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

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

Plaintiff,

vs.

ARKEMA INC., an unknown business entity;
BOSTIK, INC., an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: BC721328

Honorable Maren E. Nelson
Department SSC-17

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Christopher Rodriguez);
Declaration of Settlement Administrator
(Desirae Burton); and [Proposed] Final
Approval Order and Judgment filed
concurrently herewith]

Date: September 26, 2023
Time: 9:00 a.m.
Department: SSC-17

Complaint Filed: September 17, 2018
1AC Filed: October 31, 2018
2AC Filed: December 26, 2018
3AC Filed: August 25, 2020
4AC Filed: July 9, 2021
5AC Filed: January 4, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 26, 2023 at 9:00 a.m., or as soon
2 thereafter as the matter may be heard before the Honorable Maren E. Nelson in Department SSC-
3 17 of the Superior Court of California for the County of Los Angeles, located at 312 N. Spring
4 Street, Los Angeles, California 90012, Plaintiff Christopher Rodriguez (“Plaintiff” or “Class
5 Representative”) will, and hereby does, move for an order granting final approval of:

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

- 9 • A Net Settlement Fund of approximately **\$556,439.44** will be fully distributed to the
10 Class Members who did not submit a timely and valid Request for Exclusion
11 (“Participating Class Members”);
12 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
13 (“Settlement Administrator”);
14 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

15 2. Payment in the amount of **\$371,852.17** to Lawyers for Justice, PC (“Class
16 Counsel”), representing one-third (1/3) of the escalated Gross Settlement Fund, for attorneys’
17 fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-
18 check;

19 3. Payment in the amount of **\$25,014.91** to Class Counsel for reimbursement of
20 litigation costs and expenses;

21 4. Payment in the amount of **\$4,750.00** to the Settlement Administrator, Simpluris,
22 Inc. (“Simpluris”), for Settlement Administrator Costs;

23 5. Payment in the amount of **\$7,500.00** to Plaintiff Christopher Rodriguez, as a Class
24 Representative Service Award, for his time and effort in representing the Class; and

25 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
26 California Labor Code section 2698, *et seq.*, in the amount of \$150,000.00, of which seventy-five
27 percent (75%), or **\$112,500.00**, will be paid to the California Labor and Workforce Development
28 Agency and twenty-five percent (25%), or **\$37,500.00**, will be distributed to PAGA Members.

1 This Motion is made pursuant to Rule 3.764, Rule 3.769, and Rule 3.1113(e) of the
2 California Rules of Court, which require approval by the Court of a class action settlement and
3 permit the Court to extend the page limit for memoranda.

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

9 Dated: August 31, 2023

LAWYERS for JUSTICE, PC



10
11 By: _____

Edwin Aiwarzian
Arby Aiwarzian
Joanna Ghosh
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Christopher Rodriguez (“Plaintiff”) seeks final approval of the First Amended Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Arkema Inc. and Bostik, Inc. (“Defendants”), on the other hand. Plaintiff seeks final approval of: (1) the escalated Gross Settlement Fund of One Million One Hundred Fifteen Thousand Five Hundred Fifty-Six Dollars Fifty Two Cents (\$1,115,556.52);¹ (2) attorneys’ fees in the amount of Three Hundred Seventy-One Thousand Eight Hundred Fifty Two Dollars Seventeen Cents (\$371,852.17), which is one-third (1/3) of the escalated Gross Settlement Fund (although the Settlement Agreement provides for attorneys’ fees of up to thirty-five percent (35%) of the total settlement), and reimbursement of litigation costs and expenses in the amount of \$25,014.91 (together, “Class Counsel Award”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administrator Costs in the amount of Four Thousand Seven Hundred Fifty Dollars (\$4,750.00) to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Class Representative Service Award in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Christopher Rodriguez; and (5) allocation of One Hundred Fifty Thousand Dollars (\$150,000.00) for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

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¹ First Amended Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Settlement Agreement”). Under the Settlement, the original Gross Settlement Fund was One Million One Hundred Thousand Dollars (\$1,100,000.00). The escalator provision in the Settlement Agreement provides that, to the extent the number of Compensable Work Weeks for the Class Period exceed 18,427 by more than ten percent (10%) (i.e., if the Compensable Work Weeks for the Class Period exceed 20,270), it will trigger an escalation of the Gross Settlement Fund whereby the Gross Settlement Fund shall increase by one percent (1%) for every one percent (1%) increase in Compensable Work Weeks over the ten percent (10%) threshold. *See id.*, § III.28. The Settlement Administrator has confirmed that the total number of Compensable Work Weeks during the Class Period were twenty thousand five hundred thirty (20,530). Aiwazian Decl., ¶ 14. As such, the escalated Gross Settlement Fund is \$1,115,556.52. *Ibid.* As discussed in the accompanying declaration from the settlement administrator, Simpluris determined that the escalated gross settlement amount is \$1,115,556.52 (and used this amount to calculate estimated individual settlement payments), although the notice of class action settlement inadvertently referenced \$1,122,000

1 Plaintiff seeks relief on behalf of the following Class:

2 All current and former nonexempt employees who were employed by
3 Defendants in California during the period September 17, 2014 to November
4 1, 2021 (“Settlement Class Members” or “Settlement Class”).²

5 This matter involved ongoing investigations, formal and informal discovery, review and
6 analysis of a large volume of information, documents, and data prior to and during mediation
7 conducted by Jeffrey Krivis, Esq., and extensive settlement negotiations. This matter has
8 required 622.30 hours of attorney time by Class Counsel. As will be demonstrated herein, the
9 request for attorneys’ fees, which represents one-third (1/3) of the Gross Settlement Fund, is
10 fully supported by the use of the percentage-fee method. Courts have historically awarded fees
11 of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported
12 under the lodestar cross-check method.

13 Plaintiff moves for final approval of the Class Representative Service Award in the
14 amount of \$7,500.00 to compensate Plaintiff for the time and effort that he expended
15 spearheading the lawsuit on behalf of the Class. Plaintiff also moves for final approval of the
16 payment to the Settlement Administrator in the amount of \$4,750.00 for Settlement
17 Administrator Costs. Plaintiff also moves for final approval of the allocation of \$150,000.00 for
18 the PAGA Payment, of which \$112,500.00 will be paid to the California Labor Workforce and
19 Development Agency (“LWDA”) for its portion of the PAGA Payment (“LWDA Payment”),
20 and \$37,500.00 will be distributed to all current and former hourly-paid or non-exempt
21 employees who were employed by Defendants in California during the period September 17,
22 2014 to November 1, 2021 (“PAGA Members”) for their portion of the PAGA Payment.

23 The requests for Class Counsel Award, Class Representative Service Award, Settlement
24 Administrator Costs, and allocation for the PAGA Payment were fully disclosed in the Notice of
25 Pendency of Class Action Settlement and Final Approval Hearing Date (“Class Notice”) that was
26 mailed to the Settlement Class Members. Most importantly, as of the date of this Motion, *not a*
27 *single Class Member has objected to any aspect of the Settlement, including the requested Class*

28 ² Settlement Agreement, § I.41.

Counsel Award, Class Representative Service Award, Settlement Administrator Costs, or allocation for PAGA Payment.

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

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Arkema Inc. focuses on specialty chemicals and advanced materials and is organized into three (3) business segments – Coating Solutions, Industrial Chemicals, and Performance Products. As a global chemical major, Defendant Arkema Inc. has operations in over fifty (50) countries. Within California, Defendant Arkema Inc. operates plants in Temecula under the name Bostik and in Torrance under the name Arkema. Defendant Bostik, Inc. is a subsidiary of Defendant Arkema Inc. Plaintiff is a former employee of Defendants.

On September 17, 2018, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On October 31, 2018, Plaintiff filed a First Amended Class Action Complaint for Damages, which removed causes of action for alleged violations of California Labor Code sections 204 and 1174(d) ("First Amended Complaint").

///

On December 26, 2018, Plaintiff filed a Second Amended Class Action Complaint for Damages amending the allegations of his sixth cause of action pertaining to alleged inaccurate wage statements by consolidating the putative subclass and damages sought with respect to this claim (“Second Amended Complaint”).

On January 29, 2019, Plaintiff propounded multiple sets of discovery requests, including Requests for Production of Documents (Set One); Special Interrogatories (Sets One & Two); and Form Interrogatories (Set One), on Defendant Arkema Inc. and noticed the deposition of Defendant Arkema Inc.’s Person Most Knowledgeable regarding wage and hour practices and organizational structure of Defendant Arkema Inc. along with requests for production of documents.

On June 26, 2019, Defendant Arkema Inc. filed an Answer to Plaintiff’s Second Amended Complaint.

On August 25, 2020, Plaintiff filed a Third Amended Class Action Complaint for Damages adding Bostik, Inc. as a named defendant (“Third Amended Complaint”).

On October 23, 2020, Defendant Bostik, Inc. filed a Demurrer and Motion to Strike Portions of Plaintiff’s Third Amended Complaint.

On April 26, 2021, Plaintiff filed an Opposition to Defendant Bostik, Inc.’s Demurrer and Motion to Strike Portions of Plaintiff’s Third Amended Complaint.

On May 3, 2021, Defendant Bostik, Inc. filed a Reply in Support of its Demurrer and Motion to Strike Portions of Plaintiff’s Third Amended Complaint.

On June 10, 2021, the Court filed an Order Sustaining Demurrer and Granting Motion to Strike.

On July 9, 2021, Plaintiff filed a Fourth Amended Class Action Complaint for Damages alleging an agency theory between Arkema Inc. and Bostik Inc.

On August 10, 2021, Plaintiff provided written notice to the Labor and Workforce Development Agency by online submission and to Defendants by certified mail, of the specific provisions of the California Labor Code that Defendant violated (“LWDA Notice”).

///

On January 4, 2022, Plaintiff filed a Fifth Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698 Et Seq. (“Fifth Amended Complaint” or “Operative Complaint”), which added a cause of action under PAGA and added causes of action for alleged violations of California Labor Code sections 204 and 1174(d).

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

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further deny 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 it was commenced on September 17, 2018. On August 2, 2021, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On June 1, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement (“Original Motion for Preliminary Approval”) and supporting documents seeking preliminary approval of the settlement reached by the Parties. On June 17, 2022, the Court

1 issued a Preliminary Approval Checklist (“June 17, 2022 Preliminary Approval Checklist”) in
2 which it raised multiple points of inquiry with regards to the Original Motion for Preliminary
3 Approval.

4 On June 20, 2022, the above-captioned matter came on for hearing of the Original
5 Motion for Preliminary Approval, at which time the Court inquired about the points of
6 inquiry set forth in the June 17, 2022 Preliminary Approval Checklist. The Parties orally
7 addressed these points and presented argument, and the Court continued the hearing date on
8 the Original Motion for Preliminary Approval. To address the Court’s points of inquiry
9 raised in the June 17, 2022 Preliminary Approval Checklist, the Parties met and conferred,
10 negotiated, and executed the Settlement Agreement.

11 On September 14, 2022, based on the Court’s inquiries in the June 17, 2022 Preliminary
12 Approval Checklist, Plaintiff filed a Joint Supplemental Brief in Support of Plaintiff’s Motion
13 for Preliminary Approval of Class Action Settlement, Supplemental Declaration of Alexandra
14 Rose in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement,
15 Declaration of Aaron Cole in Support of Plaintiff’s Motion for Preliminary Approval of
16 Class Action Settlement, Declaration of Eric Springer on Behalf of Simpluris, Inc. (Proposed
17 Settlement Administrator), and [Revised Proposed] Order Granting Preliminary Approval
18 of Class Action Settlement

19 On October 18, 2022, the above-captioned matter came on for hearing on the Original
20 Motion for Preliminary Approval, and the Court raised additional issues that the Parties needed
21 to address. The Parties orally addressed the points raised by the Court and presented argument
22 at the hearing, and the Court took the matter under submission. Subsequently, on October 27,
23 2022, the Court entered an Order Denying Motion for Preliminary Approval of Class Action
24 Settlement Without Prejudice (“October 27, 2022 Order”).

25 On January 13, 2023, Plaintiff filed a Renewed Motion for Preliminary Approval of Class
26 Action Settlement and supporting documents. On May 18, 2023, the Court entered an Order
27 Granting Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval
28

Order”), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Class Counsel Award, Class Representative Service Award, Settlement Administrator Costs, and allocation for PAGA Payment.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants have agreed to pay an escalated Gross Settlement Fund of \$1,115,556.52 on a non-reversionary basis. Subject to approval by the Court, the Net Settlement Fund will be calculated by deducting the following amounts from the Gross Settlement Fund: (1) Class Counsel Award, consisting of attorneys’ fees in the amount of \$371,852.17 and reimbursement of litigation costs and expenses in the amount of \$25,014.91, to Class Counsel; (2) Class Representative Service Award in the amount of \$7,500.00 to Plaintiff Christopher Rodriguez; (3) Settlement Administrator Costs in the amount of \$4,750.00 to Simpluris; and (4) PAGA Payment in the amount of \$150,000.00.³ The Net Settlement Fund, which is estimated to be \$556,439.44, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendants.⁴

The Settlement Administrator will calculate each Participating Class Member’s share of the Net Settlement Fund (“Individual Settlement Payment”) by first dividing the Net Settlement Fund by the total number of Compensable Work Weeks worked by all Participating Class Members, the product of which is the “Compensable Class Work Weeks Value.”⁵ Each Participating Class Member’s individual number of Compensable Work Weeks will then be

³ Settlement Agreement, §§ I.24, III.16, III.20, III.21, III.22, III.24.

⁴ This amount is higher than the amount stated in Paragraph 17 of the accompanying Declaration of Desirae Burton on Behalf of Simpluris, Inc. (“Simpluris Declaration” or “Simpluris Decl.”) because the Settlement Administrator’s calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$34,000.00, and attorneys’ fee’s equal to 35% of the Gross Settlement Fund, which are allocated under the Settlement. However, Class Counsel seeks the amount of only \$25,014.91 for reimbursement of litigation costs and expenses (and the difference of \$8,985.09 will remain part of the Net Settlement Fund) and only one-third of the escalated Gross Settlement Fund in Attorneys’ Fees.

⁵ Settlement Agreement, § III.17(b).

multiplied by the Compensable Class Work Weeks Value to arrive at his or her Individual Settlement Payment.⁶

The Settlement Administrator will calculate each PAGA Member's *pro rata* share of the PAGA Payment ("Individual PAGA Payment"), by first dividing twenty-five percent (25%) of the PAGA Payment (\$37,500) by the total number Compensable Work Weeks worked by all PAGA Members, the product of which is the "Compensable PAGA Work Weeks Value".⁷ Each PAGA Member's individual number of Compensable Work Weeks will then be multiplied by the Compensable PAGA Work Weeks Value to yield his or her Individual PAGA Payment.⁸

Class Members had forty-five (45) calendar days after the initial mailing of the Class Notice to Class Members to submit a Compensable Work Weeks Dispute, opt out of the Class Settlement, and/or object to the Class Settlement ("Response Deadline").⁹ The Response Deadline was August 20, 2023.¹⁰ *As of the date of this Motion, the Settlement Administrator has received no written requests for exclusion from the Class Settlement ("Requests for Exclusion") and no objections to the Class Settlement ("Objections") from Class Members.*¹¹

Individual Settlement Payments will be allocated as twenty percent (20%) wages, to be reported on IRS Form W-2; and eighty percent (80%) as interest, penalties, and non-wage damages, to be reported on IRS Form 1099 (if applicable).¹² Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.¹³ Individual Settlement Payments will be paid out to Participating Class Members subject to reduction for the employee's share of taxes, withholdings, and contribution with respect to the wages portion of the Individual Settlement Payments, and the net payment is referred to as "Individual Settlement Payment".¹⁴

The Individual Settlement Payment checks issued to Participating Class Members and

⁶ Settlement Agreement, § III.17(b).

⁷ *Id.*, § III.18(c).

⁸ *Ibid.*

⁹ *Id.*, § I.39.

¹⁰ Simpluris Decl., ¶ 10, Exh. A.

¹¹ *Id.*, ¶¶ 11 & 12.

¹² Settlement Agreement, § III.17(a).

¹³ *Id.*, § III.18(b).

¹⁴ *Id.*, § III.17(b)

Individual PAGA Payment checks issued to PAGA Members will remain valid for one hundred eighty (180) calendar days from the date of issuance.¹⁵ Any settlement checks remaining uncashed after one hundred eighty (180) calendar days will be canceled and the funds associated with such canceled checks will be transmitted to the California State Controller's Office Unclaimed Property Division in the name of the Participating Class Members and PAGA Members who did not negotiate their checks.¹⁶

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's May 18, 2023 Preliminary Approval Order.

On May 19, 2023, Simpluris received the Court-approved text for the Class Notice.¹⁷

On May 25, 2023, Simpluris received a mailing list from Defendants' counsel that contained the following information for each Class Member and PAGA Member: last known full name; last known mailing address; last known telephone number; Social Security number; email, if available; dates employed as a non-exempt employee of Defendants in California during the Class Period; and Compensable Work Weeks ("Class Information").¹⁸ The Class Information contained information for 116 individuals identified as Class Members.¹⁹ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Information with any updated addresses located.²⁰

On July 6, 2023, Simpluris mailed the Class Notice via First Class mail to 116 individuals identified as Class Members in the Class Information.²¹

As of the date of this Motion, zero Class Notices were returned as undeliverable with forwarding addresses.²² Ten (10) Class Notices were returned as undeliverable without

¹⁵ Settlement Agreement, § III.19.

¹⁶ Ibid.

¹⁷ Simpluris Decl., ¶ 5.

¹⁸ *Id.*, ¶ 6.

¹⁹ Ibid.

²⁰ *Id.*, ¶ 7.

²¹ *Id.*, ¶ 8.

²² *Id.*, ¶ 9.

forwarding addresses.²³ Simpluris performed a skip-trace search on the ten (10) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for all ten (10) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²⁴ Ultimately, zero (0) Class Notices remain undeliverable.²⁵

As of the date of this Motion, the Settlement Administrator has not received any Objections from Class Members or Requests for Exclusion.²⁶

To date, there are one hundred sixteen (116) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Participating Class Members.²⁷ Pursuant to the terms of the Settlement, the Net Settlement Fund of approximately \$556,439.44 will be distributed to Participating Class Members in accordance with the terms of the Settlement.²⁸ The highest Individual Settlement Payment is currently estimated to be \$8,933.30 and the average Individual Settlement Payment is currently estimated to be \$4,282.81.²⁹ The highest Individual PAGA Payment is currently estimated to be \$674.30 and the average Individual PAGA Payment is currently estimated to be \$323.28.³⁰

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

²³ Simpluris Decl., ¶ 10.

²⁴ Ibid.

²⁵ Ibid.

²⁶ *Id.*, ¶¶ 11 & 12.

²⁷ *Id.*, ¶ 14.

²⁸ *Id.*, ¶ 17; see also, n.4, *supra*.

²⁹ *Id.*, ¶ 18. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Fund is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$34,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$8,985.09, will be part of the Net Settlement Fund).

³⁰ *Id.*, ¶ 19.

governmental participant, and the reaction of the class members to the proposed settlement.

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

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

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

3 The parties actively litigated the case since the Action was commenced on September 17,
4 2018. Both sides investigated the veracity, strength, and scope of the claims, and Class Counsel was
5 actively preparing the case for class certification and trial, prior to reaching the settlement.³¹ Class
6 Counsel conducted significant investigation and formal and informal discovery regarding the
7 facts of the case, including and not limited to, the exchange, review, and analysis of thousands of
8 pages of documents and data produced by Defendants.³² The volume of data and documents that
9 Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment
10 records, class time and pay records (specifically, employee time records for Defendant Arkema,
11 Inc., sampling of employee time records for Defendant Bostik, Inc., employee pay records for
12 Defendant Arkema, Inc., and employee pay records for Defendant Bostik, Inc.), class lists,
13 Defendant Bostik, Inc.’s alternative workweek election letter, multiple iterations of Defendant
14 Bostik, Inc.’s Employee Handbook, company policy acknowledgements, forms (including, but
15 not limited to, Defendant Arkema Inc.’s Vacation/Time Off Request Form), internal memoranda,
16 job descriptions, Defendant Bostik Inc.’s operations and employment policies, practices, and
17 procedures documents (including, but not limited to, Timeclock Rules, Non-Exempt Overtime
18 Pay Policy, Travel and Entertainment policy, Emergency Shut-Down Pay policy, Uniforms &
19 Personal Protective Equipment (PPE) policy, and Dress Code policy), among other information
20 and documents.³³ Class Counsel conducted interviews to gather facts and to identify potential
21 witnesses.³⁴ Class Counsel propounded multiple sets of formal written discovery requests on
22 Defendant Arkema Inc. and noticed the depositions of Defendant Arkema Inc.’s Person Most
23 Knowledgeable designees.³⁵ Counsel for the Parties also met and conferred on numerous
24 occasions, e.g., to discuss issues relating to the pleadings, motion practice, discovery, and the
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26 ³¹ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

27 ³² Ibid.

28 ³³ Ibid.

³⁴ *Id.*, ¶ 8.

³⁵ *Id.*, ¶ 6.

1 production of documents and data in the course of litigation and prior to the mediation.³⁶ Class
2 Counsel also drafted pleadings, drafted moving, opposition, and reply papers in connection with
3 motion practice (e.g., Plaintiff's motion for leave to amend the complaint and Defendant Bostik
4 Inc.'s demurrer and motion to strike the Third Amended Complaint), prepared for mediation
5 multiple times and drafted Plaintiff's mediation brief, and prepared for and attended court
6 proceedings, settlement negotiations, and mediation, among other tasks.³⁷

7 After conducting formal and informal discovery and investigation into the facts of the
8 case, the parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a
9 well-regarded mediator experienced in mediating complex labor and employment matters.³⁸
10 Prior to and during mediation and settlement discussions, the parties exchanged information and
11 data, and discussed various aspects of the Action, including and not limited to, the risks and
12 delays of further litigation, the risks to the Parties of proceeding with class certification and/or
13 representative adjudication, the law relating to off-the-clock theory, meal and rest periods, overtime
14 and alternative workweeks, agency/joint employer/alter ego theories, wage-and-hour enforcement,
15 and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility
16 of appeals, among other things.³⁹ During all settlement discussions, the parties conducted their
17 negotiations at arm's length in an adversarial position.⁴⁰ Arriving at a settlement that was
18 acceptable to the parties was not easy.⁴¹ Defendants and their counsel felt very strongly about
19 Defendants' ability to prevail on the merits and to obtain a denial of class certification, while
20 Plaintiff and Class Counsel believed that class certification would be obtained and Plaintiff
21 would prevail at trial.⁴² With the aid of the mediator's evaluation, the parties agreed that the
22 matter was well-suited for settlement given the legal issues relating to Plaintiff's principal
23 claims, as well as the costs and risks to the parties that would attend further litigation.⁴³

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25 ³⁶ Aiwazian Decl., ¶ 8.

26 ³⁷ Ibid.

27 ³⁸ Ibid.

28 ³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the Action might have concluded at certification, trial, and/or appeals. The Parties have had the opportunity to interview and obtain information from percipient witnesses.⁴⁴ Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Settlement Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁵ The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁶ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class and representative action litigation.⁴⁷

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

The Settlement, which provides for an escalated Gross Settlement Fund of \$1,115,556.52, represents a fair, adequate, and reasonable resolution of the matter, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁸ The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation.⁴⁹ Had the Action not settled, Defendants would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendants contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendants would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendants also faced the risk of the Court

⁴⁴ Aiwazian Decl., ¶ 6.

⁴⁵ Ibid.

⁴⁶ *Id.*, ¶¶ 6 & 8.

⁴⁷ *Id.*, ¶¶ 16-19.

⁴⁸ *Id.*, ¶¶ 8 & 22.

⁴⁹ *Id.*, ¶¶ 5-8.

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 PAGA Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the matter, 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 to, 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. Further 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 Defendants 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, the State of California, and PAGA Members.

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

2 The Settlement, which provides for an escalated Gross Settlement Fund of One Million
3 One Hundred Fifteen Thousand Five Hundred Fifty-Six Dollars Fifty Two Cents
4 (\$1,115,556.52), represents a fair, reasonable, and adequate resolution of the Action. The
5 Settlement was calculated using information and data uncovered through extensive case
6 investigation, formal and informal discovery, and the exchange of information in the context of
7 mediation. The Settlement takes into account the potential risks and rewards inherent in any case
8 and, in particular, in this matter. Moreover, considering all of the facts in the Action, the Gross
9 Settlement Fund represents a considerable recovery.

10 After deducting attorneys' fees in the amount of \$371,852.17, litigation costs and
11 expenses in the amount of \$25,014.91, Class Representative Service Award of \$7,500.00,
12 Settlement Administrator Costs in the amount of \$4,750.00, and PAGA Payment in the amount
13 of \$150,000.00 from the escalated Gross Settlement Fund of \$1,115,556.52, the Net Settlement
14 Fund is currently estimated to be \$556,439.44.⁵⁰ Under the Settlement Agreement, the Gross
15 Settlement Fund will be fully paid out without any reversion to Defendants, in accordance with
16 the terms of the Settlement. As discussed in Section III, *supra*, each Participating Class Member
17 will be paid a *pro rata* share of the Net Settlement Fund, based on the number of Workweeks
18 credited to him or her. To date, there are One Hundred Sixteen (116) Participating Class
19 Members, representing 100% of the Class Members.⁵¹ The highest Individual Settlement
20 Payment to a Participating Class Member is currently estimated to be \$8,933.30 and the average
21 Individual Settlement Payment is currently estimated to be \$4,282.81.⁵² The highest Individual
22 PAGA Payment to an PAGA Member is currently estimated to be \$674.30 and the average
23 Individual PAGA Payment to an PAGA Member is currently estimated to be \$323.28.⁵³ These
24 are significant individual recoveries, particularly in light of the risks of litigation.

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27 ⁵⁰ Simpluris Decl., ¶ 17; see n.4, *supra*.

⁵¹ Simpluris Decl., ¶ 14.

⁵² *Id.*, ¶ 18; see n.29, *supra*.

⁵³ *Id.*, ¶ 19.

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 Fund. 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 PAGA Members, and the State of California.⁵⁴ 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 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.⁵⁵ 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.⁵⁶ 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 Action and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Class Settlement.*⁵⁷ Specifically, no objections have been made as to the Gross Settlement Fund or requested Class Counsel Award, Class Representative Service Award, Settlement Administrator Costs, or the allocation for PAGA Payment. California courts have consistently found that a small number of objectors indicates the class’ support for a settlement

⁵⁴ Aiwazian Decl., ¶ 22.

⁵⁵ *Id.*, ¶¶ 16-19.

⁵⁶ *Ibid.*

⁵⁷ Simpluris Decl., ¶ 12.

1 and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval
2 granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final
3 approval granted despite 9 objectors).

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

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

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

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

23 California law provides that an attorneys' fees award should be equivalent to fees paid in
24 the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert*
25 *Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to
26 a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should
27 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
28 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, 34.⁵⁸ 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. See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

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⁵⁸ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

8 Under the terms of the Settlement Agreement, Defendants will pay an escalated Gross
9 Settlement Fund of \$1,115,556.52 on a non-reversionary basis. The requested attorneys’ fees are
10 one-third (1/3) of the total value of the monetary settlement. In light of Class Counsel’s
11 successful prosecution and resolution of the Action, the requested attorneys’ fees are appropriate
12 and reasonable.

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

20 The percentage method is consistent with, and is intended to mirror, the practice in the
21 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
22 arrangements with their clients. A named plaintiff’s agreement to pay a contingent fee is
23 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
24 counsel’s work to the class is to review the consideration agreed to be paid by the named
25 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
26 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
27 without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this
28 case, Plaintiff has agreed to a contingency fee of at least thirty-nine percent (39%) of the

recovery.⁵⁹

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

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

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

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

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

⁵⁹ Aiwazian Decl., ¶ 15.

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 \$371,852.17 (which is 1/3 of the Gross Settlement
10 Fund) is commensurate with the time, effort, and expense dedicated to the Action, the contingent
11 nature of Class Counsel's fee and the risks taken in commencing the Action, the skill and
12 determination required, the results that Class Counsel has achieved, and the value of the
13 settlement that Class Counsel has 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.⁶⁰

19 As outlined in the Declaration of Edwin Aiwazian, Class Counsel has fully and actively
20 participated in litigation of the action.⁶¹ Prior to commencing the action, Class Counsel had
21 conducted a significant amount of investigation into the factual and legal issues, Defendants'
22 business, and their operations and employment policies, practices, and procedures.⁶² During the
23 litigation of the action, Class Counsel interviewed Plaintiff and other Class Members;
24 propounded multiple sets of written discovery; noticed the Person Most Knowledgeable
25 depositions of Defendant Arkema Inc.; reviewed and analyzed a large volume of pages of
26 documents and data produced by Defendants and obtained through other sources; and prepared

27 ⁶⁰ Aiwazian Decl., ¶¶ 16-19.

28 ⁶¹ *Id.*, Exh. A.

⁶² *Id.*, ¶ 6 & Exh. A.

1 damages/valuation calculations.⁶³ Class Counsel also met and conferred with Defendants’
2 counsel over issues relating to the pleadings, motion practice, discovery, and the production of
3 documents and data in the course of litigation and mediation and settlement discussions. Class
4 Counsel also drafted pleadings, drafted moving, opposition, and reply papers in connection with
5 motion practice (e.g., Plaintiff’s motion for leave to amend the complaint and Defendant Bostik
6 Inc.’s demurrer and motion to strike the Third Amended Complaint), prepared for mediation
7 multiple times and drafted the mediation brief, and prepared for and attended court proceedings,
8 mediation, and settlement negotiations.⁶⁴

9 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
10 matter diligently and with maximum efficiency and has fully and actively participated in the
11 litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
12 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel
13 has spent performing tasks on behalf of Plaintiff and the Class.⁶⁵ The Task and Time Chart is
14 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
15 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
16 chart, which sets forth the history of the work performed by Class Counsel, commencing with
17 the pre-filing analysis and research, and continuing up to settlement and final approval. Class
18 Counsel has spent 622.30 hours performing tasks and to obtain a significant recovery on behalf
19 of Plaintiff and the Class.⁶⁶ These hours were required to bring this matter to its successful
20 conclusion. In light of the value of time expended and the carrying of costs involved in litigating
21 the Action, the requested attorneys’ fees are fair, adequate, and reasonable.

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

23 The skill required to properly litigate the Action is evident not only in the results
24 achieved, but in the steps necessary to reach the same. Defendants retained well-respected
25 counsel to present their defenses. More specifically, Defendants and their counsel felt very
26

27 ⁶³ Aiwarzian Decl., ¶ 6.

⁶⁴ *Id.*, ¶ 11.

⁶⁵ *Id.*, Exh. A.

⁶⁶ *Id.*, ¶ 17.

strongly about Defendants' ability to obtain a denial of certification and to prevail on the merits. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing the Action, 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 matter to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwarzian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.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 case through certification proceedings, trial, and/or appeals. Had the Action 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 matter 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 PAGA Members while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

⁶⁷ Aiwarzian Decl., ¶¶ 16-19.

As a result of this litigation and extensive settlement negotiations, Defendants agreed to pay an escalated Gross Settlement Fund of \$1,115,556.52 to settle the matter. After deducting the attorneys' fees (\$371,852.17), litigation costs and expenses (\$25,014.91), Class Representative Service Award (\$7,500.00), Settlement Administrator Costs (\$4,750.00), and PAGA Payment (\$150,000.00) from the Gross Settlement Fund, it is currently estimated that the Net Settlement Fund is approximately \$556,439.44.⁶⁸ The Net Settlement Fund will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a Participating Class Member is currently estimated to be \$8,933.30 and the average Individual Settlement Payment is currently estimated to be \$4,282.81.⁶⁹ The highest Individual PAGA Payment to an PAGA Member is currently estimated to be \$674.30 and the average Individual PAGA Payment to an PAGA Member is currently estimated to be \$323.28.⁷⁰ The Settlement offers significant monetary relief to the Participating Class Members.

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

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 622.30 hours of time to obtain relief on behalf of Plaintiff and the Class.⁷¹ Class Counsel has also incurred litigation costs and expenses in the amount of \$25,014.91.⁷²

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

⁶⁸ Simpluris Decl., ¶ 17; see n.4, *supra*.

⁶⁹ *Id.*, ¶ 18; see n.29, *supra*.

⁷⁰ *Id.*, ¶ 19.

⁷¹ Aiwasian Decl., ¶ 17, Exh. A.

⁷² See Part VII, *infra*.

⁷³ Aiwasian Decl., ¶ 20.

⁷⁴ See *id.*, ¶¶ 16-19.

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 Action 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 matter 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.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 an escalated Gross Settlement Fund of \$1,115,556.52.⁷⁶ The Gross Settlement Fund will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment to a Participating Class Member is currently estimated to be \$8,933.30 and the average Individual Settlement Payment is currently

⁷⁵ Simpluris Decl., ¶ 12.

⁷⁶ Aiwasian Decl., ¶¶ 5-8; see n.1, *supra*.

1 estimated to be \$4,282.81.⁷⁷ The highest Individual PAGA Payment to an PAGA Member is
2 currently estimated to be \$674.30 and the average Individual PAGA Payment to an PAGA
3 Member is currently estimated to be \$323.28.⁷⁸

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

5 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys'
6 knowledge, skills, and experience in bringing the Action to a successful conclusion. Class
7 Counsel has years of complex and class action litigation experience, has recovered millions of
8 dollars on behalf of thousands of individuals in California, and has successfully handled
9 numerous significant wage-and-hour class action and complex cases.⁷⁹

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

13 While the percentage-of-the-benefit approach is endorsed as the better approximation of
14 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
15 method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining
16 that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
17 spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*,
18 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method,
19 the lodestar may provide a useful perspective on the reasonableness of a given percentage
20 award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary
21 determination of the fee as a percentage” of the settlement amount and “does not impose an
22 absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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

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27 ⁷⁷ Simpluris Decl., ¶ 18; see n.29, *supra*.

28 ⁷⁸ *Id.*, ¶ 19.

⁷⁹ Aiwazian Decl., ¶¶ 16-19.

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

19 Class Counsel had to bring together a large volume of information, data, and documents
20 that were produced by Defendants and obtained from Plaintiff and Class Members and through
21 other sources. Class Counsel conducted extensive review and analysis of these documents and
22 data to strategize the Action and to prepare for and attend mediation and engage in settlement
23 discussions.

24 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
25 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
26 on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁸⁰ The chart
27 demonstrates that Class Counsel has spent a total of 622.30 hours litigating the case and

28 ⁸⁰ See Aiwazian Decl., Exh. A.

1 finalizing the Settlement.⁸¹ In light of the facts and circumstances of the matter, as well as the
2 results that Class Counsel has achieved in the case, Class Counsel has spent a reasonable number
3 of hours on this matter. In addition, Class Counsel will continue to perform work on this matter
4 through the date of final approval and in connection with the implementation of the Settlement.

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

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

14 Class Counsel has been actively involved in the case, prior to its commencement and all
15 the way up to the present, and Class Counsel's dedication to providing representation in this
16 matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its
17 efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful
18 in reaching a settlement of \$1,115,556.52.

19 As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and
20 experience of Class Counsel support a reasonable hourly rate of compensation of at least \$650
21 per hour for services provided by Class Counsel.⁸² Lawyers for Justice, PC has been awarded
22 attorneys' fees, compensating the firm at the rate of at least \$650 for legal service performed, by
23 courts of this state.⁸³ While the circumstances of every case is unique, the fact remains that the

24 ⁸¹ Aiwarzian Decl., ¶ 12.

25 ⁸² *Id.*, ¶ 13.

26 ⁸³ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment,*
27 *Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of
28 attorneys' fees involved compensation at the rate of \$936.47 per hour; final approval of the class and representative
action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157)
was granted on April 20, 2021, and the award of attorneys' fees involved compensation at the rate of \$919.57 per
hour; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC*
(Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020,

work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

Applying the blended rate of \$750 per hour to 622.30 hours would place a reasonable value of \$404,495.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seek attorneys' fees in the amount of \$371,852.1, which is one-third (1/3) of the total recovery, as provided for by the Settlement Agreement.

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

and the award of attorneys' fees involved compensation at the rate of \$766.05 per hour; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved compensation at the rate of \$764.82 per hour; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved compensation at the rate of \$855.96 per hour; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved compensation at the rate of \$831.38 per hour; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved compensation at the rate of \$780.77 per hour; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved compensation at the rate of \$845.64 per hour. Aiwazian Decl., ¶ 13.

(2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$371,852.17 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$34,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$25,014.91 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 \$8,985.09 will be part of the Net Settlement Fund, which will be distributed to the Participating Class Members in accordance with the Settlement.⁸⁶ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$25,014.91 to Class Counsel.

VIII. THE SETTLEMENT ADMINISTRATOR 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 \$4,750.00.⁸⁷ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Objections, and Workweeks Disputes (if any); handling inquiries from Class Members regarding

⁸⁴ Aiwazian Decl., ¶ 20 & Exh. B.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Simpluris Decl., ¶ 20.

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 \$4,750.00.

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

The Settlement provides for a Class Representative Service Award in the amount of \$7,500.00 to Plaintiff Christopher Rodriguez to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Class Representative Service Award is both common and reasonable and should be awarded.

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

The requested Class Representative Service 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 necessary to attempt to prove the allegations.⁸⁹ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information to support the pursuit of class and PAGA claims.⁹⁰ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendants, and gathering and reviewing documents.⁹¹ These services merit the requested Class Representative Service Award to Plaintiff, who has not received any

⁸⁸ Simpluris. Decl., ¶ 3.

⁸⁹ Aiwasian Decl., ¶ 21; Declaration of Christopher Rodriguez (“Rodriguez Decl.”), ¶¶ 3-5.

⁹⁰ Aiwasian Decl., ¶ 21; Rodriguez Decl., ¶¶ 3-5.

⁹¹ Aiwasian Decl., ¶ 21; Rodriguez Decl., ¶¶ 2-6.

1 compensation for his efforts on behalf of the Class Members to date.⁹²

2 The requested Class Representative Service Award was fully disclosed in the Class
3 Notice that was mailed to the Class Members. No objections were made with regards to the
4 requested Class Representative Service Award. Accordingly, it is appropriate and just for
5 Plaintiff Christopher Rodriguez to receive \$7,500.00 as a reasonable Class Representative
6 Service Award, for his services on behalf of the Class, PAGA Members, and the State of
7 California, in addition to his individual settlement payment.

8 **X. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
10 approval of the Settlement, and award the Class Counsel Award, Class Representative Service
11 Award, Settlement Administrator Costs, and allocation for the PAGA Payment, in their entirety,
12 as sought herein; and permit the filing of a memorandum that exceeds the page limit.

13 Dated: August 31, 2023

LAWYERS for JUSTICE, PC

14
15 By:



Edwin Aiwanian
Arby Aiwanian
Joanna Ghosh
Attorneys for Plaintiff and the Class

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28 ⁹² Rodriguez Decl., ¶ 8.