, the State of California, and Aggrieved Employees.

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 444.20 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and Aggrieved Employees.⁸² Class Counsel has also incurred litigation costs and expenses in the amount of \$24,605.05.⁸³

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁸⁴ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁸⁵ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested

⁷⁹ Simpluris Decl., ¶ 16.

⁸⁰ *Id.*, ¶ 17.

⁸¹ *Id.*, ¶ 19.

⁸² Mayer Decl., ¶¶ 11 and Exh. A.

⁸³ *Id.*, ¶ 19.

⁸⁴ *Ibid.*

⁸⁵ *Id.*, ¶¶ 13-18.

Attorneys' Fees and Litigation Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

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

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

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.⁸⁶

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

Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$1,450,000.00.⁸⁷ The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement

⁸⁶ Simpluris Decl., ¶ 13.

⁸⁷ Settlement Agreement, § I.L.

Agreement. The highest Individual Settlement Payment is currently estimated to be \$4,742.36, and the average Individual Settlement Payment is currently estimated to be \$1,011.72.⁸⁸ The highest Individual PAGA Payment is currently estimated to be \$51.28 and the average Individual PAGA Payment is currently estimated to be \$15.19.⁸⁹

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 matter 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.⁹⁰

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.

⁸⁸ Simpluris Decl. ¶ 17.

⁸⁹ *Id.*, ¶ 19.

⁹⁰ Mayer Decl., ¶¶ 13-18.

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

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

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

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

22 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Helene Mayer is a
23 task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on
24 behalf of Plaintiff and the Class, and the time required for completing those tasks.⁹¹ The chart
25 demonstrates that Class Counsel has spent a total of 444.20 hours litigating the case and finalizing
26 the Settlement.⁹² In light of the facts and circumstances of the case, as well as the results that Class
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28 ⁹¹ Mayer Decl., Exh. A.

⁹² *Id.*, ¶¶ 11, 12, & Exh. A.

Counsel has achieved in those cases, 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 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 matter, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in these cases has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$1,450,000.00.

As set forth in the Declaration of Helene Mayer, the professional backgrounds and experience of Class Counsel support reasonable rates of compensation at least \$850 per hour for services provided by Class Counsel.⁹³ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$850 per hour for legal service performed, by courts of this state.⁹⁴ While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

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⁹³ Mayer Decl., ¶¶ 11 & 12.

⁹⁴ *Ibid.*

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

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

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

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

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

26 *Ketchum*, 24 Cal. 4th at 1134.

27 Adjustment of the base lodestar figure to compute an award of attorneys’ fees for a claim
28 under the California Labor Code is appropriate. See *Id.*, at 1135-1136; *Serrano v. Priest* (1977) 20

Cal.3d 25, 48-49. “The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate.” *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at 1131-1132. The lodestar figure is the “basic fee for comparable legal services in the community” based upon the “hourly amount to which attorneys of like skill in the area would typically be entitled.” *Id.*, at 1132-1133 (quotation marks and citation omitted).

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, and the cases involved gathering and analyzing documents and data not only from Defendant 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 the cases, prior to their 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 \$1,450,000.00. Also, Class Counsel’s efforts throughout the matter 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 Helene Mayer.⁹⁵ As the chart indicates, Class Counsel has worked 444.20 hours in the pursuit of this matter. The attorney task and time chart presents the entire picture. Applying a reasonable rate of \$850 per hour to 444.20 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$377,570.00 on Class Counsel's services.⁹⁶ Applying a multiplier of 1.33, the total enhanced lodestar fees are \$509,719.50. Class Counsel seeks an attorneys' fee award of \$507,500.00 (equal to 35% of the Gross Settlement Amount). 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**).

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 \$507,500.00 to Class Counsel.

VII. LITIGATION 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 \$35,000.00. As set forth in the Declaration of Helene Mayer, Class Counsel seeks reimbursement of \$24,605.05 in litigation costs and expenses incurred in this case.⁹⁷ This amount was reasonable

⁹⁵ Mayer Decl., Exh. A.

⁹⁶ *Id.*, ¶ 12; *see n.8, supra*.

⁹⁷ *Id.*, ¶ 19 & Exh. B.

and necessary in the prosecution of the case and to obtain the Settlement.⁹⁸ The cost savings of \$10,394.95 will be part of the Net Settlement Amount, which will be distributed to Settlement Class Members in accordance with the Settlement. Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$24,605.05 to Class Counsel.

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

As set forth above, the total costs allocated to Simpluris for the notice and settlement administration process are \$13,465.00. The costs incurred and to be incurred include, but are not limited to, (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiff, Class Counsel and Class Members; (d) translating, printing and mailing the Notice of Class Action Settlement to Class Members in English and Spanish; (e) receiving and validating Requests for Exclusion, Objections or Workweeks Disputes submitted by Class Members; (f) calculating employer payroll taxes and providing appropriate forms and calculations to Defendant; (g) mailing settlement checks, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders Simpluris to perform.⁹⁹

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of \$13,465.00.

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

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

In determining whether to make enhancement awards, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise;

⁹⁸ Mayer Decl., ¶ 19 & Exh. B.

⁹⁹ Simpluris Decl., ¶ 3.

(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 Incentive Award is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence to support the prosecution of the claims.¹⁰⁰ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information to support the pursuit of the case.¹⁰¹

Accordingly, it is appropriate and just for Plaintiff Elias Rios to receive \$10,000.00 as a reasonable Incentive Award, in addition to his individual settlement payments.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Attorneys' Fees, Litigation Costs, Incentive Award, Administration Costs, and the PAGA Penalties, in their entirety, and permit the filing of a memorandum that exceeds the page limit.

Dated: March 10, 2025

LAWYERS for JUSTICE, PC

By: Helene Mayer
Helene Mayer
Attorneys for Plaintiff and the Class

¹⁰⁰ Mayer Decl., ¶ 20; Declaration of Elias Rios ("Rios Decl.") ¶ 4.

¹⁰¹ Mayer Decl., ¶ 20; Rios Decl., ¶¶ 3-6.