

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

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURT HOUSE

YASMINE RAMIREZ BARAHONA,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiff,

vs.

CARL’S JR. 800 INC., a California
corporation; BJ MART, LLC, an unknown
business entity; BR MART, INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 21STCV20100
Related to Case No.: 21STCV33550

Honorable Elihu M. Berle
Department SSC-6

CLASS ACTION

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

[Declaration of Class Counsel
(Joanna Ghosh); Declaration of Class
Representative (Yasmine Ramirez
Barahona); Declaration of Settlement
Administrator (Jennifer Beliveau); and
[Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: August 28, 2024
Time: 9:00 a.m.
Department: SSC6

Complaint Filed: May 27, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 28, 2024, at 9:00 a.m., in Department SSC-6
2 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff
3 Yasmine Ramirez Barahona a/k/a Jasmine Ramirez (“Plaintiff”) will and hereby does move for
4 an order granting final approval of:

5 1. The 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 **\$178,333.96** will be fully distributed to
9 all Class Members who did not timely opt out of the Class Settlement (“Settlement
10 Class Member”);
- 11 • As of the date of this Motion, **no Objections or Request for Exclusion** were
12 submitted to the settlement administrator, Simpluris, Inc. (“Settlement
13 Administrator”);
- 14 • Payment in the amount of **\$144,166.67** to Lawyers for Justice, PC, representing one-
15 third (1/3) of the Total Settlement Amount, for attorneys’ fees, which is reasonable
16 and justified on a percentage-basis and also based on a lodestar cross-check;

17 2. Payment in the amount of **\$18,999.37** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 3. Payment in the amount of **\$7,000.00** to the Settlement Administrator, Simpluris,
20 Inc. (“Simpluris”), for Settlement Administration Costs;

21 4. Payment in the amount of **\$9,000.00** to Plaintiff Yasmine Ramirez Barahona a/k/a
22 Jasmine Ramirez, as an Enhancement Award, for her time and effort in representing the Class;
23 and

24 5. Allocation of the penalties under the Private Attorneys General Act of 2004,
25 California Labor Code section 2698, *et seq.*, in the amount of \$75,000.00, of which seventy-five
26 percent (75%), or **\$56,250.00**, will be paid to the California Labor and Workforce Development
27 Agency (“LWDA”) (“LWDA Payment”) and twenty-five percent (25%), or **\$18,750.00**, will be
28

1 payable to the Aggrieved Employees on a *pro rata* basis, based on Workweeks during the PAGA
2 Period (i.e., Individual PAGA Payment).

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

6 This motion is based upon the following Memorandum of Points and Authorities; the
7 Declaration of Class Counsel (Joanna Ghosh), Class Representative (Yasmine Ramirez
8 Barahona), and Settlement Administrator (Jennifer Beliveau of Simpluris, Inc.) in support
9 thereof; the pleadings and other records on file with the Court in this matter; and such evidence
10 and oral argument as may be presented at the hearing on this Motion.

11 Dated: June 24, 2024

LAWYERS for JUSTICE, PC



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13 By: _____
14 Yasmin Hosseini
15 Attorneys for Plaintiff and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez (“Plaintiff” or “Class Representative”) seeks (1) the Total Settlement Amount of \$432,500.00¹; (2) attorneys’ fees in the amount of \$144,166.67, which is one-third (1/3) of the Total Settlement Amount², and reimbursement of litigation costs and expenses of \$18,999.37 (together “Attorneys’ Fees and Costs) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$7,000.00 to Simpluris, Inc. (“Settlement Administrator” or “Simpluris”); (4) Enhancement Award in the amount of \$9,000.00 to Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez; and (5) allocation of \$75,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalty Amount”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees of Defendants within the State of California employed between May 27, 2017 to December 11, 2023.³

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during mediation conducted by Donna D. Melby, Esq., and extensive settlement negotiations thereafter. This matter has required 362.90 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents one-third (1/3) of the Total Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.⁴

Plaintiff moves for final approval of the Enhancement Award in the amount of \$9,000.00, to compensate Plaintiff for the time and effort that she expended spearheading this lawsuit on

¹ Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), ¶ 8.mm.

² *Id.*, ¶ 12.

³ Settlement Agreement, ¶ 8.e. “Class Period” is defined as the period from May 27, 2017 through the date of Preliminary Approval (i.e., December 11, 2023).

⁴ Applying a reasonable rate of \$850 to 362.90 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$308,465.00 on Class Counsel’s services, and Class Counsel seeks an attorneys’ fees award of \$144,166.67.

1 behalf of the Class, Aggrieved Employees, and the State of California. Plaintiff also moves for
2 final approval of the payment to the Settlement Administrator in the amount of \$7,000.00 for
3 Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of
4 \$75,000.00 for the PAGA Penalty Amount, of which \$56,250.00 will be paid to the California
5 Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA Penalty
6 Amount (“LWDA Payment”), and \$18,750.00 will be distributed to all current and former
7 hourly-paid or non-exempt employees of Defendants in California employed between January
8 11, 2020 through December 11, 2023 (“Aggrieved Employees”).

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

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

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

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

2 Defendants are in the fast-food service industry and operate Carl's Jr. franchised
3 locations. Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez is a former employee of
4 Defendants.

5 On May 27, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los
6 Angeles County Superior Court ("Court"), thereby commencing the above-captioned lawsuit
7 ("*Barahona* Class Action").

8 On July 7, 2021, Plaintiff submitted notice to the California Labor & Workforce
9 Development Agency ("LWDA") and Defendants of her intent to pursue civil penalties under the
10 Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq.

11 On September 10, 2021, Plaintiff filed a Complaint for Enforcement Under the Private
12 Attorneys General Act in the Los Angeles County Superior Court ("*Ramirez* PAGA Action").

13 On January 5, 2022, Defendants filed a Notice of Related Case and on January 6, 2022,
14 the *Barahona* Class Action and the *Ramirez* PAGA Action were deemed related in Los Angeles
15 County Superior Court with the *Barahona* Class Action being the lead case (together, the
16 *Barahona* Class Action and *Ramirez* PAGA Action are referred to as "Actions").

17 Plaintiff's core allegation is that Defendants have violated the California Labor Code by
18 engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and
19 Aggrieved Employees, of, inter alia, failing to pay all overtime and minimum wages, failing to
20 provide compliant meal and rest periods and associated premium pay, failing to timely pay
21 wages during employment and upon termination of employment, failing to provide compliant
22 wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary
23 business expenses, and thereby engaged in unfair business practices in violation of California
24 Business and Professions Code section 17200, et seq. and conduct that gives rise to penalties
25 pursuant to PAGA. Plaintiff contends that she, and the Class Members, are entitled to, inter alia,
26 unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and
27 attorneys' fees.
28

1 Defendants have denied, and continues to deny, any liability and wrongdoing of any kind
2 associated with any of the allegations in the Actions, and further denies that the Actions are
3 appropriate for class treatment or representative adjudication for any purpose other than for
4 settlement purposes only.

5 The Parties have actively litigated the Action since the *Barahona* Class Action was
6 commenced on May 27, 2021. On June 22, 2022, the parties participated in a formal, full-day
7 mediation conducted by Donna D. Melby, Esq., a well-regarded mediator experienced in
8 mediating complex labor and employment matters, as well as re-engagements of Mediator on
9 January 10, 2023 and April 20, 2023 to continue settlement negotiations. With the aid of the
10 mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve
11 the Actions in their entirety.

12 On August 10, 2023, Plaintiff filed a Motion for Preliminary Approval of Class Action
13 Settlement and supporting documents.

14 On September 26, 2023, the Hearing on the Motion for Preliminary Approval occurred,
15 and the Court raised multiple points of inquiry for the Parties to address and continued the
16 Hearing on the Motion for Preliminary Approval.

17 On October 26, 2023, Plaintiff filed supplemental papers in support of the Motion for
18 Preliminary Approval.

19 On December 4, 2023, the continued Hearing on the Motion for Preliminary Approval
20 occurred, and the Court requested a revised class notice and revised proposed order to be
21 submitted by December 8, 2023.

22 On December 11, 2020, the Court entered an Order Granting Plaintiff's Motion for
23 Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby
24 preliminarily approving the terms of the Settlement, the Class Notice, and the proposed
25 administration procedures and associated deadlines.

26 Plaintiff now moves for final approval of the Settlement, and award Attorneys' Fees and
27 Costs, Enhancement Award, Settlement Administration Costs, and allocation for PAGA Penalty
28 Amount.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement, Defendants have agreed to pay a Total Settlement Amount of Four Hundred Thirty-Two Thousand Five Hundred Dollars (\$432,500.00) by making a deposit of One Hundred Forty-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$144,166.67) into a settlement account to be established by the Settlement Administrator within thirty (30) calendar days of the receipt of the Settlement Administrator's accounting ("First Installment"). Within seven (7) months after payment of the First Installment, Defendants will deposit One Hundred Forty-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$144,166.67) into an account to be established by the Settlement Administrator ("Second Installment"). Within seven (7) months after payment of the Second Installment, Defendants will make the final and third deposit of One Hundred Forty-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Six Cents (\$144,166.66), into a settlement account to be established by the Settlement Administrator ("Third Installment").⁵ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in the amount of One Hundred Forty-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$144,166.67) (i.e., up to one-third of the Total Settlement Amount) and reimbursement of costs and expenses in the amount of \$18,999.37 to Class Counsel (collectively referred to as the "Attorneys' Fees and Costs"); (2) Settlement Administration Costs in the amount of \$7,000.00 to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Penalty Amount in the amount of \$75,000.00; and (4) an Enhancement Award of Nine Thousand Dollars (\$9,000.00) to Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez ("Enhancement Award").⁶ The Net Settlement Amount, which is estimated to be \$178,333.96, will be distributed in accordance with the Settlement Agreement and there is no reversion to Defendants.⁷

The Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the

⁵ Settlement Agreement, ¶ 11.

⁶ *Id.*, ¶¶ 11, 12, 13, 14, & 15.

⁷ *Id.*, ¶ 11.

1 Settlement Agreement and as follows: the Settlement Administrator will divide the final Net
2 Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Final
3 Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the
4 Final Workweek Value to yield his or her Individual Settlement Share.⁸

5 The Settlement Administrator determine each Aggrieved Employee’s *pro rata* share of
6 25% the PAGA Penalty Amount (“Individual PAGA Payment”), in accordance with the
7 Settlement Agreement and as follows: the Settlement Administrator will divide the 25% of the
8 PAGA Penalty Amount by the Workweeks of all Aggrieved Employees during the PAGA Period
9 to yield the “PAGA Workweek Value,” and multiply each Aggrieved Employee’s individual
10 Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her
11 Individual PAGA Payment.⁹

12 Class Members had sixty (60) calendar days from the initial mailing of the Class Notice
13 (“Response Deadline”) to submit a Request for Exclusion, Objection and/or dispute of the
14 Workweeks.¹⁰ The Response Deadline is July 17, 2024.¹¹ ***As of the date of this Motion, the***
15 ***Settlement Administrator has not received any written objections to the Class Settlement***
16 ***(“Objection”) or requests to be excluded from the Class Settlement (“Requests for Exclusion”)***
17 ***from Class Members.***¹²

18 Each Settlement Class Member’s Individual Settlement Share will be allocated as follows:
19 fifteen percent (15%) as wages, which will be reported on an IRS Form W-2; and the remaining
20 eighty-five percent (85%) as penalties and interest, which will be reported on an IRS Form
21 1099.¹³ One hundred percent (100%) of each Individual PAGA Payment shall represent civil
22 penalties.¹⁴ The Settlement Administrator will withhold the employee’s share of taxes and
23 withholdings with respect to the wages portion of the Individual Settlement Shares, and issue
24 checks to Settlement Class Members for their Individual Settlement Payments.¹⁵ The employer’s

25 ⁸ Settlement Agreement, ¶ 16.a.ii.

26 ⁹ *Id.*, ¶ 16.b.

27 ¹⁰ *Id.*, ¶ 8.ii.

28 ¹¹ Simpluris Decl., ¶ 14.

¹² *Id.*, ¶¶ 15 & 16.

¹³ *Id.*, ¶ 27.

¹⁴ *Ibid.*

¹⁵ *Id.*, ¶ 27

share of taxes and contributions on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total Settlement Amount.¹⁶

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.¹⁷ All funds associated with such cancelled checks will be transmitted to the *cy pres*, Bet Tzedek, in accordance with California Code of Civil Procedure section 384.¹⁸

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 December 11, 2023 Preliminary Approval Order.

On December 12, 2023, Simpluris received the Court-approved text for the Class Notice.¹⁹

On December 22, 2023, Defendant's Counsel provided Simpluris with two files named, "Carls Jr 800 Timelog" and "Carls Jr. 7140 Timelogs". The Class Lists were not Excel-compatible therefore identifiable information was indecipherable. The "Carls' Jr 800 Timelog" file contained records for approximately ninety-five (95) individuals identified as Class Members. The "Carls Jr. 7140 Timelogs" file contained records for approximately eighty-nine (89) individuals identified as Class members. The Class Lists contained Employee Names, ID Numbers, Social Security Numbers, Addresses and what appeared to be wage statements, for a total of approximately one hundred and eighty-four (184) individuals.²⁰

Between January 18, 2024 and May 8, 2024, Defendants' Counsel provided files and emails containing clarification of additional data issues to include delineation between individuals and how to interpret the information provided to determine Workweeks and/or Pay Periods.²¹

¹⁶ *Ibid.*

¹⁷ *Id.*, ¶ 21.

¹⁸ *Ibid.*

¹⁹ Simpluris Decl., ¶ 5.

²⁰ *Id.*, ¶ 6.

²¹ *Id.*, ¶ 7.

On May 15, 2024, Defendants' Counsel provided Simpluris an updated Class List containing two worksheets named "800" and "7400" providing each Class Member's and/or Aggrieved Employee's, full names, last known mailing address, Social Security Number, dates worked for Defendant during the Class Period, and if applicable, during the PAGA Period, and dates worked for Defendants during the period May 27, 2017 to December 11, 2023 ("Class List").²² The Class List contained information for one hundred and fifty-eight (158) individuals identified as Class Members. Of the one hundred and fifty-eight (158) records, three (3) were removed as duplicative, leaving one hundred and fifty-five (155) records.²³ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.²⁴

On May 16, 2024, Simpluris mailed the Class Notice via first class mail to one hundred and fifty-five (155) individuals identified as Class Members in the Class List.²⁵

As of the date of this Motion, two (2) Class Notices were returned as undeliverable with forwarding addresses, and Simpluris promptly re-mailed the Class Notice to the forwarding addresses.²⁶ Twenty-three (23) Class Notices were returned as undeliverable without forwarding addresses.²⁷ Simpluris performed a skip-trace search on the twenty-three (23) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for seventeen (17) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²⁸ Ultimately, six (6) Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Class Notice was returned as undeliverable a second time.²⁹

As of the date of this Motion, the Settlement Administrator has not received any Objections or Requests for Exclusion from Class Members.³⁰

²² *Id.*, ¶ 8.

²³ *Ibid.*

²⁴ *Id.*, ¶ 9.

²⁵ Simpluris Decl., ¶ 11.

²⁶ *Id.*

²⁷ *Id.*, ¶ 12.

²⁸ *Id.*

²⁹ *Ibid.*

³⁰ *Id.*, ¶¶ 15 & 16.

To date, there are one hundred and fifty-five (155) Settlement 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.³¹ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$178,333.96 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.³² The highest Individual Settlement Share is currently estimated to be \$5,116.80 and the average Individual Settlement Share is currently estimated to be \$1,013.71.³³ The highest Individual PAGA Payment is currently estimated to be \$622.97 and the average Individual PAGA Payment is currently estimated to be \$120.97.³⁴

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

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

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

³¹ Simpluris Decl., ¶ 18.

³² *Id.*, ¶ 19. see also, n.**Error! Bookmark not defined.**, *supra*.

³³ *Id.*, ¶ 14. The actual average and highest Individual Settlement Shares will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel’s request for reimbursement of litigation costs and expenses in an amount that is less than \$33,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$14,000.63, will be part of the Net Settlement Amount) and Class Counsel’s request for attorneys’ fees in an amount that is less than thirty-five percent (35%) (i.e., \$151,375.00) (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$7,208.33, will be part of the Net Settlement Amount). See n.4, *supra*.

³⁴ *Id.*, ¶ 22.

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

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

The parties actively litigated the Action since the *Barahona* Class Action was commenced on May 27, 2021. Class Counsel conducted significant investigation and formal and informal discovery into the facts of the cases, to assess the veracity, strength, and scope of the claims, and was actively preparing for class certification and trial prior to reaching the Settlement.³⁵

The Parties conducted significant formal and informal discovery and investigation into the facts of the formally and informally exchanged a large volume of information, documents, and data throughout the course of the litigation and in connection with the mediations and

³⁵ Ghosh Decl., ¶¶ 10-12.

1 settlement negotiations.³⁶ The volume of data and documents that Class Counsel reviewed and
2 analyzed included and was not limited to: employment records of Plaintiff, sampling of class list
3 and class time and pay records, company policy acknowledgements, internal memoranda, and
4 operations and employment policies, practices, and procedures documents (including, but not
5 limited to, Employee Declaration of Paid Wages and Well Being and Cashier Policy and
6 Procedures), among other information and documents.³⁷ Class Counsel had the opportunity to
7 interview and obtain information from Plaintiff and percipient witnesses, and reviewed and
8 analyzed a volume of information, documents, and data obtained from Plaintiff, Defendants, and
9 other sources.³⁸ Class Counsel propounded multiple sets of written discovery requests on
10 Defendants (including, but not limited to Form Interrogatories – General (Set One), Special
11 Interrogatories (Sets One and Two), Requests for Production of Documents, noticed several
12 depositions of Defendants’ person(s) most knowledgeable, and reviewed Defendants’ objections
13 to deposition notices and accompanying requests for production of documents).³⁹ Class Counsel
14 also developed liability, damages, violation, and penalties valuation models in the course of
15 litigation and in connection with the mediation and settlement negotiations, and met and
16 conferred with Defendants counsel on numerous occasions, e.g., to discuss issues relating to the
17 pleadings, case management, discovery and production of various information, documents, and
18 data in the course of litigation and in connection with the mediation and settlement negotiations,
19 and the settlement.⁴⁰ Other work performed by Class Counsel included, and was not limited to,
20 case strategy and analysis; drafting, reviewing, and/or revising the pleadings, motion-related
21 papers, the mediation brief, and settlement documents; preparing for and attending court
22 proceedings, mediation, and settlement negotiations; and conducting review, analysis, and
23 assessment of Defendants’ financial circumstances, among other tasks.⁴¹

24 The Parties engaged in extensive settlement negotiations and participated in a formal,
25 full-day mediation conducted by Donna D. Melby, Esq., a well-respected mediator experienced

26 ³⁶ *Id.*, ¶ 6.

27 ³⁷ *Ibid.*

28 ³⁸ Ghosh Decl., ¶ 6.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Ibid.*

in mediating complex labor and employment matters, as well as re-engagements of Mediator on January 10, 2023 and April 20, 2023 to continue settlement negotiations.⁴² In the course of mediation and settlement discussions, the Parties exchanged information, documents, and data, and discussed various aspects of the cases, including and not limited to, the risks and delays of further litigation, the risks and expenses to the Parties of proceeding with class certification and trial, the law relating to class certification, manageability, off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴³ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁴ Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁵ After conducting investigations, significant formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties ultimately agreed that the cases were well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the Parties that would attend further litigation.⁴⁶

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals.⁴⁷ Class Counsel analyzed a large volume of information, documents, and data obtained from Defendants, 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 Defendants' defenses thereto, as well as facts discovered.⁴⁸ The Settlement was based on this large volume of facts, evidence,

⁴² Ghosh Decl., ¶¶ 10-12.

⁴³ Ghosh Decl., ¶ 8.

⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶ 8.

⁴⁶ Ghosh Decl., ¶ 8.

⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶ 7.

and investigation. Additionally, Class Counsel have extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.⁴⁹

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

The Settlement, which provides for a Total Settlement Amount of Four Hundred Thirty-Two Thousand Five Hundred Dollars (\$432,500.00), represents a fair, adequate, and reasonable resolution of the matter.⁵⁰ The Settlement was calculated using the information and data uncovered during litigation, 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 cases, the Total Settlement Amount represents a a considerable recovery.

Even after deducting the Attorneys' Fees in the amount of \$144,166.67, Attorneys' Costs in the amount of \$18,999.37, Enhancement Award in the amount of \$9,000.00, PAGA Penalty Amount in the amount of \$75,000.00, and Settlement Administration Costs in the amount of \$7,000.00, the Net Settlement Amount that is currently estimated to be One Hundred Seventy-Eight Thousand Three Hundred Thirty-Three Dollars and Ninety-Six Cents (\$178,333.96).⁵¹ As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement. The amount of each Settlement Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during the Class Period and the amount of each Aggrieved Employee's Individual PAGA Payment will be based on his or her Workweeks during the PAGA Period.⁵² To date, there are one hundred and fifty-five (155) Settlement Class Members, representing one hundred percent (100%) of the Class Members.⁵³ The highest Individual Settlement Share is currently estimated to be \$5,116.80 and the average Individual Settlement Share is currently estimated to be \$1,013.71.⁵⁴ The highest Individual PAGA Payment is currently estimated to be \$622.97 and

⁴⁹ *Id.*, ¶¶ 13-18.

⁵⁰ Ghosh Decl., ¶ 21.

⁵¹ Simpluris Decl., ¶ 19.

⁵² Settlement Agreement, ¶ 16.

⁵³ Simpluris Decl., ¶ 18.

⁵⁴ *Id.*, ¶ 20.

the average Individual PAGA Payment is currently estimated to be \$120.97.⁵⁵ 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.⁵⁶ 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.

C. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁵⁷ 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.⁵⁸ Both parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendants and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

There are no Notices of Objection to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Settlement.*⁵⁹ Specifically, no objections have been made as to the Total Settlement Amount or requested Attorneys’ Fees and Costs, Enhancement Award, Settlement

⁵⁵ Simpluris Decl., ¶ 22.

⁵⁶ Ghosh Decl., ¶ 21.

⁵⁷ *Id.*, ¶¶ 13-18.

⁵⁸ *Ibid.*

⁵⁹ Simpluris Decl., ¶ 16.

Administration Costs, or the allocation for PAGA Penalty Amount. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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

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

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

California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should

“ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will “chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims.” *Lealao, supra*, 82 Cal.App.4th at 53.

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

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

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys’ fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van*

Gemert (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁶⁰ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. See *Vincent, supra*, 557 F.2d at 769.

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

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

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

⁶⁰ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

1 See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

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

9 Under the terms of the Settlement Agreement, Defendants will pay a Total Settlement
10 Amount of \$432,500.00 on a non-reversionary Settlement. The requested attorneys’ fees are one-
11 third (1/3) of the total value of the monetary settlement. In light of Class Counsel’s successful
12 prosecution and resolution of the cases, the requested attorneys’ fees are appropriate and
13 reasonable.

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

21 The percentage method is consistent with, and is intended to mirror, the practice in the
22 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
23 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is
24 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
25 counsel’s work to the class is to review the consideration agreed to be paid by the named
26 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
27 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
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1 without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this
2 case, Plaintiffs have each agreed to contingency fees in excess of the amount sought.⁶¹

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

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

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

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

24 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
25 to be considered in determining whether fee awards are reasonable: (1) the time and labor
26 required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform
27 the legal services properly; (4) the preclusion of other employment by the attorney due to the

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⁶¹ Ghosh Decl., ¶ 9.

1 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
2 limitation imposed by the client or the circumstances; (8) the amount involved and results
3 obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the
4 case; (11) the nature and length of the professional relationship with the client; and (12) awards
5 in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d
6 768, 772.

7 Each and every one of these factors favors the attorneys' fees sought here; however,
8 some of the most relevant factors to this Court's fee determination will be addressed herein. The
9 award of attorneys' fees in the amount of \$144,166.67 (which is 1/3 of the Total Settlement
10 Amount) is commensurate with the time, effort, and expense dedicated to the cases, the
11 contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill
12 and determination required, the results that Class Counsel have achieved, and the value of the
13 settlement that Class Counsel have obtained for the Class Members.

14 **1. Time & Labor.**

15 Class Counsel used its experience and skills, and dedicated the full extent of resources, to
16 litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as
17 demonstrated in the supporting declaration, Class Counsel has extensive experience in the
18 handling of class actions and complex litigation matters.⁶²

19 As outlined in the Declaration of Joanna Ghosh, Class Counsel have fully and actively
20 participated in litigation of this cases.⁶³ Prior to commencing the lawsuit, Class Counsel had
21 conducted a significant amount of investigation into the factual and legal issues, Defendants'
22 business, and its operations and employment policies, practices, and procedures.⁶⁴ During the
23 litigation of the actions, Class Counsel had the opportunity to interview Plaintiffs and other Class
24 Members; reviewed and analyzed a large volume of pages of information, documents and data
25 obtained from Defendants, Plaintiffs, and other sources; and prepared liability, damages,
26 penalties, and valuation calculations.⁶⁵ Class Counsel also met and conferred with Defendants'

27 ⁶² Ghosh Decl., ¶¶ 12-16.

28 ⁶³ Ghosh Decl., ¶ 6.

⁶⁴ *Id.*, ¶ 6.

⁶⁵ *Ibid.*

counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery and production of various information, documents, and data in the course of litigation and in connection with the mediation and settlement negotiations, and the settlement. Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and/or revising the pleadings, motion-related papers, the mediation brief, and settlement documents; preparing for and attending court proceedings, mediation, and settlement negotiations; and conducting review, analysis, and assessment of Defendants' financial circumstances, among other tasks.⁶⁶

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 Joanna Ghosh, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff and the Class. 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 362.90 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff and the Class. These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

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

⁶⁶ Ghosh Decl., ¶ 6.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Joanna Ghosh, Class Counsel used their extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁶⁷

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

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

The Settlement at this stage is preferred over continued litigation because such resolutions save time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Settlement Class Members, the State of California, and 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 extensive settlement negotiations, Defendants agreed to pay a Total Settlement Amount of \$432,500.00 to settle the matter. After deducting the attorneys' fees (\$144,166.67), litigation costs and expenses (\$18,999.37), Enhancement Award

⁶⁷ Ghosh Decl., ¶¶ 15-17pp.;

1 (\$9,000.00), Settlement Administration Costs (\$7,000.00), and PAGA Penalty Amount
2 (\$75,000.00) from the Total Settlement Amount, it is currently estimated that the Net Settlement
3 Amount is approximately \$178,333.96.⁶⁸ The Net Settlement Amount will be fully distributed in
4 accordance with the terms of the Settlement. The highest Individual Settlement Share is
5 currently estimated to be \$5,116.80 and the average Individual Settlement Share is currently
6 estimated to be \$1,013.71.⁶⁹ The highest Individual PAGA Payment is currently estimated to be
7 \$622.97 and the average Individual PAGA Payment is currently estimated to be \$120.97.⁷⁰ The
8 Settlement offers significant monetary relief to the Settlement Class Members.

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

10 Plaintiff entered into a contingency fee agreement with Class Counsel, and the
11 representation of the Class provided by Class Counsel has been wholly contingent. Class
12 Counsel took on the case without knowing whether any recovery would be obtained. Class
13 Counsel have collectively invested 362.90 hours of time to obtain relief on behalf of Plaintiff and
14 the Class.⁷¹ Class Counsel has also collectively incurred litigation costs and expenses in the
15 amount of \$18,999.37.⁷²

16 Class Counsel have borne all of the risks and costs of litigation and will not receive any
17 compensation until recovery is obtained.⁷³ Class Counsel are well-experienced in wage-and-hour
18 class action and complex litigation and used that experience to obtain a great result.⁷⁴ The skill
19 and determination that Class Counsel have shown, along with the results obtained, justify the
20 requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed,
21 and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

24 A contingent fee must be higher than a fee for the same legal services paid as they
25 are performed. The contingent fee compensates the lawyer not only for the legal

26 ⁶⁸ Simpluris Decl., ¶ 19; see n.4, *supra*.

27 ⁶⁹ *Id.*, ¶ 20.

28 ⁷⁰ *Id.*, ¶ 22.

⁷¹ Ghosh Decl., ¶ 11, Exh. A;

⁷² *Id.*, ¶ 19.

⁷³ *Ibid.*

⁷⁴ *Id.*, ¶¶ 13-18.

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 or opted out of the Class Settlement.⁷⁵

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

Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Total Settlement Amount of \$432,500.00.⁷⁶ The Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share is currently estimated to be \$5,116.80 and the average Individual Settlement Share is currently estimated to be \$1,013.71.⁷⁷ The highest Individual PAGA Payment is currently estimated to be \$622.97 and the average Individual PAGA Payment is currently estimated to be \$120.97.⁷⁸

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⁷⁵ Simpluris Decl., ¶¶ 15 & 16.

⁷⁶ Ghosh Decl., ¶12.

⁷⁷ *Id.*, ¶ 20.

⁷⁸ *Id.*, ¶ 22.

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.⁷⁹

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

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination"); see also, e.g., *Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."). Importantly, "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" of the settlement amount and "does not impose an absolute maximum or minimum on the potential fee award." *Laffitte, supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

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

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

As discussed above, the case was highly contested and required a significant amount of

⁷⁹ Ghosh Decl., ¶¶ 13-18.

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

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Joanna Ghosh are time and charts that set forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁸⁰ The charts demonstrate that Lawyers for Justice, PC have spent a total of 362.90 hours litigating the cases and finalizing the Settlement.⁸¹ In light of the facts and circumstances of the cases, as well as the results that Class Counsel have achieved on behalf of Plaintiff and the Class Members, Class Counsel have spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

⁸⁰ See Ghosh Decl., Exh. A;

⁸¹ Ghosh Decl., ¶ 11.

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

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

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel’s dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$432,500.00.

As set forth in the Declaration of Joanna Ghosh, the professional backgrounds and experience of Lawyers for Justice, PC support a reasonable blended hourly rate of compensation of at least \$850 per hour for services provided by Class Counsel.⁸² Lawyers for Justice, PC has been awarded attorneys’ fees, compensating the firm at the blended rate of at least \$850 for legal service performed, by courts of this state.⁸³ While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys’ fees.

Applying the rate of \$850 per hour to 362.90 hours for services provided by Class Counsel would place a reasonable value of \$308,465.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys’ fees in the amount of \$144,166.67, which is one-third (1/3) of the total recovery, as provided for by the Settlement Agreement.

⁸² Ghosh Decl., ¶ 11.

⁸³ *Id.*

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

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys’ fees in the amount of \$144,166.67 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$33,000.00. As set forth in the Declaration of Joanna Ghosh Class Counsel, Class Counsel seeks reimbursement of \$18,999.37 in litigation costs and expenses.⁸⁴ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁸⁵ The cost savings of \$14,000.63 will be part of the Net Settlement Amount, which will be distributed to the

⁸⁴ Ghosh Decl., ¶ 18.

⁸⁵ *Id.*, ¶ 18.

Settlement Class Members in accordance with the Settlement.⁸⁶ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$18,999.37 to Class Counsel.

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

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$7,000.00.⁸⁷ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Class Notice to the Class Members in both English and Spanish; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Objections, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and Individual PAGA Payments and preparing the associated tax forms; and transmitting payments, among other things.⁸⁸

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$7,000.00.

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

The Settlement provides for an Enhancement Award in the amount of \$9,000.00 to Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez to compensate Plaintiff for the time and effort that she expended on behalf of the Class, Aggrieved Employees, and the State of California. The requested Enhancement Award is both common and reasonable and should be awarded.

In determining whether to make Enhancement Award, 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

⁸⁶ Ghosh Decl., ¶ 19.

⁸⁷ Simpluris Decl., ¶ 23.

⁸⁸ *Id.*, ¶ 3.

amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative).

The requested Enhancement Award is fair and appropriate because Plaintiff 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.⁸⁹ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain, and gave, information to support the pursuit of the cases.⁹⁰

Accordingly, it is appropriate and just for Plaintiff Yasmine Ramirez Barahona a/k/a Jasmine Ramirez to receive \$9,000.00 as a reasonable Enhancement Award, in addition to her individual settlement payments.

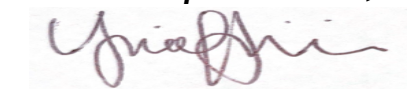
X. CONCLUSION

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

Dated: June 24, 2024

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiff and the Class

⁸⁹ Ghosh Decl., ¶ 20; Declaration of Yasmine Ramirez Barahona ("Barahona Decl."), ¶¶ 3-5.

⁹⁰ Ghosh Decl., ¶ 20; Barahona Decl., ¶¶ 3-5.