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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

SONNY LE, 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.

BALBOA WATER GROUP LLC, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 30-2019-01042358-CU-OE-CXC

Honorable Peter J. Wilson
Department CX101

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Sonny Le); Declaration of
Settlement Administrator (Stephen Gomez);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: December 8, 2022
Time: 2:00 p.m.
Department: CX101

Complaint Filed: January 7, 2019
FAC Filed: March 28, 2019
SAC Filed: December 30, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 8, 2022 at 2:00 p.m., in Department
2 CX101 of the above-entitled Court, located at Civil Complex Center, 751 West Santa Ana
3 Boulevard, Santa Ana, California 92701, Plaintiff Sonny Le (“Plaintiff”) will and hereby does
4 move for an order granting final approval of:

5 1. The Joint Stipulation of Class Action and PAGA Settlement and Release and
6 Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement and Release
7 (together, “Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the
8 Settlement is fair, adequate, and reasonable because:

- 9 • A Net Settlement Amount of approximately **\$698,490.53** will be fully distributed to
10 the Class Members who did submit a timely and valid Request for Exclusion
11 (“Settlement Class Members”);
12 • **No Notices of Objection** were submitted to the settlement administrator, Simpluris,
13 Inc. (“Settlement Administrator”);
14 • **Only Two (2) Requests for Exclusion** were submitted to the Settlement
15 Administrator;

16 2. Payment in the amount of **\$476,875.00** to Lawyers *for* Justice, PC (“Class
17 Counsel”), representing thirty-five percent (35%) of the Gross Settlement Amount, for attorneys’
18 fees, which is reasonable and justified on a percentage;

19 3. Payment in the amount of **\$17,384.47** to Class Counsel for reimbursement of
20 litigation costs and expenses;

21 4. Payment in the amount of **\$12,250.00** to the Settlement Administrator, Simpluris,
22 Inc. (“Simpluris”), for Settlement Administration Costs;

23 5. Payment in the amount of **\$7,500.00** to Plaintiff Sonny Le, as a Service Award,
24 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 3.769 and Rule 3.1113(e) of the California Rules
2 of Court, which require approval by the Court of a class action settlement and permit the Court to
3 extend the page limit for memoranda.

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

9 Dated: November 14, 2022

LAWYERS for JUSTICE, PC

10
11 By:


Edwin Aiwarzian
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Sonny Le (“Plaintiff”) seeks final approval of: (1) the Gross Settlement Amount of \$1,362,500.00; (2) attorneys’ fees in the amount of \$476,875.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$17,384.47 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$12,250.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Service Award in the amount of \$7,500.00 to Plaintiff Sonny Le; and (5) allocation of \$150,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Allocation”).

Plaintiff seeks relief on behalf of the following Class:

All individuals who worked for Defendant in California as non-exempt employees at any time during the period from January 7, 2015 through December 20, 2021 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of pages of information, documents, and data prior to and during mediation conducted by Jeffrey A. Ross, Esq., and extensive settlement negotiations. This matter has required 689.50 hours of attorney time from Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.²

Plaintiff moves for final approval of the Service Award in the amount of \$7,500.00 to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$12,250.00 for Settlement Administration Costs. Plaintiff also

¹ Joint Stipulation of Class Action and PAGA Settlement and Release (“Original Agreement”), ¶ 6.d.

² The total lodestar fees are \$499,887.50, and Class Counsel seeks an attorneys’ fees award of \$476,875.00 (equal to 35% of the Gross Settlement Amount).

1 moves for final approval of the allocation of \$150,000.00 for the PAGA Allocation, of which
2 \$112,500.00 will be paid to the California Labor Workforce and Development Agency
3 (“LWDA”) for its portion of the PAGA Allocation (“LWDA Payment”), and \$37,500.00 will be
4 distributed to all individuals who worked for Defendant in California as non-exempt employees
5 at any time during the PAGA Period³ (“PAGA Members”) on a *pro rata* basis (“PAGA Member
6 Amount”).

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

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

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

26 ///

27 _____
28 ³ “PAGA Period” is defined as the period from August 5, 2020 through December 20, 2021. See Original Agreement, ¶ 6.gg.

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

2 Defendant Balboa Water Group LLC (“Defendant”) specializes in the design and
3 manufacture of leisure water products and its headquarters are located in Costa Mesa, California.
4 Plaintiff Sonny Le is a former employee of Defendant.

5 On January 7, 2019, Plaintiff filed a Class Action Complaint for Damages in the Orange
6 County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

7 On March 28, 2019, Plaintiff filed a First Amended Class Action Complaint for Damages
8 (“FAC”).

9 On July 16, 2019, Defendant filed an Answer to Plaintiff’s FAC, and thereafter, on
10 August 6, 2019, Defendant filed an Amended Answer to Plaintiff’s FAC.

11 On September 10, 2021, Plaintiff provided written notice by certified mail to the LWDA
12 and Defendant of the specific provisions of the California Labor Code that were violated, and on
13 September 15, 2021, Plaintiff provided a follow-up notice as well.

14 On December 30, 2021, Plaintiff filed a Second Amended Class Action Complaint for
15 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
16 2698, Et Seq. (“Operative Complaint”).

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

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

On February 18, 2019, Defendant propounded multiple sets of discovery including Request for Admissions, (Set One); Request for Production of Documents, (Set One); and Special Interrogatories, (Set One), on Plaintiff. Thereafter, on March 25, 2019, and July 10, 2019, Plaintiff responded to Defendant's discovery requests.

On July 18, 2019, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Sets One & Two); and Form Interrogatories – General, (Set One), on Defendant and noticed the depositions of Defendant's Person Most Knowledgeable regarding wage and hour practices and organizational structure of Defendant, along with accompanying requests for production of documents. Thereafter, on August 5, 2019, and October 7, 2019, Defendant responded to Plaintiff's discovery requests.

On October 15, 2019, Plaintiff propounded additional sets of Request for Production of Documents, (Set Two); and Special Interrogatories, (Set Three) on Defendant, and noticed the deposition of Defendant's Person Most Knowledgeable regarding affirmative defenses of Defendant, along with accompanying requests for production of documents. Thereafter, on November 20, 2019, and January 30, 2020, Defendant responded to Plaintiff's discovery requests.

The Parties have actively litigated the Action since it was commenced on January 7, 2019. On August 5, 2021, the Parties participated in a formal, full-day mediation conducted by Jeffrey A. Ross, 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 March 23, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On April 20, 2022, the Court issued a tentative ruling ("April 20, 2022 Tentative Ruling") in which it raised multiple points of inquiry with regards to

1 the Motion for Preliminary Approval. On April 21, 2022, the Court issued a Minute Order,
2 which adopted its April 20, 2022 Tentative Ruling (“April 21, 2022 Minute Order”) and
3 continued the hearing on Plaintiff’s Motion for Preliminary Approval to June 2, 2022 at 2:00
4 p.m. in Department CX102 of the above-captioned Court.

5 On May 25, 2022, the Parties filed a Joint Stipulation to Continue Plaintiff’s Hearing
6 and Deadline to File Supplemental Papers in Support of Motion for Preliminary Approval of
7 Class Action Settlement; [Proposed] Order Thereon (“Joint Stipulation”) requesting a
8 continuance of the deadline to file supplemental briefing and the hearing on Plaintiff’s Motion
9 for Preliminary Approval. On May 26, 2022, the Court entered an Order granting the Parties’
10 Joint Stipulation, which continued the deadline to file supplemental briefing to July 11, 2022,
11 and the hearing on Plaintiff’s Motion for Preliminary Approval to July 21, 2022, at 2:00 p.m.
12 in Department CX102 of the above-captioned Court.

13 On July 11, 2022, Plaintiff filed supplemental papers in support of the Motion for
14 Preliminary Approval. On July 29, 2022, the Court entered an Order Granting Plaintiff’s
15 Motion for Preliminary Approval of Class Action (“Preliminary Approval Order”), thereby
16 preliminary approving the terms of the Settlement, the Notice Packet, and the proposed
17 administration procedures and associated deadlines.

18 Plaintiff now moves for final approval of the Settlement, Attorneys’ Fees and Costs,
19 Service Award, Settlement Administration Costs, and PAGA Allocation.

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

21 Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross
22 Settlement Amount of \$1,362,500.00 on a non-reversionary basis.⁴ Subject to approval by the
23 Court, the Net Settlement Amount will be calculated by deducting the following amounts from
24 the Gross Settlement Amount: (1) Attorneys’ Fees and Costs, consisting of attorneys’ fees in the
25 amount of \$476,875.00 and reimbursement of litigation costs and expenses in the amount of
26 \$17,384.47, to Class Counsel; (2) Service Award in the amount of \$7,500.00 to Plaintiff Sonny
27 Le; (3) Settlement Administration Costs in the amount of \$12,500.00 to Simpluris; and (4)

28 ⁴ Original Agreement, ¶ 6.s.

PAGA Allocation in the amount of \$150,000.00.⁵ The Net Settlement Amount, which is estimated to be \$698,490.53, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁶

The Settlement Administrator will calculate each Settlement Class Member's *pro rata* share of the Net Settlement Amount that a Settlement Class Member is eligible to receive for the Class Settlement ("Individual Settlement Share") in accordance with the Settlement Agreement, which will equal the total of the following: (a) his or her individual number of Released Workweeks multiplied by the Released Workweek Value and (b) his or her individual number of Non-Released Workweeks multiplied by the Non-Released Workweek Value.⁷

The Settlement Administrator will calculate each PAGA Member's *pro rata* share of the PAGA Member Amount that a PAGA Member is eligible to receive for the PAGA Settlement ("Individual PAGA Payment") in accordance with the Settlement Agreement and as follows: the PAGA Member Amount will be divided by the total number of Workweeks worked by all PAGA Members during the PAGA Period to produce the "Weekly PAGA Value;" the Weekly PAGA Value will be multiplied by the number of Workweeks attributable to the individual PAGA Member to derive his or her Individual PAGA Payment.⁸

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⁵ Original Agreement, ¶¶ 10, 11, 12, & 13, as amended by Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement and Release ("Amendment No. 1"), ¶ C.

⁶ This amount is higher than the amount stated in Paragraph 17 of the accompanying Declaration of Stephen Gomez Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$35,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$17,384.47 for reimbursement of litigation costs and expenses, and the difference of \$17,615.53 will remain part of the Net Settlement Amount.

⁷ Original Agreement, ¶¶ 6.v & 14. "Class Settlement" is defined as the settlement and resolution of all Class Released Claims. *See id.*, ¶ 6.i. "Released Workweek(s)" is defined as the Workweeks of Class Members who signed an individual release and severance agreement with Defendant. *See id.*, ¶ 6.nn. "Released Workweek Value" is defined as the value of a Released Workweek, calculated as twenty-eight point forty-four percent (28.44%) of the Net Settlement Amount divided by all Released Workweeks for all Class Members. *See id.*, ¶ 6.oo. "Non-Released Workweek(s)" is defined as the Workweeks of Class Members who did not sign an individual release and severance agreement with Defendant. *See id.*, ¶ 6.y. "Non-Released Workweek Value" is defined as the value of a Non-Released Workweek, calculated as seventy-one point fifty-six percent (71.56%) of the Net Settlement Amount divided by all Non-Released Workweeks of all Class Members. *See id.*, ¶ 6.z.

⁸ *Id.*, ¶¶ 6.t & 15. "PAGA Settlement" is defined at the settlement and resolution of PAGA Released Claims. *See id.*, ¶ 6.ii. "Workweeks" is defined as the weeks worked by Class Members during the Class Period. *See id.*, ¶ 6.vv.

Class Members had forty-five (45) calendar days after the initial mailing of the Notice Packet by the Settlement Administrator to dispute the number of Workweeks credited to each of them, opt out of the Class Settlement, and/or object to the Class Settlement (“Response Deadline”).⁹ The Response Deadline was October 17, 2022.¹⁰ The Settlement Administrator has received two (2) Exclusion Forms or timely and valid letters submitted by Class Members indicating a request to be excluded from the Class Settlement (both of which are referred to as a “Request for Exclusion”) and no Objection Forms or written objections (both of which are referred to as a “Notice of Objection”) to the Class Settlement from Class Members.¹¹

Each Individual Settlement Share will be allocated as follows: one-third (1/3) wages, which will be reported on IRS Form W-2; and two-third (2/3) as penalties, interest, and non-wage damages, which will be reported on IRS Form 1099 (if applicable).¹² Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement Payment”).¹³ Defendant will pay the employer’s share of taxes and contributions in connection with the wages portion of Individual Settlement Shares (“Employer Taxes”) in addition to the Gross Settlement Amount.¹⁴ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable).¹⁵

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.¹⁶ The Settlement Administrator shall perform a skip-trace search on any checks that are returned as undeliverable within ninety (90) days of the initial mailing, and perform a single re-mailing to any address located.¹⁷ The funds associated with

⁹ Original Agreement, ¶¶ 6.aa., 6.qq., 21, and 22, as amended by Amendment No.1, ¶¶ A, B, E, & F.

¹⁰ Simpluris Decl., ¶ 10, Exh. A & B.

¹¹ *Id.*, ¶¶ 11 & 12.

¹² Original Agreement, ¶ 25.

¹³ *Id.*, ¶¶ 6.u & 25.

¹⁴ *Id.*, ¶ 6.n.

¹⁵ *Id.*, ¶ 25.

¹⁶ *Id.*, ¶ 20.

¹⁷ *Ibid.*

1 such canceled checks will be transmitted by the Settlement Administrator to Legal Aid at
2 Work.¹⁸

3 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

4 The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps
5 to effectuate the notice and settlement administration process, as set forth in the Court's July 29,
6 2022 Preliminary Approval Order.

7 On July 28, 2022, Simpluris received the Court-approved Notice Packet.¹⁹

8 On August 19, 2022, Simpluris received a mailing list from Defendant's counsel that
9 contained the full names, mailing addresses, telephone numbers, Social Security Numbers, and
10 number of Workweeks during the Class Period and, as applicable, during the PAGA Period
11 (collectively, "Class and PAGA Data and List").²⁰ The Class and PAGA Data and List contained
12 information for 1,100 individuals identified as Class Members.²¹ Simpluris processed the names
13 and addresses through the National Change of Address Database ("NCOA") and updated the
14 Class and PAGA Data and List with any updated addresses located.²²

15 On September 2, 2022, Simpluris mailed the Notice Packet via First Class Mail in
16 English and Spanish to 1,100 individuals identified as Class Members in the Class and PAGA
17 Data and List.²³

18 As of the date of this Motion, ninety-eight (98) Notice Packets were returned as
19 undeliverable without a forwarding address.²⁴ Simpluris performed a skip-trace search on the
20 ninety-eight (98) Notice Packets that were returned to Simpluris without forwarding addresses,
21 and re-mailed the Notice Packets to either the updated addresses or a forwarding address
22 provided by the Class Member.²⁵ Ultimately, sixteen (16) Notice Packets remain undeliverable.²⁶

23 ///

24 ¹⁸ Original Agreement, ¶ 20.

25 ¹⁹ Simpluris Decl., ¶ 5.

26 ²⁰ *Id.*, ¶ 6.

27 ²¹ *Ibid.*

28 ²² *Id.*, ¶ 10.

²³ *Id.*, ¶ 8.

²⁴ *Id.*, ¶ 9.

²⁵ *Ibid.*

²⁶ *Ibid.*

As of the date of this Motion, the Settlement Administrator has not received any Notices of Objections and has received only two (2) Requests for Exclusion from Class Members.²⁷

To date, there are 1,098 Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁸ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$698,490.53 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁹ The highest Individual Settlement Share of a Settlement Class Member who did not sign an individual release and severance agreement with Defendant is currently estimated to be \$4,918.13 and the average Individual Settlement Share of a Settlement Class Member who did not sign an individual release and severance agreement with Defendant is currently estimated to be \$665.62.³⁰ The highest Individual Settlement Share of a Settlement Class Member who signed an individual release and severance agreement with Defendant is currently estimated to be \$1,557.78 and the average Individual Settlement Share of a Settlement Class Member who signed an individual release and severance agreement with Defendant is currently estimated to be \$529.07.³¹ These amounts are subject to reduction for the employee's share of taxes and withholding with respect to the wages portion of each Individual Settlement Share. The highest Individual PAGA Payment is currently estimated to be \$846.74 and the average Individual PAGA Payment is currently estimated to be \$568.18.³²

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²⁷ Simpluris Decl., ¶¶ 11 & 12.

²⁸ *Id.*, ¶ 14.

²⁹ *Id.*, ¶ 17; see also, n.6, *supra*.

³⁰ *Id.*, ¶ 18. 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 \$35,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$17,615.53 will be part of the Net Settlement Amount). See n.6, *supra*.

³¹ *Id.*, ¶ 19. See n.30, *supra*.

³² *Id.*, ¶ 20.

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.

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 Actions since it was commenced on January 7, 2019. Prior to reaching the Settlement, the parties investigated the veracity, strength, and scope of the claims, and were preparing the matter for class certification and trial.³³ The parties conducted extensive formal and informal discovery and investigation into the facts of the case, and also informally exchanged a large volume of information, documents, and data in preparation for mediation.³⁴ Class Counsel prepared and served multiple sets of written discovery requests on Defendant in various forms (specifically, Request for Production of Documents (Sets One & Two); Special Interrogatories (Sets One, Two, & Three); and Form Interrogatories – General (Set One)), prepared and served numerous notices of depositions of Defendant’s Person(s) Most Knowledgeable designees (along with accompanying requests for production of documents), and reviewed Defendant’s objections and responses to Plaintiff’s discovery requests.³⁵ Class Counsel also worked with Plaintiff to prepare and provide responses and supplemental responses to formal written discovery propounded by Defendant (specifically, Request for Production of Documents (Set One), Special Interrogatories (Set One), and Request for Admissions (Set One)). Class Counsel also interviewed and obtained information from Plaintiff and other Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed a large volume of pages of documents and data obtained from Plaintiff, Defendant, and other sources.³⁶ The documents and data reviewed and analyzed by Class Counsel included, and were not limited to: Plaintiff’s employment records, a detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s Employee Handbook, company policy

³³ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

1 acknowledgements and agreements (including, but not limited to, Defendant's
2 Acknowledgement & Receipt of Company Handbook and Agreement to Resolve by Reference
3 Employee Disputes), internal memoranda, job descriptions, new hire orientation checklists and
4 guidelines, and Defendant's operations and employment practices, forms, procedures, and
5 policies (including, but not limited to, Defendant's Rest & Meal Periods, Reporting to Work
6 When There is No Work, Overtime, and Expense Reimbursement policies), among other
7 information and documents.³⁷ Class counsel researched applicable law, undertook
8 damages/valuation models in preparation for mediation, and met and conferred with Defendant's
9 counsel regarding the pleadings, discovery, case management, motion practice, and the
10 production of documents and data in the course of litigation and in connection with mediation,
11 among other tasks.³⁸

12 After conducting significant formal and informal discovery and investigation into the
13 facts of the case, the parties participated in a formal, full-day mediation conducted by Jeffrey A.
14 Ross, Esq., a well-regarded mediator experienced in mediating complex labor and employment
15 matters.³⁹ Prior to, during, and after the mediation and settlement discussions, the parties
16 exchanged information and data, and discussed and considered various aspects of the case,
17 including and not limited to, the risks and delays of further litigation, the risks and expenses to
18 the parties of proceeding with class certification and trial, the law relating to off-the-clock
19 theory, meal and rest periods, representative PAGA claims, California Labor Code and the FLSA
20 violations, and federal and state wage-and-hour enforcement, the evidence produced and
21 analyzed, and the possibility of appeals, among other things.⁴⁰ During all settlement discussions,
22 the parties conducted their negotiations at arm's length in an adversarial position.⁴¹ Arriving at a
23 settlement that was acceptable to the parties was not easy.⁴² Defendant contended, *inter alia*, that
24 it shut down its Tustin facility in or about March 2019 and its Valencia facility in or about April
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26 ³⁷ Aiwazian Decl., ¶ 6.

27 ³⁸ Ibid.

28 ³⁹ Ibid.

⁴⁰ *Id.*, ¶ 8.

⁴¹ Ibid.

⁴² Ibid.

2017 and laid off all the workers at these locations, and that the workers that were laid off from these facilities signed individual release and severance agreements with Defendant.⁴³ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class certification would be obtained and Plaintiff would prevail at trial.⁴⁴ After conducting significant formal and informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the parties that would attend further litigation.⁴⁵

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.⁴⁶ Class Counsel also reviewed and analyzed a large volume of information, documents, and data obtained from Plaintiff, Defendant, or other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, PAGA representative claims, the Fair Labor Standards Act, wage-and-hour enforcement, arbitration agreements, release agreements, Plaintiff's claims and allegations, and Defendant's defenses thereto, as well as facts discovered.⁴⁷ The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁸ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴⁹

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⁴³ Aiwazian Decl., ¶ 8.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ *Id.*, ¶ 6.

⁴⁷ Ibid.

⁴⁸ *Id.*, ¶¶ 6 & 8.

⁴⁹ *Id.*, ¶¶ 15-18.

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

3 The Settlement, which provides for a Gross Settlement Amount of \$1,362,500.00,
4 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
5 litigating class and representative claims through certification proceedings, trial, and/or appeals.⁵⁰
6 The Settlement was calculated using information and data uncovered through extensive case
7 investigation, formal and informal discovery, and the exchange of information in the context of
8 mediation.⁵¹ Had the Action not settled, Defendant would have vigorously challenged class
9 certification, manageability of representative adjudication, and liability. Defendant contended
10 that individualized questions of fact predominate over any common issues, and these issues
11 would pose challenges to certification and representative adjudication. Defendant would have
12 likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide
13 and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court
14 certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or
15 representative basis. Additionally, preparation for trial would have been expensive for all
16 parties.

17 It is preferable to reach an early resolution of a dispute because such resolutions save
18 time and money that would otherwise go to litigation. If this matter had settled after further
19 litigation, the settlement amount would have taken into account the additional costs incurred, and
20 there might have been less money available for Class Members after all was said and done. This
21 is not just an abstract contention. The risks and expenses of further litigation outweighed any
22 benefit that might have been gained otherwise. These risks of further litigation include a
23 determination that the claims were unsuitable for class treatment and/or representative
24 adjudication, class de-certification after certification of a class, allowing a jury to decide the
25 claims asserted in the case, and the real possibility of no recovery after years of litigation.
26 Additionally, the parties were moving into the phase of the litigation where they would have to

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28 ⁵⁰ Aiwazian Decl., ¶¶ 8 & 21.

⁵¹ *Id.*, ¶¶ 5-8.

1 conduct a significant amount of additional discovery, including and not limited to, depositions of
2 Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses,
3 such as managers, supervisors, and other current and former employees throughout the State of
4 California. Additional discovery would have certainly arisen, which would have cost the parties
5 additional time and money. In contrast, the Settlement provides real and significant benefits for
6 the Class here and now, while avoiding the further expenses, risks, and delay of prolonged
7 litigation with only the possibility of recovery.

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

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

15 The Settlement, which provides for a Gross Settlement Amount of \$1,362,500.00,
16 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
17 using information and data uncovered through extensive case investigation, formal and informal
18 discovery, and the exchange of information in the context of mediation. The Settlement takes
19 into account the potential risks and rewards inherent in any case and, in particular, in this matter.
20 Moreover, considering all of the facts in the case, the Gross Settlement Amount represents a
21 considerable recovery.

22 Even after deducting attorneys' fees in the amount of \$476,875.00, litigation costs and
23 expenses in the amount of \$17,384.47, Service Award of \$7,500.00, Settlement Administration
24 Costs in the amount of \$12,250.00, and PAGA Allocation in the amount of \$150,000.00 from the
25 Gross Settlement Amount of \$1,362,500.00, the Net Settlement Amount is currently estimated to
26 be \$698,490.53.⁵² Under the Settlement Agreement, the Gross Settlement Amount will be fully
27 paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As

28 ⁵² Simpluris Decl., ¶ 17; see n.6, *supra*.

discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Released Workweeks and Non-Released Workweeks credited to him or her. To date, there are 1,098 Settlement Class Members, representing 99.82% of the Class Members.⁵³ The highest Individual Settlement Share to a Settlement Class Member who did not sign an individual release and severance agreement with Defendant is currently estimated to be \$4,918.13 and the average Individual Settlement Share to a Settlement Class Member who did not sign an individual release and severance agreement with Defendant is currently estimated to be \$665.62.⁵⁴ The highest Individual Settlement Share to a Settlement Class Member who signed an individual release and severance agreement with Defendant is currently estimated to be \$1,557.78 and the average Individual Settlement Share to a Settlement Class Member who signed an individual release and severance agreement with Defendant is currently estimated to be \$529.07.⁵⁵ The highest Individual PAGA Payment is currently estimated to be \$846.74 and the average Individual PAGA Payment is currently estimated to be \$568.18.⁵⁶ 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.⁵⁷ 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*

⁵³ Simpluris Decl., ¶ 14.

⁵⁴ *Id.*, ¶ 18; see n.30, *supra*.

⁵⁵ *Id.*, ¶ 19; see n.30, *supra*.

⁵⁶ *Id.*, ¶ 20.

⁵⁷ Aiwasian Decl., ¶ 21.

1 *Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the
2 Settlement.

3 **D. The Class Was Represented by Competent Counsel.**

4 Class Counsel has extensive experience in employment class action law and complex
5 wage-and-hour litigation.⁵⁸ Lawyers *for* Justice, PC has been appointed class counsel in
6 numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in
7 California.⁵⁹ Both parties' counsel were capable of assessing the strengths and weaknesses of the
8 Class Members' claims against Defendant and the benefits of the Settlement under the
9 circumstances of the case and in the context of a private, consensual settlement agreement.

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

11 The Settlement has been well received by the Class – ***not a single Class Member***
12 ***objected to the Class Settlement.***⁶⁰ Specifically, no objections have been made as to the Gross
13 Settlement Amount or requested Attorneys' Fees and Costs, Service Award, Settlement
14 Administration Costs, or PAGA Allocation. California courts have consistently found that a
15 small number of objectors indicates the class' support for a settlement and strongly favors final
16 approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20
17 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9
18 objectors).

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

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27 ⁵⁸ Aiwazian Decl., ¶¶ 15-18.

28 ⁵⁹ Ibid.

⁶⁰ Simpluris Decl., ¶ 12.

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, 34.⁶¹ 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.

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⁶¹ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

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

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

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

3 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
4 Amount of \$1,362,500.00 on a non-reversionary basis. The requested attorneys' fees are thirty-
5 five percent (35%) of the total value of the monetary settlement. In light of Class Counsel's
6 successful prosecution and resolution of the case, the requested attorneys' fees are appropriate
7 and reasonable.

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

15 The percentage method is consistent with, and is intended to mirror, the practice in the
16 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
17 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is
18 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
19 counsel's work to the class is to review the consideration agreed to be paid by the named
20 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
21 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
22 without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this
23 case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the
24 recovery.⁶²

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28 ⁶² Aiwazian Decl., ¶ 9.

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 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results

obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$476,875.00 (which is 35% of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁶³

As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively participated in litigation of this case.⁶⁴ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁶⁵ During the litigation of the Action, Class Counsel interviewed Plaintiff and other Class Members; propounded formal written discovery requests and reviewed Defendant's objections thereto; worked with Plaintiff to provide responses and supplemental responses to discovery requests that were propounded by Defendant; noticed the depositions of Defendant's Person(s) Most Knowledgeable designees regarding organizational structure, wage and hour practices, and affirmative defenses; reviewed and analyzed a large volume of pages of information, documents,

⁶³ Aiwasian Decl., ¶¶ 15-18.

⁶⁴ *Id.*, Exh. A.

⁶⁵ *Id.*, ¶ 6 & Exh. A.

1 and data obtained from Plaintiff, Defendant, or other sources; and prepared damages/valuation
2 calculations.⁶⁶ Class Counsel also met and conferred with Defendant's counsel over the issues
3 relating to pleadings, discovery, and the production of documents and data, among other things;
4 engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and
5 attended court proceedings, mediation, and settlement negotiations.⁶⁷

6 Class Counsel has devoted a considerable number of hours to this matter over the course of
7 the litigation process. The task and time chart, which is attached as EXHIBIT A to the
8 accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that Lawyers for
9 Justice, PC has spent performing tasks on behalf of Plaintiff and the Class.⁶⁸ The task and time
10 chart is thorough and comprehensive, and was prepared so that the Court can peruse it without
11 having to set forth each and every task in the body of this Motion. The Court is respectfully
12 referred to the chart, which sets forth the history of the work performed by Lawyers for Justice,
13 PC, commencing with the pre-filing analysis and research, and continuing up to settlement and
14 final approval. Attorneys at Lawyers for Justice, PC have spent **689.50** hours performing tasks
15 and to obtain a significant recovery in this case.⁶⁹ These hours were required to bring this matter
16 to its successful conclusion. In light of the value of time expended and the carrying of costs
17 involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

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

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

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27 ⁶⁶ Aiwazian Decl., ¶ 6.

⁶⁷ Ibid.

⁶⁸ Id., Exh. A.

⁶⁹ Id., ¶ 11.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, 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.⁷⁰

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

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

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

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Gross Settlement Amount of \$1,362,500.00 to settle the matter. After deducting the attorneys' fees (\$476,875.00), litigation costs and expenses (\$17,384.47), Service Award (\$7,500.00), Settlement Administration Costs (\$12,250.00), and PAGA Allocation (\$150,000.00)

⁷⁰ Aiwazian Decl., ¶¶ 15-18.

from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$698,480.53.⁷¹ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Settlement Class Member who did not sign an individual release and severance agreement with Defendant is currently estimated to be \$4,918.13 and the average Individual Settlement Share to a Settlement Class Member who did not sign an individual release and severance agreement with Defendant is currently estimated to be \$665.62.⁷² The highest Individual Settlement Share of a Settlement Class Member who signed an individual release and severance agreement with Defendant is currently estimated to be \$1,557.78 and the average Individual Settlement Share of a Settlement Class Member who signed an individual release and severance agreement with Defendant is currently estimated to be \$529.07.⁷³ The Settlement offers significant monetary relief to the Settlement Class Members.

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

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested **689.50** hours of time to obtain relief on behalf of Plaintiff and the Class.⁷⁴ Class Counsel has also incurred litigation costs and expenses in the amount of \$17,384.47.⁷⁵

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁶ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷⁷ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

⁷¹ Simpluris Decl., ¶ 17; see n.6, *supra*.

⁷² *Id.*, ¶ 18; see n.30, *supra*.

⁷³ *Id.*, ¶ 10; see n.30, *supra*.

⁷⁴ Aiwasian Decl., ¶ 11, Exh. A.

⁷⁵ See Part VII, *infra*.

⁷⁶ Aiwasian Decl., ¶ 19.

⁷⁷ See *id.*, ¶¶ 15-18.

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

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

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

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.⁷⁸

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, the Class, PAGA Members, and the State of California are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$1,362,500.00.⁷⁹ The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share to a Settlement Class Member who did not sign an individual release and severance agreement with

⁷⁸ Simpluris Decl., ¶ 12.

⁷⁹ Aiwazian Decl., ¶¶ 5-8.

Defendant is currently estimated to be \$4,918.13 and the average Individual Settlement Share to a Settlement Class Member who did not sign an individual release and severance agreement with Defendant is currently estimated to be \$665.62.⁸⁰ The highest Individual Settlement Share of a Settlement Class Member who signed an individual release and severance agreement with Defendant is currently estimated to be \$1,557.78 and the average Individual Settlement Share of a Settlement Class Member who signed an individual release and severance agreement with Defendant is currently estimated to be \$529.07.⁸¹ The highest Individual PAGA Payment is currently estimated to be \$846.74 and the average Individual PAGA Payment is currently estimated to be \$568.18.⁸²

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 case 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.⁸³

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

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination"); see also, e.g., *Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage

⁸⁰ Simpluris Decl., ¶ 18; see n.30, *supra*.

⁸¹ *Id.*, ¶ 19; see n.30, *supra*.

⁸² *Id.*, ¶ 20.

⁸³ Aiwazian Decl., ¶¶ 15-18.

award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” of the settlement amount and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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

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

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

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward certification and trial, including taking and defending depositions of Defendant’s Person(s) 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.

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Class Counsel had to bring together a large volume of data and documents that were produced by Defendant and obtained from Plaintiff and Class Members 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 Edwin Aiwanian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁸⁴ The chart demonstrates that Lawyers for Justice, PC has spent a total of 689.50 hours litigating the case and finalizing the Settlement.⁸⁵ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiff and the Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

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

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⁸⁴ See Aiwanian Decl., Exh. A.

⁸⁵ Aiwanian Decl., ¶ 11.

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$1,362,500.00.

As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and experience of Lawyers for Justice, PC support a reasonable blended hourly rate of compensation of at least \$725.00 per hour for services provided by Lawyers for Justice, PC.⁸⁶ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$725.00 for legal service performed, by courts of this state.⁸⁷ 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 \$725.00 per hour to 689.50 hours would place a reasonable value of \$499,887.50, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$476,875.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

⁸⁶ Aiwasian Decl., ¶ 12.

⁸⁷ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved an hourly rate of \$845.64. Aiwasian Decl., ¶ 12.

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

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys’ fees in the amount of \$476,875.00 to Class Counsel.

3. The Risk Involved, Skill Required, Complexity of the Matter, and Results Obtained Warrant Upward Enhancement of the Lodestar.

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

Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved, the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee

enhancers [...] is for contingency risk.”). 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*, 24 Cal.4th at 1132-33. 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.

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

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

Ketchum at 1134.

Adjustment of the base lodestar figure to compute an award of attorneys’ fees for a claim under the California Labor Code is appropriate. See *Id.*, at 1135-1136; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. “The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate.” *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at 1131-1132. The lodestar figure is the “basic fee for comparable legal services in the community” based upon the “hourly amount to which attorneys of like skill in the area would typically be entitled.” *Id.*, at 1132-1133

(quotation marks and citation omitted).

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, and the case involved gathering and analyzing documents and data not only from Defendant but also from the Class Members. The handling of this matter involved a great amount of effort, and required the exercise of high-level of skill, which Class Counsel has as a result of extensive experience in employment class actions and wage-and-hour litigation. Class Counsel has been actively involved in the prosecution of this matter, prior to its commencement and Class Counsel's work has continued all the way up to the present. Class Counsel's dedication to the representation of the Class Members has precluded other employment.

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class Counsel was successful in achieving substantial results in the form of a settlement of \$1,362,500.00. Also, Class Counsel's efforts throughout the case demonstrate dedication to the interests of the Class Members.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time summarized above and detailed in the task and time chart, which is attached as EXHIBIT A to the Declaration of Edwin Aiwazian.⁸⁸ As the chart indicates, Class Counsel has worked 689.50 hours in the pursuit of this matter. The attorney task and time chart presents the entire picture. Applying a reasonable rate of \$725.00 per hour to 689.50 hours of work performed by Lawyers for Justice, PC would place a base

⁸⁸ Aiwazian Decl., Exh. B.

lodestar value of \$499,887.50 on Class Counsel's services.⁸⁹ Class Counsel seeks an attorneys' fee award of \$476,875.00 (equal to 35% of the Gross Settlement Amount based on the Settlement Agreement).

Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$476,875.00 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$35,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks reimbursement of \$17,384.47 in litigation costs and expenses incurred in this case.⁹⁰ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁹¹ The cost savings of \$17,615.53 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁹² Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$17,384.47 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 \$12,250.00.⁹³ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Notice Packet to the Class Members in both English and Spanish; performing skip-trace searches on Notice Packets returned as undeliverable; re-mailing the Notice Packets to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Notices of Objection, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual

⁸⁹ Aiwazian Decl., ¶ 11; see n.2, *supra*.

⁹⁰ Id., ¶ 19.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Simpluris Decl., ¶ 21.

Settlement Payments and Individual PAGA Payments and preparing the associated tax forms; and transmitting payments, among other things.⁹⁴

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 \$12,250.00.

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

The Settlement provides for a Service Award in the amount of \$7,500.00 to Plaintiff Sonny Le. The requested 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 Service Award is fair and appropriate because Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and provided the facts and evidence necessary to attempt to prove the allegations, including and not limited to, by way of working with Class Counsel to prepare responses and supplemental responses to written discovery requests that were propounded on Plaintiff by Deferment.⁹⁵ Plaintiff available whenever Class Counsel needed him and actively tried to obtain, and gave, information that would support the pursuit of class and PAGA claims.⁹⁶ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experience with Defendant, and gathering and reviewing documents.⁹⁷ These services merit the requested Service

⁹⁴ Simpluris Decl., ¶ 3.

⁹⁵ Aiwazian Decl., ¶ 20; Declaration of Sonny Le (“Le Decl.”), ¶¶ 3-4.

⁹⁶ Aiwazian Decl., ¶ 20; Le Decl., ¶¶ 3-4.

⁹⁷ Aiwazian Decl., ¶ 20; Le Decl., ¶¶ 2-4.

Award to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members to date.⁹⁸

The requested Service Award was fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Service Award. Accordingly, it is appropriate and just for Plaintiff Sonny Le to receive \$7,500.00 as a reasonable Service Award, in addition to his individual settlement payment, for his services in the Action.

X. CONCLUSION

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

Dated: November 14, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiff and the Class

⁹⁸ Le Decl., ¶ 9.