

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Yasmin Hosseini (SBN 326399)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHRISTOPHER MEJIA, 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.

TP-LINK USA CORPORATION DBA TP-
LINK NORTH AMERICA, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CIVDS1906246

Honorable David S. Cohn
Department S26

CLASS ACTION

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

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

Date: December 6, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: February 27, 2019
FAC Filed: July 6, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 6, 2022 at 10:00 a.m., in Department S26
2 of the above-entitled Court, located at 247 W 3rd Street, San Bernardino, California 92415,
3 Plaintiff Christopher Mejia (“Plaintiff”) will and hereby does move for an order granting final
4 approval of:

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

- 8 • A Net Settlement Amount of approximately **\$232,522.99** will be fully distributed to the
9 Class Members who did not timely opt out of the Settlement (“Settlement Class
10 Member”);
11 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
12 (“Settlement Administrator”);
13 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$166,650.00** to Lawyers for Justice, PC (“Class
15 Counsel”), representing one third (33.33%) of the Gross Settlement Amount, for attorneys’ fees,
16 which is reasonable and justified on a percentage-basis;

17 3. Payment in the amount of **\$34,097.01** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$7,730.00** to the Settlement Administrator, Simpluris,
20 Inc. (“Simpluris”), for Administrative Costs;

21 5. Payment in the amount of **\$9,000.00** to Plaintiff Christopher Mejia, as an
22 Enhancement Payment, for his time and effort in representing the Class; and

23 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
24 California Labor Code section 2698, *et seq.*, in the amount of \$50,000.00, of which seventy-five
25 percent (75%), or **\$37,500.00**, will be paid to the California Labor and Workforce Development
26 Agency (“LWDA Payment”) and twenty-five percent (25%), or **\$12,500.00**, will be distributed to
27 Aggrieved Employees (“Employee PAGA Amount”).
28

1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of
2 Court, which 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 Declaration of Class Counsel (Edwin Aiwarzian), Class Representative (Christopher Mejia), and
6 Settlement Administrator (Lindsay Kline of Simpluris) in support thereof; the pleadings and other
7 records on file with the Court in this matter; and such evidence and oral argument as may be
8 presented at the hearing on this Motion.

9 Dated: November 9, 2022

LAWYERS for JUSTICE, PC

10
11 By:



Edwin Aiwarzian
Attorney for Plaintiff and the Class

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	2
III.	SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION.	4
IV.	THE SETTLEMENT ADMINISTRATION PROCESS.....	6
V.	THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.....	8
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.....	9
B.	The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.	11
C.	The Settlement Is Fair, Reasonable, and Adequate.....	13
D.	The Class Was Represented by Competent Counsel.....	14
E.	There Are No Objections to the Settlement.....	14
VI.	THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.	15
A.	Legal Standard for Attorneys’ Fees in a Class Action Settlement.	15
B.	A Fee Award of a Percentage of the Entire Fund Is Appropriate.....	16
C.	The Attorneys’ Fees Award Requested by Class Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.	19
	1. Time & Labor.....	20
	2. The Skill Required to Perform Legal Services Properly.	21
	3. The Value of the Settlement for the Class Members.	22
	4. Whether the Fee Is Fixed or Contingent.	23
	5. The Amount Involved and the Results Achieved.	24
	6. The Reputation and Ability of the Attorneys.	24
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.

..... 25

1. The Number of Hours Spent on the Litigation was Reasonable. 25

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

26

**VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND
REASONABLE, AND SHOULD BE APPROVED..... 28**

**VIII. THE ADMINISTRATIVE COSTS ARE FAIR AND REASONABLE AND
SHOULD BE APPROVED..... 29**

**IX. THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND REASONABLE,
AND SHOULD BE APPROVED. 29**

X. CONCLUSION 31

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	8, 14
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195 .	16
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472.....	16, 19
<i>Cates v. Chiang</i> (2013) 213 Cal.App.4th 791.....	23
<i>Cellphone Termination Fee Cases</i> (2009) 180 Cal.App.4th 1110.....	15
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	8, 16
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78.....	28
<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545.....	16
<i>Crampton v. Takegoshi</i> (1993) 17 Cal.App.4th 308.....	17
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 15
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126.....	16
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127	
F.Supp.2d 418	14
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494.....	16
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	15, 25, 26, 28
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480.....	15, 17, 25
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	15, 19
<i>Paul, Johnson, Alston & Hunt v. Grauldy</i> (1989) 886 F.2d 268	16
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	16
<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4th 495	28
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800.....	16
<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	16, 17
<i>Vizcaino v. Microsoft</i> (9th Cir. 2002) 290 F.3d 1043	18
<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4th 440	25
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	8, 9, 14, 19, 28
<i>Winslow v. Harold G. Ferguson Corp.</i> (1944) 25 Cal.2d 274.....	18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Statutes

Cal. Lab. Code § 2698..... 1

Other Authorities

A. Conte, *Attorney Fee Awards* (2d Ed., 1993)..... 17

California Practice Guide, *Civil Procedure Before Trial*, Chapter 14..... 15

Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47..... 14, 24

Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03..... 16

Court Awarded Attorney Fees, Report of the Third Circuit Task Force (October 8, 1985) 108

F.R.D. 237..... 24

R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A..... 17

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Christopher Mejia (“Plaintiff”) seeks final approval of: (1) the Gross Settlement Amount of \$500,000.00; (2) attorneys’ fees in the amount of \$166,650.00, which is one-third (33.33%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$34,097.01 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Administrative Costs in the amount of \$7,730.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$9,000.00 to Plaintiff Christopher Mejia; and (5) allocation of \$50,000.00 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 current and former hourly-paid and/or non-exempt employees who worked for Defendant within the State of California at any time during the time period from February 27, 2015 to July 6, 2022, excluding persons who have signed individual settlement/termination and release agreements with Defendant (“Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during mediations conducted by Paul Grossman, Esq., and extensive settlement negotiations. This matter has required 526.40 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents one third (33.33%) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method.² 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.

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

¹ Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), § I.F. “Class Period” is defined as the period of time from February 27, 2015 through July 6, 2022. *See id.*, § I.H.

² The Settlement Agreement provides for attorneys’ fees of up to thirty-eight percent (38%) of the Gross Settlement Amount; however, Class Counsel seeks an award of only one third (33.33%) of the Gross Settlement Amount for attorneys’ fees. *See id.*, § XIII.A.

of the Class, Aggrieved Employees, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$7,730.00 for Administrative Costs. Plaintiff also moves for final approval of the allocation of \$50,000.00 for the PAGA Allocation, of which \$37,500.00 will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA Allocation (“LWDA Payment”), and \$12,500.00 will be distributed to Aggrieved Employees (“Employee PAGA Amount”).

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

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

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award Attorneys’ Fees and Costs, Enhancement Payment, Administrative Costs, and PAGA Allocation, 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 TP-Link Corporation dba TP-Link North America, Inc. (“Defendant”) (together with Plaintiff, the “Parties”) sells networking devices and accessories such as routers, adapters, and modems. Plaintiff Christopher Mejia is a former employee of Defendant.

On February 27, 2019, Plaintiff filed a Class Action Complaint for Damages in the San Bernardino County Superior Court ("Court"), thereby commencing the action *Christopher Mejia vs. TP-Link Corporation dba TP-Link North America, Inc.*, Case No. CIVDS1906246 (the "Action").

On May 6, 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.

On June 3, 2019, Defendant filed an Answer to Plaintiff's Class Action Complaint, and thereafter, on August 7, 2019, Defendant filed an Amended Answer to Plaintiff's Class Action Complaint.

On June 13, 2019, Plaintiff propounded additional sets of Requests for Production of Documents, (Set Two); and Special Interrogatories, (Set Three) on Defendant, and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on July 22, 2019, October 22, 2020, October 29, 2020, and January 15, 2021, Defendant responded to Plaintiff's discovery requests.

On September 8, 2021, Plaintiff provided written notice to the Labor and Workforce Development Agency and Defendant of his intent to seek civil penalties for alleged violations of the California Labor Code, under PAGA.

On July 6, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* ("First Amended Complaint").

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, and Aggrieved Employees, of, *inter alia*, failing to pay minimum and overtime wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages and associated waiting time penalties, failing to maintain accurate payroll records, failing to provide compliant wage statements, and failing to reimburse necessary business-related expenses, and thereby engaged in unfair business practices under the California Business and Professions

Code section 17200, *et seq.* and conduct that gives to civil penalties under PAGA. Plaintiff contends that he, Class Members, and Aggrieved Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

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

The Parties have actively litigated the matter since it was commenced February 27, 2019. The Parties conducted significant formal and informal discovery, and exchanged a large volume of documents and data. The Parties participated in two formal, full-day mediations on August 11, 2020 and August 20, 2021, conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. After conducting significant formal and informal discovery and investigation into the facts of the case and 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 14, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On July 6, 2022, a hearing was held on Plaintiff's Motion for Preliminary Approval. On July 6, 2022, the Court entered an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Attorneys' Fees and Costs, Enhancement Payment, Administrative Costs, and allocation for PAGA Allocation.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$500,000.00. Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Attorney's Fees and Costs, consisting of attorneys' fees in the amount of \$166,650.00 and reimbursement of litigation costs and expenses in the amount of \$34,097.01, to Class Counsel; (2)

Enhancement Payment in the amount of \$9,000.00 to Plaintiff Christopher Mejia; (3) Administrative Costs in the amount of \$7,730.00 to Simpluris; and (4) PAGA Allocation in the amount of \$50,000.00.³ The Net Settlement Amount, which is estimated to be \$232,522.99, will be distributed in accordance with the Settlement Agreement.

The Settlement Administrator will calculate each Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Share"), by dividing the Net Settlement Amount by the total number of Class Workweeks for all Settlement Class Members to yield the "Class Workweek Value." The Class Workweek Value is multiplied by the number of each Settlement Class Member's Class Workweeks during the Class Period, as determined by the Settlement Administrator, to yield his or her Individual Settlement Share.⁴

The Settlement Administrator will calculate each Aggrieved Employee's share from the 25% portion of the Employee PAGA Amount ("Individual PAGA Payment") by dividing by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period to yield the "PAGA Workweek Value." Then, the PAGA Workweek Value is multiplied by the number of PAGA Pay Periods worked by each individual Aggrieved Employee during the PAGA Period, as determined by the Settlement Administrator in accordance with the above, to yield his or her Individual PAGA Payment.⁵

Class Members had forty-five (45) calendar days after the initial mailing of the Class Notice to Class Members to submit a Request for Exclusion, Objection, and/or dispute of the Workweeks and/or PAGA Pay Periods credited to them ("Response Deadline").⁶ The Response Deadline was September 19, 2022.⁷ ***As of the date of this Motion, the Settlement Administrator has not received any written requests for exclusion from the Class Settlement ("Requests for Exclusion") or objections to the Class Settlement ("Objections") from Class Members.***⁸

Each Individual Settlement Shares will be allocated as follows: 33.33% as wages (the

³ Settlement Agreement, §§ VIII, XIII.A, XIV & XV.

⁴ *Id.*, § XI.A.2.

⁵ *Id.*, § XI.B.2.

⁶ *Id.*, § I.LL.

⁷ Simpluris Decl., ¶ 10, Exh. A.

⁸ *Id.*, ¶¶ 11 & 12.

“wage portion”), which will be reported on an IRS Form W-2; and the remaining 66.67% as penalties, and other non-wage damages, which will be reported on IRS Form 1099 (if applicable).⁹ Individual Settlement Shares will be paid out to Settlement Class Members subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and the net payment is referred to as “Individual Settlement Payment”.¹⁰ Defendant will pay employer-side payroll taxes on the wage portion of the Individual Settlement Shares distributed to Settlement Class Members separate and in addition to the Gross Settlement Amount.¹¹ The Parties agree that one hundred percent (100%) of the Individual PAGA Payment will be treated as non-wage damages and reported on an IRS Form 1099, if applicable.¹²

The Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks issued to Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days from the date of issuance of the check.¹³ Any settlement checks remaining uncashed after one hundred eighty (180) calendar days will be cancelled and the funds associated with any and all cancelled checks will be distributed to Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 et seq., for the benefit of that Settlement Class Member and/or Aggrieved Employee.¹⁴

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 July 6, 2022 Preliminary Approval Order.

On July 13, 2022, Simpluris received the Court-approved text for the Class Notice.¹⁵

On August 1, 2022, Simpluris received a mailing list from Defendant’s counsel that contained the names, last known addresses, Social Security numbers, telephone numbers, and dates of employment as non-exempt employees in California from February 27, 2015 through July 6,

⁹ Settlement Agreement, § XVI.A.3.

¹⁰ *Id.*, § I.S.

¹¹ *Id.*, § XVI.A.5.

¹² *Id.*, § XVI.A.2.

¹³ *Id.*, § XI.D.2.

¹⁴ *Ibid.*

¹⁵ Simpluris Decl., ¶ 5.

2022 for individuals identified as Class Members (“Class List”).¹⁶ The Class List contained information for one hundred sixty-four (164) individuals identified as Class Members and fifty-nine (59) individuals identified as Aggrieved Employees.¹⁷ Simpluris processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class List with any updated addresses located.¹⁸

On August 4, 2022, Simpluris mailed the Class Notice via First Class mail to one hundred sixty-four (164) individuals identified as Class Members and fifty-nine (59) individuals identified as Aggrieved Employees in the Class List.¹⁹

As of the date of this Motion, zero (0) Class Notices were returned as undeliverable with forwarding addresses.²⁰ Seventeen (17) Class Notices were returned as undeliverable without forwarding addresses.²¹ Simpluris performed a skip-trace search on the seventeen (17) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for fourteen (14) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²² Ultimately, three (3) Class Notices remain undeliverable because an updated address was not located through skip-tracing.²³

As of the date of this Motion, the Settlement Administrator has not received any Objections or Requests for Exclusion from Class Members.²⁴

To date, there are zero (0) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁵ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$232,522.99 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁶ The highest Individual Settlement Share is currently estimated to be \$5,403.24 and the average Individual

¹⁶ Simpluris Decl., ¶ 6.

¹⁷ Ibid.

¹⁸ *Id.*, ¶ 7.

¹⁹ *Id.*, ¶ 8.

²⁰ *Id.*, ¶ 9.

²¹ *Id.*

²² *Id.*

²³ Ibid.

²⁴ *Id.*, ¶¶ 11 & 12.

²⁵ *Id.*, ¶ 11.

²⁶ *Id.*, ¶ 16.

Settlement Share is currently estimated to be 1,417.82.²⁷ The highest Individual PAGA Payment is currently estimated to be 289.05 and the average Individual PAGA Payment is currently estimated to be 211.86.²⁸

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."

²⁷ Simpluris Decl., ¶ 17.

²⁸ *Id.*, ¶ 18.

1 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent
2 of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*,
3 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower
4 than it would be if the case were to be successfully litigated, that is no bar to a class settlement
5 because the public interest may indeed be served by a voluntary settlement in which each side
6 gives ground in the interest of avoiding prolonged litigation. *Id.*

7 A. **The Settlement Resulted from Arm's-Length Negotiations Based Upon**
8 **Extensive Investigation and Discovery.**

9 The parties actively litigated the case since it was commenced on February 27, 2019. Both
10 sides used the pre-mediation time period to investigate the veracity, strength and scope of the
11 claims, and Class Counsel was actively preparing the case for class certification and trial.²⁹ The
12 parties conducted significant formal and informal discovery and investigation into the facts of the
13 case, and also informally exchanged information and data in preparation for mediation.³⁰ Class
14 Counsel propounded multiple sets of written discovery requests in various forms; reviewed
15 Defendant's responses thereto; and prepared and served deposition notices.³¹ Class Counsel also
16 interviewed and obtained information from Plaintiff and Class Members, including and not limited
17 to the names of potential witnesses, and reviewed and analyzed a large volume of documents and
18 data produced by Defendant and obtained through other sources.³² The documents and data
19 reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiff's employment
20 records, a detailed sampling of Class Members time and pay data, multiple iterations of
21 Defendant's Employee Handbook, company policy acknowledgements, internal memoranda, job
22 descriptions, and Defendant's operations and employment practices, procedures, and policies,
23 (including but not limited to Defendant's Warehouse Steel-Toed Shoes Policy, Footwear
24 Authorization Form, Meal Break Waiver – 2nd Meal, Mutual Arbitration Agreement, Employee
25 Mobile Phone Reimbursement policy, Dress Codes and Other Personal Standards policy, Meal

26
27 ²⁹ Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6-8.

28 ³⁰ *Id.*, ¶ 6.

³¹ *Ibid.*

³² *Ibid.*

1 and Rest Periods policy, Employee Travel policy, Employee Purchase Program and Policy,
2 Employee Application, Employee Orientation Checklist, Forklift Safety Training Services, Inc. –
3 Written Test, Termination and Release Agreement, Employee Termination Checklist,
4 Organization Charts, Employee Confidentiality & Nondisclosure Policy, Employee
5 Telecommuting Policy Acknowledgment, Harassment Discrimination & Retaliation Prevention
6 Policy Acknowledgement, and Company Policies Acknowledgement), among other information
7 and documents.³³ The parties engaged in significant motion practice, and Class Counsel researched
8 applicable law, developed damages/valuation models in preparation for the mediations, and met
9 and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to
10 the pleadings, discovery, and production of documents and data prior to the mediations.³⁴

11 After conducting significant formal and informal discovery and investigation into the facts
12 of the case, the parties participated in two formal, full-day mediations conducted by Paul
13 Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and
14 employment matters.³⁵ Prior to and during the mediations and settlement discussions, the parties
15 exchanged information and data, and discussed various aspects of the case, including and not
16 limited to, the risks and delays of further litigation, the risks and expenses to the parties of
17 proceeding with class certification, representative adjudication, and trial, the law relating to off-
18 the-clock theory, meal and rest periods, arbitration agreements, representative PAGA claims, and
19 wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals,
20 among other things.³⁶ During all settlement discussions, the parties conducted their negotiations
21 at arm's length in an adversarial position.³⁷ Arriving at a settlement that was acceptable to the
22 parties was not easy.³⁸ Defendant and its counsel felt very strongly about Defendant's ability to
23 prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel
24 believed that class certification would be obtained and Plaintiff would prevail at trial.³⁹ After

25 ³³ Aiwazian Decl., ¶ 6.

26 ³⁴ Ibid.

27 ³⁵ *Id.*, ¶ 8.

28 ³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

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.⁴⁰

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.⁴¹ Class Counsel also reviewed and analyzed a large volume of documents produced by Defendant and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, arbitration agreements, representative PAGA claims, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses, as well as facts discovered.⁴² The Settlement was based on this large volume of facts, evidence, and investigation.⁴³ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴⁴

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

The Settlement, which provides for a Gross Settlement Amount of \$500,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁵ The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation.⁴⁶ Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominate over any common issues,

⁴⁰ Aiwazian Decl., ¶ 8.

⁴¹ *Id.*, ¶ 6.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Id.*, ¶¶ 16-19.

⁴⁵ *Id.*, ¶¶ 8 & 22.

⁴⁶ *Id.*, ¶¶ 5-8.

1 and these issues would pose challenges to certification and representative adjudication. Defendant
2 would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-
3 wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the
4 Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or
5 representative basis. Additionally, preparation for trial would have been expensive for all parties.

6 It is preferable to reach an early resolution of a dispute because such resolutions save time
7 and money that would otherwise go to litigation. If this matter had settled after further litigation,
8 the settlement amount would have taken into account the additional costs incurred, and there might
9 have been less money available for Class Members and Aggrieved Employees after all was said
10 and done. This is not just an abstract contention. The risks and expenses of further litigation
11 outweighed any benefit that might have been gained otherwise. These risks of further litigation
12 include a determination that the claims were unsuitable for class treatment and/or representative
13 adjudication, failure to obtain certification, class de-certification after certification of a class,
14 allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery
15 after years of litigation. Additionally, the parties were moving into the phase of the litigation
16 where they would have to conduct a significant amount of additional discovery, including and not
17 limited to, depositions of Defendant's Person Most Knowledgeable designees, expert witnesses,
18 and percipient witnesses, such as managers, supervisors, and other current and former employees
19 throughout the State of California. Additional discovery would have certainly arisen, which would
20 have cost the parties additional time and money. In contrast, the Settlement provides real and
21 significant benefits for the Class here and now, while avoiding the further expenses, risks, and
22 delay of prolonged litigation with only the possibility of recovery.

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

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

2 The Settlement, which provides for a Gross Settlement Amount of Five Hundred Thousand
3 Dollars (\$500,000.00), represents a fair, reasonable, and adequate resolution of the case. The
4 Settlement was calculated using information and data uncovered through extensive case
5 investigation, formal and informal discovery, and the exchange of information in the context of
6 mediation. The Settlement takes into account the potential risks and rewards inherent in any case
7 and, in particular, in this matter. Moreover, considering all of the facts in the case, the Gross
8 Settlement Amount represents a considerable recovery.

9 Even after deducting attorneys' fees in the amount of \$166,650.00, litigation costs and
10 expenses in the amount of \$34,097.01, Enhancement Payment in the amount of \$9,000.00,
11 Administrative Costs in the amount of \$7,730.00, and PAGA Allocation in the amount of
12 \$50,000.00 from the Gross Settlement Amount of \$500,000.00, the Net Settlement Amount is
13 currently estimated to be \$232,522.99.⁴⁷ Under the Settlement Agreement, the Gross Settlement
14 Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in
15 Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net
16 Settlement Amount, based on the number of Class Workweeks credited to him or her. To date,
17 there are one hundred sixty-four (164) Settlement Class Members, representing 100% of the Class
18 Members.⁴⁸ The highest Individual Settlement Share to a Settlement Class Member is currently
19 estimated to be \$5,403.24 and the average Individual Settlement Share is currently estimated to be
20 \$1,417.82.⁴⁹ The highest Individual PAGA Payment to Aggrieved Employees is currently
21 estimated to be \$289.05 and the average Individual PAGA Payment is currently estimated to be
22 \$211.86.⁵⁰ These are significant individual recoveries, particularly in light of the risks of litigation.

23 At the final approval stage, "[a]n allocation formula need only have a reasonable, rational
24 basis [to warrant approval], particularly if recommended by experienced and competent class
25 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)

26
27 ⁴⁷ Simpluris Decl., ¶ 16.

28 ⁴⁸ *Id.*, ¶ 14.

⁴⁹ *Id.*, ¶ 17.

⁵⁰ *Ibid.*

1 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute
2 the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the
3 Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class
4 Members, State of California, and Aggrieved Employees.⁵¹ Although the recommendations of
5 Class Counsel are not conclusive, the Court can properly take the recommendations into account,
6 particularly if Class Counsel appears to be competent, has experience with this type of litigation,
7 and significant discovery and investigation have been completed, as is the case here. Conte &
8 Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant
9 final approval of the Settlement.

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

11 Class Counsel has extensive experience in employment class action law and complex
12 wage-and-hour litigation.⁵² Lawyers for Justice, PC has been appointed class counsel in numerous
13 complex wage-and-hour cases, and has recovered millions of dollars for individuals in
14 California.⁵³ Both parties' counsel were capable of assessing the strengths and weaknesses of the
15 claims against Defendant and the benefits of the Settlement under the circumstances of the case
16 and in the context of a private, consensual settlement agreement.

17 **E. There Are No Objections to the Settlement.**

18 The Settlement has been well received by the Class – ***not a single Class Member objected***
19 ***to or opted out of the Class Settlement.***⁵⁴ Specifically, no objections have been made as to the
20 Gross Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Payment,
21 Administrative Costs, or the allocation for PAGA Allocation. California courts have consistently
22 found that a small number of objectors indicates the class' support for a settlement and strongly
23 favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite
24 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite
25 9 objectors).

26
27 ⁵¹ Aiwasian Decl., ¶ 22.

⁵² *Id.*, ¶¶ 16-19.

⁵³ *Ibid.*

⁵⁴ Simpluris Decl., ¶¶ 11 & 12.

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

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

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

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

California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Lealao, supra*, 82 Cal.App.4th at 53.

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

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

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys’ fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁵ The purpose of this equitable doctrine is to spread litigation costs

⁵⁵ 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 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
2 burden alone. See *Vincent, supra*, 557 F.2d at 769.

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

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

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

25 When the case was originally filed, not only was it inescapably contingent, but the prospect
26 of a long, drawn-out battle with a defendant represented by experienced counsel, was almost a
27 certainty. By taking on this “battle” on a contingency basis, Class Counsel risked substantial
28 economic loss if the results were not successful. This substantial risk is the reason that the courts

1 approve the use of the percentage method when a settlement is obtained by the efforts of class
2 counsel. *See Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing the risks
3 of engaging in litigation without certainty of compensation).

4 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
5 Amount of \$500,000.00 on a non-reversionary basis. The requested attorneys' fees are one third
6 (33.33%) of the total value of the monetary settlement. In light of Class Counsel's successful
7 prosecution and resolution of the case, the requested attorneys' fees are appropriate 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 powerful
18 evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to
19 the class is to review the consideration agreed to be paid by the named plaintiff. If the named
20 plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the
21 members of the class, who will enjoy the benefits of the settlement without incurring the risks of
22 bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a
23 contingency fee of at least thirty-nine percent (39%) of the recovery.⁵⁶

24 Furthermore, a percentage-fee award is not dependent on a determination of the actual
25 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
26 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
27 equitable that [the attorney's] compensation and expenses should come from the entire fund saved
28

⁵⁶ Aiwazian Decl., ¶ 9.

1 for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.* (1944)
2 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be
3 calculated on the basis of the total fund made available rather than the actual payments made to
4 the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a litigant
5 or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client
6 is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

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

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

19 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
20 to be considered in determining whether fee awards are reasonable: (1) the time and labor required;
21 (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal
22 services properly; (4) the preclusion of other employment by the attorney due to the acceptance of
23 the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation
24 imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the
25 experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature
26 and length of the professional relationship with the client; and (12) awards in similar cases.
27 *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 \$166,650.00 (which is 33.33% 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.⁵⁷

As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively participated in litigation of this case.⁵⁸ 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.⁵⁹ During the litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; propounded formal written discovery requests and reviewed Defendant's responses thereto; reviewed and analyzed large volume of documents and data produced by Defendant and obtained through other sources; and prepared damages/valuation calculations.⁶⁰ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, contemplated motion practice, discovery, and production of documents and data, among other things; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, two mediations, and settlement negotiations.⁶¹

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this

⁵⁷ Aiwarzian Decl., ¶¶ 16-19.

⁵⁸ *Id.*, Exh. A.

⁵⁹ *Id.*, ¶ 6 & Exh. A.

⁶⁰ *Id.*, ¶ 6.

⁶¹ *Ibid.*

1 matter diligently and with maximum efficiency and has fully and actively participated in the
2 litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
3 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel
4 has spent performing tasks on behalf of Plaintiff and the Class.⁶² The Task and Time Chart is
5 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
6 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
7 chart, which sets forth the history of the work performed by Class Counsel, commencing with the
8 pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel
9 has spent 526.40 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff
10 and the Class.⁶³ These hours were required to bring this matter to its successful conclusion. In
11 light of the value of time expended and the carrying of costs involved in litigating this case, the
12 requested attorneys' fees are fair, adequate, and reasonable.

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

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

19 Class Counsel undertook significant investigation, analysis, and research prior to filing this
20 case, during the litigation, and prior to the mediations. Class Counsel took steps to prepare the
21 matter for class certification and representative adjudication and had every intention of taking the
22 case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement.
23 Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin
24 Aiwarzian, Class Counsel used its extensive experience in the handling of class actions and
25 complex wage-and-hour litigation matters in order to obtain the Settlement with maximum
26 efficiency.⁶⁴

27 ⁶² Aiwarzian Decl., Exh. A.

28 ⁶³ *Id.*, ¶ 12.

⁶⁴ *Id.*, ¶¶ 16-19.

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

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

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

16 As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay
17 a Gross Settlement Amount of \$500,000.00 to settle the matter. After deducting the attorneys' fees
18 (\$166,650.00), litigation costs and expenses (\$34,097.01), Enhancement Payment (\$9,000.00),
19 Administrative Costs (\$7,730.00), and PAGA Allocation (\$50,000.00) from the Gross Settlement
20 Amount, it is currently estimated that the Net Settlement Amount is approximately \$232,522.99.⁶⁵
21 The Net Settlement Amount will be fully distributed in accordance with the terms of the
22 Settlement. The highest Individual Settlement Share to a Settlement Class Member is currently
23 estimated to be \$5,403.24 and the average Individual Settlement Share is currently estimated to be
24 \$1,417.82.⁶⁶ The highest Individual PAGA Payment is currently estimated to be \$289.05 and the
25 average Individual PAGA Payment is currently estimated to be at least \$211.86.⁶⁷ The Settlement
26

27 ⁶⁵ Simpluris Decl., ¶ 16.

28 ⁶⁶ *Id.*, ¶ 17.

⁶⁷ *Id.*, ¶ 18.

1 offers significant monetary relief to the Settlement Class Members, State of California, and
2 Aggrieved Employees.

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

4 Plaintiff entered into a contingency fee agreement with Class Counsel, and the
5 representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel
6 took on the case without knowing whether any recovery would be obtained. Class Counsel has
7 invested **526.40** hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of
8 California, and Aggrieved Employees.⁶⁸ Class Counsel has also incurred litigation costs and
9 expenses in the amount of **\$34,097.01**.⁶⁹

10 Class Counsel has borne all of the risks and costs of litigation and will not receive any
11 compensation until recovery is obtained.⁷⁰ Class Counsel is well-experienced in wage-and-hour
12 class action and complex litigation and used that experience to obtain a great result.⁷¹ The skill and
13 determination that Class Counsel has shown, along with the results obtained, justify the requested
14 Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks
15 incurred, the requested fees and costs are reasonable and should be awarded.

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

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

24 *Cates v. Chiang* (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class
25 Counsel litigated the case on a contingent basis with all of the concomitant risk factors inherent in
26 such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel

27 ⁶⁸ Aiwasian Decl., ¶ 12, Exh. A.

28 ⁶⁹ See Part VII, *infra*.

⁷⁰ Aiwasian Decl., ¶ 20.

⁷¹ See *id.*, ¶¶ 16-19.

1 has devoted to litigating the case would have been for naught, and would not have produced any
2 fee or any reimbursement of costs or expenses.

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

4 The results achieved, in light of the difficulties inherent in similar cases and the specific
5 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
6 from the Class Members—no Class Members objected to or opted out of the Class Settlement.⁷²

7 The court in *Camden* noted that, “a key element of the common fund case is that fees are
8 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
9 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
10 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
11 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

12 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
13 in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted
14 in a settlement that provides for a Gross Settlement Amount of \$500,000.00.⁷³ The Gross
15 Settlement Amount will be fully paid out, in accordance with the terms of the Settlement
16 Agreement. The highest Individual Settlement Share to a Settlement Class Member is currently
17 estimated to be \$5,403.24 and the average Individual Settlement Share is currently estimated to be
18 \$1,417.82.⁷⁴ This highest Individual PAGA Payment is currently estimated to be at least \$289.05
19 and the average Individual PAGA Payment is currently estimated to be at least \$211.86.⁷⁵

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

21 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
22 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
23 has years of complex and class action litigation experience, has recovered millions of dollars on
24 behalf of thousands of individuals in California, and has successfully handled numerous significant
25 wage-and-hour class action and complex cases.⁷⁶

26 ⁷² Simpluris Decl., ¶¶ 11 & 12.

27 ⁷³ Aiwazian Decl., ¶¶ 5-8.

28 ⁷⁴ Simpluris Decl., ¶ 17.

⁷⁵ *Id.*, ¶ 18.

⁷⁶ Aiwazian Decl., ¶¶ 16-19.

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

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

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

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 Plaintiff and 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

1 have followed as the case moved toward certification and trial, including taking and defending
2 depositions of Defendant's Person Most Knowledgeable designees, percipient witnesses, and
3 experts, propounding additional discovery requests and conducting additional document
4 production, and engaging in additional, extensive motion practice. As Class Counsel geared up
5 for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire
6 matter through mediation.

7 Class Counsel had to bring together a large volume of data and documents that were
8 produced by Defendant and obtained from Plaintiff and Class Members and through other sources.
9 Class Counsel conducted extensive review and analysis of these documents and data to strategize
10 the action and to prepare for and attend the mediations and engage in settlement discussions.

11 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
12 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
13 on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁷⁷ The chart
14 demonstrates that Class Counsel has spent a total of 526.40 hours litigating the case and finalizing
15 the Settlement.⁷⁸ In light of the facts and circumstances of the case, as well as the results that Class
16 Counsel has achieved in the case, Class Counsel has spent a reasonable number of hours on this
17 matter. In addition, Class Counsel will continue to perform work on this matter through the date
18 of final approval and in connection with the implementation of the Settlement.

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

21 Both California and federal courts recognize that attorneys should be compensated for
22 providing representation on a contingency basis and for taking on the risks associated with said
23 representation, as well as being provided with financial incentives to enforce important rights and
24 protections like those at issue in this action. See *Ketchum, supra*, 24 Cal.4th at 1132-33. In
25 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
26 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
27

28 ⁷⁷ See Aiwazian Decl., Exh. A.

⁷⁸ Aiwazian Decl., ¶ 12.

normal hourly rates for winning contingency cases.” See *id.*

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel’s dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$500,000.00.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$650 per hour for services provided by Class Counsel.⁷⁹ Lawyers for Justice, PC has been awarded attorneys’ fees, compensating the firm at the rate of at least \$650 for legal service performed, by courts of this state.⁸⁰ 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 \$650 per hour to 526.40 hours would place a reasonable value of \$342,160.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys’ fees in the amount of \$166,650.00, which is one-third (33.33%) of the total recovery, as provided for by the Settlement Agreement.

⁷⁹ Aiwarzian Decl., ¶ 13.

⁸⁰ 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 Corp.* (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. Aiwarzian 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 \$166,650.00 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 \$40,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$34,097.01 in litigation costs and expenses.⁸¹ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁸² Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$34,097.01 to Class Counsel.

⁸¹ Aiwazian Decl., ¶ 20.

⁸² *Ibid*.

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

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$7,730.00.⁸³ The costs incurred and to be incurred include, but are not limited to, expenses for establishing and maintaining a related settlement fund account, establishing and maintaining a calendar of administrative deadlines and responsibilities, processing and mailing payments to the Plaintiff, Class Counsel, Settlement Class Members, and Aggrieved Employees, translating, printing and mailing the Notice of Class Action and PAGA Settlement to Class Members in English and Spanish, receiving and validating Requests for Exclusion, Objections or disputes of Workweeks submitted by Class Members, calculating employer-side payroll taxes and providing appropriate forms and calculations to Defendant, mailing Individual Settlement Payment and Individual PAGA Payment checks, providing counsel with weekly reports, and other tasks as the Parties mutually agree or the Court orders Simpluris to perform.⁸⁴

Accordingly, the Court should grant final approval of payment to Simpluris, a necessary third-party for handling of the notice and settlement process, in the amount of \$7,730.00.

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

The Settlement provides for an Enhancement Payment in the amount of \$9,000.00 to Plaintiff Christopher Mejia to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Enhancement Payment is both common and reasonable and should be awarded.

In determining whether to make 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

⁸³ Simpluris Decl., ¶ 20.

⁸⁴ *Id.*, ¶ 3.

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

The requested Enhancement Payment is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁸⁵ 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.⁸⁶ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendant, and gathering and reviewing documents.⁸⁷ These services merit the requested Enhancement Payment to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members to date.⁸⁸

The requested Enhancement Payment was fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Christopher Mejia to receive \$9,000.00 as a reasonable Enhancement Payment, for his services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to his Individual Settlement Payment and Individual PAGA Payment.

///

///

///

///

///

///

///

⁸⁵ Aiwasian Decl., ¶ 21; Declaration of Christopher Mejia (“Mejia Decl.”), ¶¶ 3-5.

⁸⁶ Aiwasian Decl., ¶ 21; Mejia Decl., ¶¶ 3-5.

⁸⁷ Aiwasian Decl., ¶ 21; Mejia Decl., ¶¶ 2-6.

⁸⁸ Mejia Decl., ¶ 9.

1 **X. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval
3 of the Settlement, and award Attorneys' Fees and Costs, Enhancement Payment, Administrative
4 Costs, and allocation for the PAGA Allocation, in their entirety, as sought herein; and permit the
5 filing of a memorandum that exceeds the page limit.

6 Dated: November 9, 2022

LAWYERS for JUSTICE, PC

7
8 By:



Edwin Aiwanian
Attorneys for Plaintiff and the Class