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

SERGIO SANTIAGO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

THE OLIVE RESTOBAR, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 21STCV07908
[Related to Case No.: 21NWCV00595]

Honorable Elaine Lu
Department SSC9

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF ATTORNEYS' FEES AND COSTS
AND ENHANCEMENT PAYMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: December 12, 2024
Time: 10:00 a.m.
Department: SSC9

Complaint Filed: March 1, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 12, 2024, at 10:00 a.m., in Department SSC9
2 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012,
3 Plaintiff Sergio Santiago (“Plaintiff” or “Named Plaintiff”) will and hereby does move for an order
4 granting final 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: A Net Settlement Amount of approximately **\$225,597.55** will be fully
8 distributed to all Class Members who do not submit a timely and valid Request for Exclusion
9 (“Participating Class Members”) and **no objections or Requests for Exclusion** were submitted to
10 the settlement administrator, Simpluris, Inc. (“Settlement Administrator”);

11 2. Payment in the amount of **\$181,500.00** to Lawyers for Justice, PC (“Class
12 Counsel”), representing 33% of the Total Settlement Amount, for the attorneys’ fees, which is
13 reasonable and justified on a percentage-basis, and also on a lodestar cross-check;

14 3. Payment in the amount of **\$18,002.45** to Class Counsel for litigation costs;

15 4. Payment in the amount of **\$9,900.00** to the Settlement Administrator for Settlement
16 Administration Costs;

17 5. Payment in the amount of **\$15,000.00** to Plaintiff Sergio Santiago as an
18 Enhancement Payment, for his time and effort in representing the Class; and

19 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
20 California Labor Code section 2698, *et seq.*, in the amount of \$100,000.00 (“PAGA Amount”), of
21 which seventy-five percent (75%), or **\$75,000.00** will be paid to the California Labor and
22 Workforce Development Agency (“LWDA”) (“LWDA Payment”) and twenty-five percent (25%),
23 or **\$25,000.00**, will be distributed to Aggrieved Employees on a *pro rata* basis, based on
24 Workweeks during the PAGA Period (“Individual PAGA Payment”).

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

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1 This motion is based upon the following Memorandum of Points and Authorities; the
2 Declarations of Class Counsel (Helene Mayer), Named Plaintiff (Sergio Santiago), Settlement
3 Administrator (Lisa Pavlik of Simpluris, Inc.) in support thereof; the pleadings and other records
4 on file with the Court in this matter; and such evidence and oral argument as may be presented at
5 the hearing on this Motion.

6 Dated: November 12, 2024

LAWYERS for JUSTICE, PC

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8 By: Helene Mayer
9 Helene Mayer
10 Attorneys for Plaintiff and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Sergio Santiago (“Plaintiff” or “Named Plaintiff”) seek final approval of: (1) the Total Settlement Amount of \$550,000.00¹; (2) Attorneys’ Fees and Costs for attorneys’ fees in the amount of \$181,500.00, which is 33% of the Total Settlement Amount², and reimbursement of litigation costs and expenses in the amount of \$18,002.45 to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$9,900.00 to Simpluris, Inc. (“Settlement Administrator”); (4) Enhancement Payment in the amount of \$15,000.00 to Plaintiff Sergio Santiago; and (5) allocation of \$100,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Amount”).

Plaintiff seeks relief on behalf of the following Class: Individuals who are current or former hourly-paid or non-exempt employees of Defendant in the State of California at any time during the period from March 1, 2017 through July 10, 2023 (“Class” or “Class Members”).³

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during the mediation conducted by Lynn S. Frank, Esq., and settlement negotiations thereafter. This matter has required 382.70 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents 33% of the Total Settlement Amount, is supported by the use of the percentage-fee method. The requested attorneys’ fees are also supported under the lodestar cross-check method.⁴

Plaintiff moves for final approval of the Enhancement Payment in the amount of \$15,000.00 to Plaintiff Sergio Santiago, to compensate Plaintiff for the time and effort that he expended spearheading the lawsuit on behalf of the Class, Aggrieved Employees, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$9,900.00 for Settlement Administration Costs. Plaintiff also moves for final

¹ Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), ¶ 33.

² *Id.*, ¶ 3.

³ *Id.*, ¶ 5. “Class Period” is defined as the period from March 1, 2017 through July 10, 2023. *See id.*, ¶ 8.

⁴ Applying a reasonable rate of \$850 to 382.70 hours of work performed by Lawyers for Justice, PC, the total lodestar fees are \$325,295.00, and Class Counsel seeks an attorneys’ fees award of \$181,500.00.

1 approval of the allocation of \$100,000.00 for the PAGA Amount, of which seventy-five percent
2 (75%), i.e., \$75,000.00, will be paid to the California Labor Workforce and Development Agency
3 (“LWDA”) for its portion of the PAGA Amount (“LWDA Payment”), and twenty-five percent
4 (25%), i.e., \$25,000.00, will be distributed to individuals who are current or former hourly-paid or
5 non-exempt employees of Defendant in the State of California at any time during the period from
6 July 7, 2020 through July 10, 2023 (“Aggrieved Employees”).

7 The requests for Attorneys’ Fees and Costs, Enhancement Payment, Settlement
8 Administration Costs, and the allocation for PAGA Amount were fully disclosed in the Court
9 Approved Notice of Class Action Settlement (“Class Notice”) that was mailed to the Class
10 Members. Most importantly, as of the date of this Motion, *not a single Class Member has objected*
11 *to any aspect of the Class Settlement, including the requested Attorneys’ Fees and Costs,*
12 *Enhancement Payment, Settlement Administration Costs or the allocation for PAGA 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 and Costs, Enhancement
17 Payment, Settlement Administration Costs, and the allocation for PAGA Amount in the amounts
18 as fully 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 and Costs, Enhancement
21 Payment, Settlement Administration Costs, and the allocation for PAGA Amount, Plaintiff also
22 moves for an order permitting the filing of this single consolidated memorandum, although it
23 exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing
24 several separate motions.

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

26 Defendant Green Olive Mediterranean Cuisine Apollo, Inc. (“Defendant”) owns and
27 operates a restaurant doing business as The Olive RestoBar. The Olive RestoBar is a modern
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1 Mediterranean eatery specializing in middle eastern food with a high-end bar. Plaintiff Sergio
2 Santiago is a former employee of Defendant.

3 On March 1, 2021, Plaintiff filed a putative class action complaint (“Class Complaint”),
4 thereby commencing a putative class action against Defendant for violations of the California
5 Labor Code and the California Business and Professions Code, entitled *Sergio Santiago vs. The*
6 *Olive RestoBar*, Superior Court of California, Los Angeles, Case No. 21STCV07908 (“Class
7 Action”). This lawsuit had alleged ten (10) causes of action for violations of the California Labor
8 Code and Industrial Welfare Commission Wage Orders, for alleged failure to pay minimum wages,
9 failure to pay overtime wages, failure to provide meal periods and associated premiums, failure to
10 provide rest periods and associated premiums, failure to pay timely wages during employment,
11 failure to timely pay final wages and associated waiting-time penalties, failure to keep compliant
12 payroll records, failure to keep compliant wage statements, failure to reimburse business expenses,
13 and for violations of California Business and Professions Code Section 17200 et seq..

14 On July 7, 2021, Plaintiff provided written notice to the LWDA and Defendant, giving
15 notice of his intent to pursue civil penalties under PAGA, California Labor Code § 2698, Et Seq.
16 on behalf of himself and the State of California, as well as on behalf of a proposed group of
17 aggrieved employees, for alleged violations of multiple provisions of the California Labor Code
18 and Industrial Welfare Commission Wage Orders (“LWDA Notice”).

19 On September 10, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
20 Attorneys General Act, Cal. Labor Code § 1698 Et Seq. in the Los Angeles County Superior Court,
21 Case No. 21NWCV00595 (“PAGA Action”) against Defendant.

22 On February 9, 2022, Plaintiff submitted an Amended PAGA Notice by electronic upload
23 to the LWDA and Defendant to add “The Green Olive Mediterranean Cuisine Apollo, Inc.” as the
24 correct entity name doing business as The Olive RestoBar.

25 On November 18, 2022, the Court issued an order deeming the Class Action and PAGA
26 Action related cases, with the Class Action serving as the lead case;

On May 3, 2023, in connection with the settlement, Plaintiff electronically submitted a Second Amended PAGA Notice to the LWDA and Defendant to include additional violations against Defendant.

On August 15, 2023, Plaintiff filed his First Amended Complaint for Enforcement under the Private Attorneys General Act in the PAGA Action.

On November 11, 2023, to effectuate the terms of this Agreement, the Parties filed a joint stipulation to consolidate the Class Action (Case No. 21STCV07908) and the PAGA Action (Case No. 21NWCV00595) and deem the Class Action as the lead case, which was granted on November 17, 2023.

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, the Class Members, and Aggrieved Employees, 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, failing to reimburse necessary business expenses, failing to provide one day's rest in seven, failing to maintain accurate payroll records, failing to provide notice of material terms of employment, failing to provide paid sick leave and COVID supplemental sick leave, and failing to provide reporting time pay, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, et seq. and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he, the Class Members, and Aggrieved Employees are entitled to, inter alia, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the Action since the Class Action was commenced on March 1, 2021. On April 11, 2023, the Parties participated in a formal, full-day mediation

1 conducted by Lynn Frank, Esq. of Frank & Feder Mediators, a well-regarded mediator experienced
2 in mediating complex labor and employment matters. With the aid of the mediator's evaluation,
3 the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.
4 On April 26, 2023, the Parties executed a Memorandum of Understanding setting forth basic and
5 key terms of the settlement.

6 On November 13, 2023, Plaintiff filed a Motion for Preliminary Approval of Class Action
7 Settlement and supporting documents ("Motion for Preliminary Approval").

8 On December 4, 2023, the Court published a Tentative Ruling and raised multiple points
9 of inquiry. On March 7, 2024, Plaintiff filed a Supplemental Brief in Support of the Motion for
10 Preliminary Approval, Supplemental Declaration of Helene Mayer, Declaration of Kenneth J.
11 Zielinski, Declaration of Rami Nasser, and [Revised Proposed] Order Granting Motion for
12 Preliminary Approval of Class Action Settlement. On April 10, 2024, the Court published a
13 Tentative Ruling. On April 11, 2024, Court issued a Minute Order Granting Preliminary Approval
14 of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the
15 terms of the Settlement, the Class Notice, and the proposed administration procedures and
16 associated deadlines.

17 Plaintiff now moves for final approval of Attorneys' Fees and Costs, Enhancement
18 Payment, Settlement Administration Costs, and the allocation for PAGA Amount.

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

20 Under the terms of the Settlement Agreement, Defendant has agreed to pay a Total
21 Settlement Amount of \$550,000.00, and also fund the amounts necessary to fully pay Defendant's
22 share of payroll taxes.⁵ Subject to approval by the Court, the Net Settlement Amount will be
23 calculated by deducting the following amounts from the Total Settlement Amount: (1) Attorneys'
24 Fees and Costs, consisting of attorneys' fees in the amount of \$181,500.00 and reimbursement of
25 litigation costs and expenses in the amount of \$18,002.45, to Class Counsel; (2) Enhancement
26 Payment in the amount of \$15,0000.00 to Plaintiff Sergio Santiago; (3) Settlement Administration
27 Costs in the amount of \$9,900.00 to Settlement Administrator; and (4) PAGA Amount in the

28 ⁵ Settlement Agreement, ¶ 51.

amount of \$100,000.00.⁶ The Net Settlement Amount, which is estimated to be \$225,597.55, will be distributed in accordance with the Settlement Agreement and there is no reversion to Defendant.⁷

The Settlement Administrator will determine each Participating Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"), according to the following methodology: the Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members during the Class Period to yield the "Class Workweek Value," and multiply each Participating Class Member's individual Workweeks during the Class Period by the Class Workweek Value to yield his or her Individual Settlement Share.⁸

The Administrator will determine each Aggrieved Employee's *pro rata* share of 25% the PAGA Amount ("Individual PAGA Payment"), according to the following methodology: the Administrator will divide the 25% portion of the PAGA Amount allocated to Aggrieved Employees, i.e., \$25,000.00, by the total number of Workweeks worked by all Aggrieved Employees during the PAGA Period ("Total PAGA Workweeks") resulting in the "PAGA Workweek Value" and then multiply each PAGA Member's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.⁹

Class Members had forty-five (45) calendar days from the initial mailing of the Class Notice ("Response Deadline") to submit a Request for Exclusion, Objection and/or dispute of the Workweeks.¹⁰ The Response Deadline was July 8, 2024.¹¹ ***The Settlement Administrator did not receive any written objections to the Class Settlement or requests to be excluded from the Class Settlement ("Requests for Exclusion") from Class Members.***¹²

⁶ Settlement Agreement, ¶ 53.

⁷ This amount is higher than the amount stated in Paragraph 16 of the accompanying Declaration of Lisa Pavlik of Simpluris, Inc. Regarding Notice and Settlement Administration ("Simpluris Declaration" or Simpluris Decl.") because the Administrator's calculation assumes that Class Counsel will obtain attorneys' fees in the maximum amount of \$192,500.00 and litigation costs and expenses in the maximum amount of \$25,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$181,500.00 for attorneys' fees and \$18,002.45 for reimbursement of litigation costs and expenses, and the total difference of \$16,997.55 will remain part of the Net Settlement Amount.

⁸ Settlement Agreement, ¶ 53(e)(i).

⁹ *Id.*, ¶ 53(e)(ii).

¹⁰ Settlement Agreement, ¶ 56(c).

¹¹ Simpluris Decl., ¶ 10.

¹² *Id.*, ¶¶ 11-13.

Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2, and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹³ Defendant will separately pay any and all employer taxes owed on the wages portions of the Individual Settlement Shares.¹⁴ 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.¹⁵

The face of each check shall prominently state the date (not less than one hundred eighty (180) calendar days after the date of mailing) when the check will be voided.¹⁶ For any Participating Class Member whose Individual Settlement Payment check or Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Settlement Administrator shall transmit the funds represented by such checks to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq., in the name of the Participating Class Member and/or Aggrieved Employee whose check is cancelled and in the respective amount of the cancelled check.¹⁷ All Participating Class Members and Aggrieved Employees shall be bound by the terms and conditions of this Settlement Agreement regardless of whether or not they cash or otherwise negotiate their Individual Settlement Payment check and/or Individual PAGA Payment check.¹⁸

IV. THE SETTLEMENT ADMINISTRATION PROCESS

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

On May 2, 2024, Defendant's counsel provided Simpluris the Class List containing each Class Member's full name, last-known mailing address, Social Security Number, and sufficient information for Simpluris to calculate the number of Workweeks worked for Defendant during the

¹³ Settlement Agreement, ¶ 55(a).

¹⁴ *Id.*, ¶ 55(a).

¹⁵ *Ibid.*

¹⁶ *Id.*, ¶ 60(c).

¹⁷ *Id.*, ¶ 60(e).

¹⁸ *Id.*, ¶ 58(a).

1 Class Period and, if applicable, during the PAGA Period. (“Class List”).¹⁹ The Class List contained
2 data for 344 individuals.²⁰ The mailing addresses contained in the Class List were processed and
3 updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S.
4 Postal Service.²¹ The NCOA contains requested changes of address filed with the U.S. Postal
5 Service. In the event that any individual had filed a U.S. Postal Service change of address request,
6 the address listed with the NCOA would be utilized in connection with the mailing of the Class
7 Notice.²²

8 On May 24, 2024, Simpluris mailed the Class Notice in English and in Spanish via U.S.
9 First Class Mail to all 344 individuals in the Class List.²³

10 A total of 73 Class Notices were returned to Simpluris.²⁴ Of these, three were returned with
11 a forwarding address and promptly re-mailed to the forwarding address provided.²⁵ Simpluris
12 performed an advanced address search (i.e., skip trace) on the 70 returned Class Notices that did
13 not have a forwarding address, in an effort to obtain an updated address for the purpose of re-
14 mailing the Class Notice. As a result of this skip trace, 56 updated addresses were obtained, and
15 the Class Notices were promptly re-mailed to those Class Members, via U.S. First Class Mail.²⁶ A
16 total of 59 Class Notices have been re-mailed.²⁷ A total of 14 Class Notices have been deemed
17 undeliverable.²⁸

18 The Administrator has not received any objections, any Requests for Exclusion, or any
19 workweek disputes from Class Members or Aggrieved Employees.²⁹ To date, there are 344 Class
20 Members who did not submit a timely and valid Request for Exclusion (“Participating Class
21 Members”), and who will be paid their portion of the Net Settlement Amount.³⁰ Pursuant to the
22 terms of the Settlement, the Net Settlement Amount of approximately \$225,597.55 will be
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24 ¹⁹ Simpluris Decl., ¶ 5.

²⁰ Ibid.

²¹ *Id.*, ¶ 6.

²² Ibid.

²³ *Id.*, ¶ 7.

²⁴ *Id.*, ¶ 8.

²⁵ Ibid.

²⁶ *Id.*, ¶ 8.

²⁷ *Id.*, ¶ 9.

²⁸ *Id.*, ¶ 10.

²⁹ *Id.*, ¶¶ 11-13.

³⁰ *Id.*, ¶ 11.

distributed to Participating Class Members in accordance with the terms of the Settlement. The highest Individual Settlement Share is currently estimated to be \$24,572.92 and the average Individual Settlement Share is currently estimated to be \$603.49.³¹ The highest Individual PAGA Payment is currently estimated to be \$587.57 and the average Individual PAGA Payment is currently estimated to be \$126.90.³²

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 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 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*, 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.

³¹ Simpluris Decl., ¶ 17. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Simpluris Declaration. See n.7, *supra*.

³² *Id.*, ¶ 19.

1 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1146. The
2 inquiry is not whether the settlement agreement is the best one that class members could have
3 possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.”
4 Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent
5 of the damages sought in order to be fair, reasonable, and ultimately, meaningful. Wershba, 91
6 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower
7 than it would be if the cases were to be successfully litigated, that is no bar to a class settlement
8 because the public interest may indeed be served by a voluntary settlement in which each side
9 gives ground in the interest of avoiding prolonged litigation. *Id.*

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

12 The Parties actively litigated the case since the Action commenced on March 1, 2021. Class
13 Counsel conducted significant investigation and formal and informal discovery into the facts of
14 the case, to assess the veracity, strength, and scope of the claims, and was preparing for class
15 certification and trial prior to reaching the Settlement.³³

16 The Parties conducted significant formal and informal discovery and investigation into the
17 facts of the case, and also formally and informally exchanged a large volume of information,
18 documents, and data throughout the course of the litigation and in connection with the mediation
19 and settlement negotiations.³⁴ The volume of data and documents that Class Counsel reviewed and
20 analyzed included, and were not limited to: employment records of Plaintiff, a detailed sampling
21 of Plaintiff’s time and pay data, Class Members’ time punch data, Defendant’s Employee
22 Handbook, company policies and procedures (including but not limited to documents regarding:
23 job descriptions, employment categories, performance evaluation, paid time off for non-
24 managerial, non-exempt employees, timekeeping, pay days, pay deductions and setoffs, work
25 schedules, cell phone usage, rest and meal periods, use of equipment and vehicles, business travel
26 expenses, employee conduct and work rules, attendance and punctuality, and personal
27

28 ³³ Mayer Decl., ¶ 6.

³⁴ *Ibid.*

appearance), and Defendant's confidential financial statements, among other information and documents.³⁵ Class Counsel propounded multiple sets of written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto, noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties. Class Counsel took the deposition of Defendant's Person Most Knowledgeable, Rami Nasser, on October 5, 2021. Class Counsel prepared for and defended the deposition of Plaintiff taken by Defendant on November 22, 2021.³⁶ Class Counsel had the opportunity to interview Plaintiff and other Class Members to gather facts and to identify potential witnesses. Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with the mediation and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of information, documents, and data in the course of litigation and the mediation and settlement negotiations.³⁷ Class Counsel reviewed and analyzed information, documents, and data obtained from Plaintiff, Defendant, and other sources. Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related papers, mediation brief, and settlement-related papers; and preparing for and attending court proceedings, settlement negotiations, and the mediation, among other tasks.³⁸

After conducting formal and informal discovery and investigation into the facts of the cases, the Parties participated in a formal, full-day mediation conducted by Lynn S. Frank, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.³⁹ In the course of mediation and settlement negotiations, the Parties exchanged class information, documents, and data, and discussed all aspects of the case, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and trial, the law relating to class certification, off-the-clock theory, meal and rest periods,

³⁵ Mayer Decl., ¶ 6.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ *Id.*, ¶ 8.

representative PAGA claims, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position. Arriving at a settlement that was acceptable to the Parties was not easy.⁴¹ Defendant and its counsel felt very strongly about Defendant ability to prevail on the merits and to avoid class certification. 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.⁴² 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.⁴³

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, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.⁴⁴ The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁵ Additionally, Class Counsel have extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.⁴⁶

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⁴⁰ Mayer Decl. ¶ 8.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Mayer Decl., ¶ 7.

⁴⁵ *Id.*, ¶¶ 6-8.

⁴⁶ *Id.*, ¶¶ 13-17.

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

The Settlement, which provides for a Total Settlement Amount of \$550,000.00, 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.⁴⁷ 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.⁴⁸ 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. Additionally, the Parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited

⁴⁷ Mayer Decl., ¶ 20.

⁴⁸ *Id.*, ¶¶ 5-8.

to, the written discovery encompassed in Plaintiff's Motions to Compel Further Responses to Special Interrogatories, further depositions of Defendants' Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Additional discovery would have certainly arisen, which would have cost the Parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Class here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

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

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

The Settlement, which provides for a Total Settlement Amount of \$550,000.00, 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 preparing for mediation and conducting ongoing settlement negotiations. 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 Total Settlement Amount represents a considerable recovery.

Even after deducting the Attorneys' Fees and Costs in the amount of \$181,500.00 in fees and \$18,002.45 in costs, Enhancement Payment in the amount of \$15,000.00, Settlement Administration Costs in the amount of \$9,900.00, and the allocation of PAGA Amount of \$100,000.00 from the Total Settlement Amount, the Net Settlement Amount is currently estimated to be \$225,597.55. Under the Settlement Agreement, the Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on

the number of Workweeks credited to him or her, and each Aggrieved Employee will be paid a *pro rata* share of 25% of the PAGA Amount, based on the number of Workweeks during the PAGA Period credited to him or her.⁴⁹ To date, there are 344 Participating Class Members, representing one hundred percent (100%) of the Class Members.⁵⁰ The highest Individual Settlement Share is currently estimated to be \$4,572.92 and the average Individual Settlement Share is currently estimated to be \$603.49.⁵¹ The highest Individual PAGA Payment is currently estimated to be \$587.57 and the average Individual PAGA Payment is currently estimated to be \$126.90.⁵² 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) 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.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

⁴⁹ Settlement Agreement, ¶¶ 53(d) and 53(e)(i).

⁵⁰ Simpluris Decl., ¶ 15.

⁵¹ *Id.*, ¶ 17.

⁵² *Id.*, ¶ 19.

⁵³ Mayer Decl., ¶ 20.

⁵⁴ *Id.*, ¶¶ 13-17.

⁵⁵ *Ibid.*

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 Class Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Class Settlement.*⁵⁶ California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors). Here, the lack of any objections speaks volumes about the fairness, reasonableness, and adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk*, 48 Cal.App.4th at 1802.

VI. THE ATTORNEYS' FEES REQUESTED 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*, 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*, 82 Cal.App.4th at 49.

⁵⁶ Simpluris Decl., ¶ 12.

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*, 1 Cal.5th at 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*, 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*, 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*, 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*, 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).

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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. 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*, 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*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent*,
16 557 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*, 1 Cal.5th 480 at 486 & 506. The California
20 Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar
21 cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check
22 and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he
23 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
27 reasonable fee award, courts award fees to serve as an economic incentive for lawyers to pursue
28 such litigation in order to achieve increased access to the judicial system for meritorious claims

1 and to enhance deterrents to wrongdoing. This is especially true in situations where multiple
2 similar alleged wrongs would not be economically feasible to pursue individually, such as here.
3 See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

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

11 Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement
12 Amount of \$550,000.00 on a non-reversionary basis. The requested attorneys’ fees are 33% of the
13 total value of the monetary settlement. In light of Class Counsel’s successful prosecution and
14 resolution of the case, the requested attorneys’ fees are appropriate and reasonable.

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

20 **C. The Attorneys’ Fees Requested Is Reasonable Based on the Factors**
21 **Considered in Determination of Fee Awards.**

22 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
23 to be considered in determining whether fee awards are reasonable: (1) the time and labor required;
24 (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal
25 services properly; (4) the preclusion of other employment by the attorney due to the acceptance of
26 the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation
27 imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the
28 experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature

1 and length of the professional relationship with the client; and (12) awards in similar cases.
2 *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

3 Each and every one of these factors favors the attorneys' fees sought here; however, some
4 of the most relevant factors to this Court's fee determination will be addressed herein. The Class
5 Counsel Fees Payment in the amount of \$181,500.00 (which is 33% of the Total Settlement
6 Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent
7 nature of Class Counsel's fee and the risks taken in commencing the case, the skill and
8 determination required, the results that Class Counsel have achieved, and the value of the
9 settlement that Class Counsel have obtained for the Class Members.

10 **1. Time & Labor.**

11 Class Counsel used its experience and skills, and dedicated the full extent of resources, to
12 litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as
13 demonstrated in the supporting declarations, Class Counsel have extensive experience in the
14 handling of class actions and complex litigation cases.⁵⁷

15 As outlined in the Declaration of Helene Mayer, Class Counsel has fully and actively
16 participated in litigation of the case.⁵⁸ Prior to commencing the lawsuit, Class Counsel had
17 conducted a significant amount of investigation into the factual and legal issues, Defendant's
18 business, and its operations and employment policies, practices, and procedures.⁵⁹ During the
19 litigation of the action, Class Counsel had the opportunity to interview Plaintiff and other Class
20 Members; reviewed and analyzed a large volume of pages of information, documents and data
21 obtained from Defendant, Plaintiff, and other sources; and prepared liability, damages, penalties,
22 and valuation calculations.⁶⁰ Class Counsel also met and conferred with Defendant's counsel over
23 the issues relating to pleadings, discovery, and the production of information, documents and data,
24 among other things; engaged in settlement negotiations with Defendant's counsel; and prepared
25 for and attended court proceedings, mediation, and settlement negotiations.⁶¹

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27 ⁵⁷ Mayer Decl., ¶¶ 13-17.

⁵⁸ *Id.*, Exh. A.

⁵⁹ *Id.*, ¶ 7.

⁶⁰ *Id.*, ¶¶ 6, 7.

⁶¹ *Id.*, ¶ 6.

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.⁶² 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 382.70 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, the Aggrieved Employees, and the State of California.⁶³ 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 those results. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

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

⁶² Mayer Decl., Exh. A.

⁶³ *Id.*, ¶¶ 11-12.

and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁶⁴

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 Participating Class 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 Total Settlement Amount of \$550,000.00 to settle the matter. The Settlement offers significant monetary relief to the Participating 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 382.70 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and Aggrieved Employees.⁶⁵ Class Counsel has also incurred litigation costs and expenses in the amount of \$18,002.45.⁶⁶

⁶⁴ Mayer Decl., ¶¶ 13-17.

⁶⁵ *Id.*, ¶¶ 11 and Exh. A.

⁶⁶ *Id.*, ¶ 18.

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁷ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁶⁸ 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.

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 have 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.⁶⁹

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)).

⁶⁷ Mayer Decl., ¶ 18.

⁶⁸ *Id.*, ¶¶ 13-17.

⁶⁹ Simpluris Decl., ¶ 12.

Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a Total Settlement Amount of \$550,000.00.⁷⁰ The Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement.

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.⁷¹

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*, 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*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum*, 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.

⁷⁰ Mayer Decl., ¶ 9.

⁷¹ *Id.*, ¶¶ 13-17.

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

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

5 As discussed above, the case was highly contested and required a significant amount of
6 time and labor. Defendant made it clear very early on that it disputed all of the allegations of the
7 case and disputed that the matter was appropriate for class or representative treatment. 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.⁷² The chart
25 demonstrates that Class Counsel has spent a total of 382.70 hours litigating the case and finalizing
26 the Settlement.⁷³ In light of the facts and circumstances of the case, as well as the results that Class
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28 ⁷² Mayer Decl., Exh. A.

⁷³ *Id.*, ¶¶ 11 and 12, Exh. A.

Counsel has achieved in these case, 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*, 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 \$550,000.00.

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.⁷⁴ 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.⁷⁵ 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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⁷⁴ Mayer Decl., ¶¶ 11 and 12.

⁷⁵ *Ibid.*

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$25,000.00. As set forth in the Declaration of Helene Mayer, Class Counsel seeks reimbursement of \$18,002.45 in litigation costs and expenses incurred in this case.⁷⁶ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁷⁷ The cost savings of \$6,997.55 will be part of the Net Settlement Amount, which will be distributed to Participating Class Members in accordance with the Settlement.⁷⁸

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

As set forth in the accompanying Simpluris, Inc. Declaration, the total costs incurred and to be incurred by Simpluris, Inc. for the notice and settlement administration process are \$9,900.00.⁷⁹ The Settlement provides for Settlement Administration Costs of up to \$12,000.00, and the remainder of \$2,100.00 will remain in the Net Settlement Amount.⁸⁰ The costs incurred and to be incurred include, but are not limited to, (a) printing and mailing the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, in both English and Spanish; (b) receiving and processing requests for exclusion; (c) resolving Participating Class Members' disputes over the number of Workweeks Defendant has record of them working during the Class Period, which was pre-printed on their individualized Class Notice; (d) calculating individual settlement payment amounts; (e) processing and mailing settlement award checks; (f) handling tax withholdings as required by the Settlement and the law; (g) preparing, issuing and filing tax returns and other applicable tax forms; (h) handling the distribution of any unclaimed funds pursuant to the terms of the Settlement; and (i) performing other tasks as the Parties mutually agree to and/or the Court orders Simpluris, Inc. to perform.⁸¹

⁷⁶ Mayer Decl., ¶ 18.

⁷⁷ Ibid.

⁷⁹ Simpluris Decl., ¶ 20.

⁷⁹ Simpluris Decl., ¶ 20.

⁸⁰ Settlement Agreement, ¶ 53(b).

⁸¹ Simpluris Decl., ¶ 3.

Accordingly, the Court should grant final approval of payment to Simpluris, Inc., a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of \$9,900.00.

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

The Settlement provides for an Enhancement Payment in the amount of \$15,000.00 to Plaintiff Sergio Santiago to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Enhancement Payment 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; (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 Class Representative Service Payment 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.⁸² Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information to support the pursuit of the case.⁸³

Accordingly, it is appropriate and just for Plaintiff Sergio Santiago to receive \$15,000.00, as a reasonable Enhancement Payment, in addition to his individual settlement payment.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Attorneys' Fees and Costs, Enhancement Payment, Settlement

⁸² Mayer Decl., ¶ 19; Declaration of Sergio Santiago ("Santiago Decl."), ¶¶ 3-5.

⁸³ Mayer Decl., ¶ 19; Santiago Decl., ¶¶ 3-5.

Administration Costs, and the allocation for PAGA Amount, in their entirety, as sought herein;
and permit the filing of a memorandum that exceeds the page limit.

Dated: November 12, 2024

LAWYERS for JUSTICE, PC

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