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

NAKITA CLARK, DAWN STEPHENSON,
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;

Plaintiffs,

vs.

WITTMAN ENTERPRISES, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 34-2019-00251989-CU-OE-GDS

Honorable Jill H. Talley
Department 25

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representatives (Nakita Clark and Dawn
Stephenson); Declaration of Settlement
Administrator (Stephen Gomez); and
[Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: June 2, 2023
Time: 9:00 a.m.
Department: 25

Complaint Filed: March 6, 2019
FAC Filed: March 29, 2019
SAC Filed: July 18, 2019
TAC Filed: February 4, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 2, 2023 at 9:00 a.m., in Department 25 of the
2 above-entitled Court, located at the Gordon D. Schraber Courthouse, 720 9th Street Sacramento,
3 California 95814, Plaintiffs Nakita Clark and Dawn Stephenson (together “Plaintiffs”) will and
4 hereby do move for an order granting final approval of:

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

- 8 • A Net Settlement Amount of approximately **\$223,248.12** will be fully distributed to
9 the Class Members who did not submit a timely and valid Request for Exclusion
10 (“Participating Class Members”);
11 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.
12 (“Administrator”);
13 • **No Requests for Exclusion** were submitted to the Administrator;

14 2. Payment in the amount of **\$160,000.00** to Lawyers for Justice, PC (“Class
15 Counsel”), representing one-third (1/3) of the Gross Settlement Amount, for attorneys’ fees,
16 which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check;

17 3. Payment in the amount of **\$13,063.11** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$8,000.00** to the Administrator, Simpluris, Inc.
20 (“Simpluris”), for Administration Costs;

21 5. Payment in the amount of **\$7,500.00** each to Plaintiffs Nakita Clark and Dawn
22 Stephenson, as an Enhancement Payment, for their time and effort in representing the Class
23 (totaling \$15,000.00); and

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

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 Aiwazian), Class Representatives (Nakita Clark and Dawn
6 Stephenson), and Administrator (Stephen Gomez of Simpluris) in support thereof; the pleadings
7 and other records on file with the Court in this matter; and such evidence and oral argument as
8 may be presented at the hearing on this Motion.

9 Dated: May 10, 2023

LAWYERS for JUSTICE, PC

10
11 By:



Yasmin Hosseini
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Nakita Clark and Dawn Stephenson (together, “Plaintiffs”) seek final approval of: (1) the Gross Settlement Amount of \$480,000.00; (2) attorneys’ fees in the amount of \$160,000.00, which is one-third (1/3) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of **\$13,063.11** (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Administration Costs in the amount of \$8,000.00 to Simpluris, Inc. (“Simpluris” or “Administrator”); (4) Enhancement Payments in the amount of \$7,500.00 each to Plaintiffs Nakita Clark and Dawn Stephenson (totaling \$15,000.00); and (5) allocation of \$50,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from March 6, 2015 to January 11, 2023 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of information, documents, and data prior to and during mediation conducted by David L. Perrault, Esq., and extensive settlement negotiations. This matter has required 570.50 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents one-third (1/3) of the 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.

Plaintiffs move for final approval of the Enhancement Payments in the amount of \$7,500.00 each to compensate Plaintiffs for the time and effort that they expended spearheading the lawsuit on behalf of the Class, Aggrieved Employees, and the State of California. Plaintiffs also move for final approval of the payment to the Administrator in the amount of \$8,000.00 for Administration Costs. Plaintiffs also move for final approval of the allocation of \$50,000.00 for

¹ First Amended Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), § 2.8.

1 the PAGA Payment, of which seventy-five percent (i.e., \$37,500.00) will be paid to the
2 California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA
3 Payment (“LWDA Payment”), and twenty-five percent (i.e., \$12,500.00) will be distributed to all
4 current and former hourly-paid or non-exempt employees who worked for Defendant within the
5 State of California at any time during the period from September 1, 2020 through January 11,
6 2023 (“Aggrieved Employees”) on a *pro rata* basis for their portion of the PAGA Payment.

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

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

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

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

26 Defendant Wittman Enterprises, LLC (“Defendant”) is an EMS billing specialist,
27 providing products and services to ensure that EMS providers are reimbursed timely for the
28

1 services they provide. Plaintiffs Nakita Clark and Dawn Stephenson are former employees of
2 Defendant.

3 On March 6, 2019, Plaintiff Nakita Clark filed a Class Action Complaint for Damages in
4 the Sacramento County Superior Court (“Court”), thereby commencing the above-captioned
5 lawsuit (“Action”).

6 On March 29, 2019, Plaintiff Nakita Clark filed a First Amended Class Action Complaint
7 for Damages, adding Dawn Stephenson as a named plaintiff.

8 On July 18, 2019, Plaintiffs filed the Second Amended Class Action Complaint for
9 Damages, removing the allegation of unreimbursed business expenses pursuant to Labor Code
10 sections 2800 and 2802.

11 On October 1, 2019, Defendant filed an Answer to Plaintiffs’ Class Action Complaint.

12 On June 6, 2019, Plaintiffs propounded multiple sets of discovery including Requests for
13 Production of Documents, (Set One); Special Interrogatories, (Sets One & Two); and Form
14 Interrogatories, (Set One), on Defendant and noticed the deposition of Defendant’s person most
15 knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on
16 July 31, 2019, Defendant responded and objected to Plaintiffs’ discovery requests. On August 1,
17 2019, Defendant propounded Form Interrogatories-Employment on both Plaintiffs, and, on
18 September 9, 2019, both Plaintiffs responded and objected to Defendant’s discovery requests.

19 On August 27, 2020, Plaintiffs propounded additional sets of Requests for Production of
20 Documents, (Set Two); and Special Interrogatories, (Set Three) on Defendant, and Requests for
21 Admissions (Set One). Thereafter, on September 15, 2020, September 30, 2020, October 8,
22 2020, and November 12, 2020, Defendant served responses and amended responses to Plaintiffs’
23 discovery requests. On December 15, 2020, Class Counsel took the deposition of Defendant’s
24 Chief Executive Officer, Corrine Wittman-Wong.

25 On September 1, 2021, Plaintiffs each provided written notice to the Labor and
26 Workforce Development Agency (“LWDA”) and Defendant (together, “LWDA Letters”), giving
27 notice of their intent to pursue civil penalties under the California Private Attorneys General Act,
28

1 California Labor Code § 2698, Et Seq. (“PAGA”), on behalf of themselves and the State of
2 California.

3 On February 4, 2022, Plaintiffs filed a Third Amended Complaint for Damages and
4 Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698 et seq., adding a
5 PAGA cause of action (“Operative Complaint”).

6 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by
7 engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and
8 Aggrieved Employees, of, *inter alia*, failing to pay all overtime and minimum wages, failing to
9 provide compliant meal and rest periods and associated premium pay, failing to timely pay
10 wages during employment and upon termination of employment, failing to provide compliant
11 wage statements, failing to maintain requisite payroll records, and thereby engaged in unfair
12 business practices in violation of California Business and Professions Code section 17200, *et*
13 *seq.*, which conduct gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, the
14 Class Members, and the Aggrieved Employees are entitled to, *inter alia*, unpaid wages, penalties
15 (including, but not limited to, penalties pursuant to PAGA), and attorneys’ fees.

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

20 The parties have actively litigated the matter since it was commenced March 6, 2019.
21 The parties conducted formal and informal discovery, and exchanged a large volume of
22 information, documents, and data throughout the course of the litigation and in connection with
23 mediation and settlement negotiations. On February 19, 2020, the parties participated in a
24 formal, full-day mediation conducted by David L. Perrault, Esq., a well-regarded mediator
25 experienced in mediating complex labor and employment matters. After continued settlement
26 negotiations, and with the continued aid of the mediator and his evaluations, the parties
27 ultimately reached the Settlement described herein to resolve the case in its entirety.

On October 21, 2022, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On January 11, 2023, the Court entered an Order Granting 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.

Plaintiffs now move for final approval of the Settlement, Attorneys’ Fees and Costs, Enhancement Payments, Administration Costs, and allocation for PAGA Payment.

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 \$480,000.00 on a non-reversionary basis by making a one-time deposit of the Gross Settlement Amount within thirty (30) calendar days of the Effective Date.² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Attorneys’ Fees and Litigation Costs, consisting of attorneys’ fees in the amount of \$160,000.00 and reimbursement of litigation costs and expenses in the amount of **\$13,063.11**, to Class Counsel; (2) Enhancement Payments in the amount of \$7,500.00 each to Plaintiffs Nakita Clark and Dawn Stephenson (totaling \$15,000.00); (3) Administration Costs in the amount of \$8,000.00 to Simpluris; and (4) PAGA Payment in the amount of \$50,000.00.³ The Net Settlement Amount, which is estimated to be **\$223,248.12**, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁴

The Administrator will calculate each Participating Class Member’s *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”), by dividing the final Net Settlement Amount by the Qualifying Workweeks of all Participating Class Members to yield the “Final

² Settlement Agreement, § 3.1.

³ *Id.*, §§ 3.2, 3.4, 3.5, 3.6.

⁴ This amount is higher than the amount stated in Paragraph 10 of the accompanying Declaration of Stephen Gomez Regarding Notice and Settlement Administration (“Simpluris Declaration” or “Simpluris Decl.”) because the Administrator’s calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$22,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$13,063.11 for reimbursement of litigation costs and expenses, and the difference of \$8,936.89 will remain part of the Net Settlement Amount.

1 Workweek Value,” and multiplying each Participating Class Member’s individual Qualifying
2 Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.⁵

3 The Administrator will calculate each Aggrieved Employee’s Individual PAGA Payment
4 by dividing the 25% of the PAGA Payment payable to Aggrieved Employees by the total
5 number of Qualifying Workweeks of all Aggrieved Employees during the PAGA Period to yield
6 the “PAGA Workweek Value,” and multiplying each Aggrieved Employee’s individual
7 Qualifying Workweeks during the PAGA Period by the PAGA Workweek value to yield his or
8 her Individual PAGA Payment.⁶

9 Class Members had sixty (60) calendar days after the initial mailing of the Class Notice
10 to Class Members to submit a dispute of the number of Qualifying Workweeks to which they
11 were credited, opt out of the Class Settlement, and/or object to the Class Settlement (“Response
12 Deadline”).⁷ The Response Deadline was May 15, 2023.⁸ ***As of the date of this Motion, the
13 Administrator has not received any Requests for Exclusion from the Class Settlement
14 (“Requests for Exclusion”) or Objections to the Class Settlement (“Objections”) from Class
15 Members.***⁹

16 Individual Settlement Shares will be allocated as twenty-five percent (25%) wages, to be
17 reported on IRS Form W-2; and seventy-five percent (75%) penalties, interest, and non-wage
18 damages, to be reported on IRS Form 1099 (if applicable).¹⁰ Each Individual PAGA Payment
19 will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-
20 1099 (if applicable) by the Administrator.¹¹ Individual Settlement Shares will be paid out to
21 Participating Class Members subject to reduction for the employee’s share of taxes,
22 withholdings, and contribution with respect to the wages portion of the Individual Settlement
23 Shares, and the net payment is referred to as the “Individual Settlement Payment.”¹²

24
25 ⁵ Settlement Agreement, § 3.7.2.

26 ⁶ *Id.*, § 3.8.

27 ⁷ *Id.*, §§ 2.36, 4.4, 4.6.1, 4.7.

28 ⁸ Simpluris Decl., ¶ 14, Exh. A.

⁹ *Id.*, ¶¶ 15 & 17.

¹⁰ Settlement Agreement, § 4.9.

¹¹ *Ibid.*

¹² *Id.*, §§ 2.21 & 4.9.

The Individual Settlement Payment checks issued to Participating Class Members and Individual PAGA Payment checks issued to Aggrieved Employees will remain valid for one hundred eighty (180) calendar days from the date of mailing.¹³ Any settlement checks remaining uncashed after one hundred eighty (180) calendar days will be canceled, and the Parties will file a stipulation to the Final Approval order and Judgment that sets forth the total amount paid to Participating Class Members and Aggrieved Employees and the amount of unpaid residue, plus interest on such funds.¹⁴ All funds associated with such canceled checks will be distributed to Legal Aid at Work.¹⁵ The Parties have represented that they do not have any financial interest in Legal Aid at Work or otherwise have a relationship with Legal Aid at Work that could create a conflict of interest.¹⁶

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's January 11, 2023 Preliminary Approval Order.

On January 18, 2023, Simpluris received the Court-approved text for the Class Notice.¹⁷

On February 17, 2023, Simpluris received a mailing list from Defendant's counsel that contained each Class Member's and Aggrieved Employee's full name, last known address, Social Security Number, start and end dates worked for Defendant as an hourly-paid or non-exempt employee within the State of California at any time during the Class Period and PAGA Period ("Class List and Data").¹⁸ The Class List and Data contained information for four hundred and nine (409) individuals identified as Class Members and two hundred and fifteen (215) individuals identified as Aggrieved Employees.¹⁹ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class

¹³ Settlement Agreement, § 4.15.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Simpluris Decl., ¶ 5.

¹⁸ *Id.*, ¶ 6.

¹⁹ Ibid.

List and Data with any updated addresses located.²⁰

On March 15, 2023, Simpluris mailed the Class Notice via First Class mail to four hundred and nine (409) individuals identified as Class Members and two hundred and fifteen (215) individuals identified as Aggrieved Employees in the Class List and Data.²¹

As of the date of this Motion, forty-seven (47) Class Notices were returned as undeliverable without forwarding addresses.²² Simpluris performed a skip-trace search on the forty-seven (47) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for forty-one (41) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²³ Ultimately, six (6) Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Class Notice was returned as undeliverable a second time.²⁴

As of the date of this Motion, the Administrator has not received any Objections or Requests for Exclusion from Class Members.²⁵

To date, there are four hundred and nine (409) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Participating Class Members.²⁶ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$223,248.12 will be distributed to Participating Class Members in accordance with the terms of the Settlement.²⁷ The highest Individual Settlement Share is currently estimated to be \$2,116.79 and the average Individual Settlement Share is currently estimated to be \$58.14.²⁸ The highest Individual PAGA Payment is currently estimated to be \$125.79 and the

²⁰ Simpluris Decl., ¶ 7.

²¹ *Id.*, ¶ 8.

²² *Ibid.*

²³ *Id.*, ¶¶ 9.

²⁴ *Ibid.*

²⁵ *Id.*, ¶¶ 15 & 17.

²⁶ *Id.*, ¶ 12.

²⁷ *Id.*, ¶ 10; see also, n.4, *supra*.

²⁸ *Id.*, ¶ 12. 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 \$22,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$8,936.89 will be part of the Net Settlement Amount). See n.4, *supra*.

average Individual PAGA Payment is currently estimated to be \$58.14.²⁹

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,

²⁹ Simpluris, Decl., ¶ 13.

1 meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords
2 relief that is substantially narrower than it would be if the case were to be successfully litigated,
3 that is no bar to a class settlement because the public interest may indeed be served by a
4 voluntary settlement in which each side gives ground in the interest of avoiding prolonged
5 litigation. *Id.*

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

8 The parties actively litigated the case since it was commenced on March 6, 2019. Both
9 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
10 claims, and Class Counsel was actively preparing the case for class certification and trial, prior to
11 reaching the Settlement.³⁰ The parties conducted formal and informal discovery and
12 investigation into the facts of the case, and formally and informally exchanged a large volume of
13 information, documents, and data throughout the course of the litigation and in connection with
14 mediation and settlement negotiations.³¹ The information, documents, and data reviewed and
15 analyzed by Class Counsel included, and was not limited to: Plaintiffs' and other Class
16 Members' employment records, a sampling of Class Members' time and pay records, new hire
17 information checklists, multiple iterations of Defendant's Employee Handbook, company policy
18 acknowledgements (including but not limited to, Handbook Acknowledgement,
19 Acknowledgement of Receipt of Handbook Updates, At-Will Employment Agreement, and
20 Acknowledgment of Receipt of Code of Safe Practices), internal memoranda, job descriptions,
21 Defendant's operations and employment practices, procedures, and policies documents
22 (including but not limited to, Electronic Device Policy, Cell Phone Usage, Meal Break Waiver
23 Form, Telephone Monitoring Consent, Electronic Communication and Internet Use Policy,
24 Electronic and Telephone Monitoring Consent, Employee Orientation Checklist, Annual
25 Confidentiality Statement, Vacation and Sick Benefit Agreement Letter, and Guidelines for
26 Dress) among other information and documents.³² Class Counsel had the opportunity to

27 ³⁰ Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6.

28 ³¹ *Ibid.*

³² *Ibid.*

1 interview and obtain information from Plaintiffs and other Class Members and reviewed and
2 analyzed a volume of information, documents, and data obtained from Plaintiffs, Defendant, and
3 other sources.³³ Class Counsel propounded multiple sets of formal written discovery requests on
4 Defendant, reviewed Defendant's objections, responses, and amended responses thereto, and
5 worked with Plaintiffs to provide responses to discovery requests that were propounded on them
6 by Defendant. Class Counsel noticed the depositions of Defendant's Persons Most
7 Knowledgeable, and prepared for and took the deposition of Defendant's Chief Executive
8 Officer.³⁴ Class Counsel researched applicable law, developed liability, damages, and penalties
9 valuation models in connection with mediation and settlement negotiations, and met and
10 conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the
11 pleadings, case management, discovery, and the production of information, documents, and data
12 in the course of litigation as well as in connection with mediation and settlement negotiations.
13 Class Counsel also drafted pleadings, motion-related papers (including and not limited to, in
14 connection with Defendant's demurrer) and the mediation brief, prepared for and attended court
15 proceedings, and prepared for and participated in mediation and settlement negotiations, among
16 other tasks.³⁵

17 After conducting formal and informal discovery and investigation into the facts of the
18 case, the parties participated in a formal, full-day mediation conducted by David L. Perrault,
19 Esq., a well-regarded mediator experienced in mediating complex labor and employment
20 matters.³⁶ In the course of mediation and settlement negotiations, the parties exchanged
21 information and data, and discussed all aspects of the case, including the risks and delays of
22 further litigation, the risks to the parties of proceeding with class certification and trial, the law
23 relating to class certification, off-the-clock theory, meal and rest periods, representative PAGA
24 claims, waiver, *Pick-Up Stix* agreements/releases, and wage-and-hour enforcement, the evidence
25 produced and analyzed, and the possibility of appeals, among other things.³⁷ During all

26 ³³ Aiwazian Decl., ¶ 6.

27 ³⁴ Ibid.

28 ³⁵ Ibid.

³⁶ *Id.*, ¶ 8.

³⁷ Ibid.

1 settlement discussions, the parties conducted their negotiations at arm's length in an adversarial
2 position.³⁸ Arriving at a settlement that was acceptable to the parties was not easy.³⁹ Defendant
3 and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain
4 a denial of class certification, while Plaintiffs and Class Counsel believed that class certification
5 would be obtained and Plaintiffs would prevail at trial.⁴⁰ After conducting formal and informal
6 discovery and investigations, extensive settlement negotiations, and with the aid of the
7 mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the
8 legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the parties that
9 would attend further litigation.⁴¹

10 The Settlement takes into account the strengths and weaknesses of each side's position
11 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.
12 Class Counsel had the opportunity to interview and obtain information from Plaintiffs and other
13 Class Members and reviewed and analyzed a largen volume of information, documents, and data
14 obtained from Plaintiffs, Defendant, and other sources.⁴² Class Counsel also performed
15 significant research into the applicable law, which is evolving as it relates to class certification,
16 off-the-clock theory, meal and rest periods, representative PAGA claims, waiver, *Pick-Up Stix*
17 agreements/releases, wage-and-hour law and enforcement, Plaintiffs' claims and allegations, and
18 Defendant's defenses thereto, as well as facts discovered.⁴³ The Settlement was based on this
19 large volume of facts, evidence, and investigation.⁴⁴ Additionally, Class Counsel has extensive
20 experience in handling complex wage-and-hour matters, including significant experience in
21 employment class action litigation.⁴⁵

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23 ////

24 ³⁸ Ibid.

25 ³⁹ Aiwazian Decl., ¶ 8.

26 ⁴⁰ Ibid.

27 ⁴¹ Ibid.

28 ⁴² *Id.*, ¶ 6.

⁴³ Ibid.

⁴⁴ *Id.*, ¶¶ 6 & 8.

⁴⁵ *Id.*, ¶¶ 16-19.

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 \$480,000.00,
4 represents a fair, adequate, and reasonable resolution of the matter, given the risks inherent in
5 litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁶
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.⁴⁷ 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 Plaintiffs' 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 Plaintiffs' 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 and Aggrieved Employees after
21 all was said and done. This is not just an abstract contention. The risks and expenses of further
22 litigation outweighed any benefit that might have been gained otherwise. These risks of further
23 litigation include a determination that the claims were unsuitable for class treatment and/or
24 representative adjudication, failure to obtain certification, class de-certification after certification
25 of a class, allowing a jury to decide the claims asserted in the matter, and the real possibility of
26 no recovery after years of litigation. Additionally, the parties were moving into the phase of the

27 _____
28 ⁴⁶ Aiwazian Decl., ¶¶ 8 & 22.

⁴⁷ *Id.*, ¶¶ 5-8.

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

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

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

The Settlement, which provides for a Gross Settlement Amount of Four Hundred Eighty Thousand Dollars (\$480,000.00), represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Gross Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$160,000.00, litigation costs and expenses in the amount of \$13,063.11, Enhancement Payments totaling \$15,000.00, Administration Costs in the amount of \$8,000.00, and PAGA Payment in the amount of \$50,000.00 from the Gross Settlement Amount of \$480,000.00, the Net Settlement Amount is currently estimated to be \$223,248.12.⁴⁸ Under the Settlement Agreement, the Gross Settlement

⁴⁸ Simpluris Decl., ¶ 10; see n.4, *supra*.

Amount will be fully paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As 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 Workweeks credited to him or her. To date, there are four hundred and nine (409) Participating Class Members, representing 100% of the Class Members.⁴⁹ The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be \$2,116.79 and the average Individual Settlement Share is currently estimated to be \$58.14.⁵⁰ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$125.79 and the average Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$58.14.⁵¹ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the Aggrieved Employees, and the State of California.⁵² Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁵³ Lawyers for Justice, PC has been appointed class counsel in

⁴⁹ Simpluris Decl., ¶ 12.

⁵⁰ *Id.*, ¶ 12; see n.29, *supra*.

⁵¹ *Ibid.*

⁵² Aiwazian Decl., ¶ 22.

⁵³ *Id.*, ¶¶ 16-19.

1 numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in
2 California.⁵⁴ Both parties' counsel were capable of assessing the strengths and weaknesses of the
3 Class Members' claims against Defendant and the benefits of the Settlement under the
4 circumstances of the case and in the context of a private, consensual settlement agreement.

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

6 The Settlement has been well received by the Class – *not a single Class Member*
7 *objected to the Class Settlement.*⁵⁵ Specifically, no objections have been made as to the Gross
8 Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Payments,
9 Administration Costs, or the allocation for PAGA Payment. California courts have consistently
10 found that a small number of objectors indicates the class' support for a settlement and strongly
11 favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite
12 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted
13 despite 9 objectors).

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

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

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

21 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
22 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
23 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
24 1132 (The "experienced trial judge is the best judge of the value of professional services
25 rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.
26 Where the amount of a settlement is a "certain easily calculable sum of money," California
27

28 ⁵⁴ Ibid.

⁵⁵ Simpluris Decl., ¶ 17.

1 courts may calculate attorneys' fees as a reasonable percentage of the settlement. Weil and
2 Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also*
3 *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808.
4 The percentage-of-the-benefit approach is preferred in class and representative actions because
5 "it better approximates the workings of the marketplace than the lodestar approach." *Lealao*,
6 *supra*, 82 Cal.App.4th at 49.

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

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

25 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
26 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
27 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
28 (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, 34.⁵⁶ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent, supra*, 557 F.2d at 769.

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

The propriety of calculating and awarding attorneys' fees as a percentage of a monetary settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a

⁵⁶ 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 lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar
2 cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]”
3 and “[t]he percentage [...] method survives in California.” *Id.* (internal quotes omitted).

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

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

19 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
20 Amount of \$480,000.00 on a non-reversionary basis. The requested attorneys’ fees are one-third
21 (1/3) of the total value of the monetary settlement. In light of Class Counsel’s successful
22 prosecution and resolution of the case, the requested attorneys’ fees are appropriate and
23 reasonable.

24 Compensating class counsel in class litigation on a percentage basis makes good sense
25 because: (1) it is consistent with the private marketplace where contingent fee attorneys are
26 customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent
27 class members in achieving the maximum possible resolution of the case; and (3) it encourages
28 the most efficient and expeditious resolution of the litigation by providing an incentive for early,

1 yet reasonable, settlement. The requested attorneys’ fees in this matter satisfy all of those factors
2 as such and should be approved on a percentage basis.

3 The percentage method is consistent with, and is intended to mirror, the practice in the
4 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
5 arrangements with their clients. A named plaintiff’s agreement to pay a contingent fee is
6 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
7 counsel’s work to the class is to review the consideration agreed to be paid by the named
8 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
9 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
10 without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this
11 case, Plaintiffs have both agreed to a contingency fee of at least thirty-nine percent (39%) of the
12 recovery.⁵⁷

13 Furthermore, a percentage-fee award is not dependent on a determination of the actual
14 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
15 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
16 equitable that [the attorney’s] compensation and expenses should come from the entire fund
17 saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.*
18 (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be
19 calculated on the basis of the total fund made available rather than the actual payments made to
20 the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a
21 litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or
22 his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

28 ⁵⁷ Aiwazian Decl., ¶ 10.

Class Counsel has obtained a substantial recovery on behalf of Plaintiffs, the Class, Aggrieved Employees, 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 Plaintiffs and Class Counsel. Thus, the requested attorneys' fees are appropriate.

C. The Attorneys' Fees 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 \$160,000.00 (which is one-third 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

1 handling of class actions and complex litigation matters.⁵⁸

2 As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively
3 participated in litigation of the Action.⁵⁹ Prior to commencing the Action, Class Counsel had
4 conducted a significant amount of investigation into the factual and legal issues, Defendant's
5 business, and its operations and employment policies, practices, and procedures.⁶⁰ During the
6 litigation of the Action, Class Counsel interviewed Plaintiffs and other Class Members;
7 propounded formal written discovery requests on Defendant; reviewed and analyzed a large
8 volume of pages of documents and data produced by Defendant and obtained through other
9 sources; and prepared damages/valuation calculations.⁶¹ Class Counsel also met and conferred
10 with Defendant's counsel over the issues relating to pleadings, case management, discovery,
11 *Belaire-West* process, and production of documents and data, among other things; engaged in
12 extensive settlement negotiations with Defendant's counsel; and prepared for and attended court
13 proceedings, mediation, and settlement negotiations.⁶²

14 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
15 matter diligently and with maximum efficiency and has fully and actively participated in the
16 litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
17 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Lawyers for
18 Justice, PC has spent performing tasks on behalf of Plaintiffs and the Class.⁶³ The Task and
19 Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it
20 without having to set forth each and every task in the body of this Motion. The Court is
21 respectfully referred to the chart, which sets forth the history of the work performed by Class
22 Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement
23 and final approval. Class Counsel has spent 570.50 hours performing tasks and to obtain a
24 significant recovery on behalf of Plaintiffs and the Class.⁶⁴ These hours were required to bring

25 ⁵⁸ Aiwarzian Decl., ¶¶ 16-19.

26 ⁵⁹ *Id.*, Exh. A.

27 ⁶⁰ *Id.*, ¶ 6 & Exh. A.

28 ⁶¹ *Id.*, ¶ 6

⁶² *Ibid.*

⁶³ *Id.*, Exh. A.

⁶⁴ *Id.*, ¶ 12.

1 this matter to its successful conclusion. In light of the value of time expended and the carrying
2 of costs involved in litigating the case, the requested attorneys' fees are fair, adequate, and
3 reasonable.

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

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

10 Class Counsel undertook significant investigation, analysis, and research prior to filing
11 the case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the
12 matter for class certification and representative adjudication and had every intention of taking the
13 matter to trial on a class-wide basis if Defendant did not offer an appropriate class-wide
14 settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the
15 Declaration of Edwin Aiwarzian, Class Counsel used its extensive experience in the handling of
16 class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with
17 maximum efficiency.⁶⁵

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

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

25 The Settlement at this stage is preferred over continued litigation because such
26 resolutions save time and money that would otherwise go to litigation. The risks and expenses of
27 further litigation outweighed any benefit that might have been gained otherwise. The Settlement

28 ⁶⁵ Aiwarzian Decl., ¶¶ 16-19.

provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Participating Class Members, the State of California, and Aggrieved Employees while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Gross Settlement Amount of \$480,000.00 to settle the matter. After deducting the attorneys' fees (\$160,000.00), litigation costs and expenses (\$13,063.11), Enhancement Payments (\$15,000.00), Administration Costs (\$8,000.00), and the PAGA Payment (\$50,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$223,248.12.⁶⁶ 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 is currently estimated to be \$2,116.79 and the average Individual Settlement Share is currently estimated to be \$58.14.⁶⁷ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$125.79 and the average Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$58.14.⁶⁸ The Settlement offers significant monetary relief to the Participating Class Members.

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

Plaintiffs 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 570.50 hours of time to obtain relief on behalf of Plaintiffs and the Class.⁶⁹ Class Counsel has also incurred litigation costs and expenses in the amount of \$13,063.11.⁷⁰

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⁶⁶ Simpluris Decl., ¶ 10; see n.4, *supra*.

⁶⁷ *Id.*, ¶ 12; see n.29, *supra*.

⁶⁸ *Ibid*.

⁶⁹ Aiwazian Decl., ¶ 12, Exh. A.

⁷⁰ See Part VII, *infra*.

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷² The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

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

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to or opted out of the Class Settlement.⁷³

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)).

⁷¹ Aiwazian Decl., ¶ 20.

⁷² See *id.*, ¶¶ 16-19.

⁷³ Simpluris Decl., ¶¶ 15 & 17.

Here, the results achieved and obtained on behalf of Plaintiffs and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$480,000.00.⁷⁴ 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 is currently estimated to be \$2,116.79 and the average Individual Settlement Share is currently estimated to be \$58.14.⁷⁵ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$125.79 and the average Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$58.14.⁷⁶

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 the 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.⁷⁷

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

⁷⁴ Aiwazian Decl., ¶¶ 5-8.

⁷⁵ Simpluris Decl., ¶ 12; see n.31, *supra*.

⁷⁶ *Id.*, ¶ 13.

⁷⁷ Aiwazian Decl., ¶¶ 16-19.

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

Class Counsel had to bring together a large volume of information, data, and documents that were produced by Defendant and obtained from Plaintiffs and Class Members and through other sources. Class Counsel conducted extensive review and analysis of these documents and

1 data to strategize the action and to prepare for and attend mediation and engage in settlement
2 discussions.

3 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwasian
4 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
5 on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁷⁸ The
6 chart demonstrates that Class Counsel has spent a total of 570.50 hours litigating the case and
7 finalizing the Settlement.⁷⁹ In light of the facts and circumstances of the matter, as well as the
8 results that Class Counsel has achieved in the case, Class Counsel has spent a reasonable number
9 of hours on this matter. In addition, Class Counsel will continue to perform work on this matter
10 through the date of final approval and in connection with the implementation of the Settlement.

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

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

20 Class Counsel has been actively involved in the case, prior to its commencement and all
21 the way up to the present, and Class Counsel's dedication to providing representation in this
22 matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its
23 efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful
24 in reaching a settlement of \$480,000.00.

25 As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and
26 experience of Class Counsel support a reasonable hourly rate of compensation of at least \$650

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28 ⁷⁸ See Aiwasian Decl., Exh. A.

⁷⁹ Aiwasian Decl., ¶ 12.

per hour for services provided by Class Counsel.⁸⁰ 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.⁸¹ 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 570.50 hours would place a reasonable value of \$370,825.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$160,000.00, which is one-third (1/3) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line

⁸⁰ Aiwazian Decl., ¶ 13.

⁸¹ 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 a higher 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 a higher 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 a higher 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 a higher hourly rate of \$845.64. Aiwazian Decl., ¶ 13.

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 \$100,000.00 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$22,000.00. As set forth in the Declaration of Edwin Aiwarzian, Class Counsel has incurred a total of \$13,063.11 in litigation costs and expenses.⁸² This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁸³ The cost savings of \$8,936.89 will be part of the Net Settlement Amount, which will be distributed to the Participating Class Members in accordance with the Settlement.⁸⁴ Accordingly, Plaintiffs requests that the Court award litigation costs and expenses in the amount of \$13,063.11 to Class Counsel.

VIII. THE 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 \$8,000.00.⁸⁵ The costs incurred and to be incurred include, but are not limited to, expenses for formatting,

⁸² Aiwarzian Decl., ¶ 20.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Simpluris Decl., ¶ 17.

printing, and mailing the Class Notice to the Class Members and Aggrieved Employees; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Objections, and workweeks disputes (if any); handling inquiries from Class Members and Aggrieved Employees regarding the Settlement; calculating Individual Settlement Shares and Individual PAGA Payments and preparing the associated tax forms; and transmitting payments, among other things.⁸⁶

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 \$8,000.00.

IX. THE REQUESTED ENHANCEMENT PAYMENTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for an Enhancement Payment in the amount of \$7,500.00 each to Plaintiffs Nakita Clark and Dawn Stephenson to compensate them for the time and effort that they expended on behalf of the Class. The requested Enhancement Payments are 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 Enhancement Payments are fair and appropriate because Plaintiffs 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.⁸⁷ For example, Plaintiffs expended effort to review and provide responses to

⁸⁶ Simpluris Decl., ¶ 3.

⁸⁷ Aiwazian Decl., ¶ 21; Declaration of Nakita Clark (“Clark Decl.”), ¶¶ 3-4; Declaration of Dawn Stephenson (“Stephenson Decl.”) ¶¶ 3-4.

discovery requests that were propounded by Defendant.⁸⁸ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information to support the pursuit of class and PAGA claims.⁸⁹ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.⁹⁰ These services merit the requested Enhancement Payments to Plaintiffs, who have not received any compensation for their efforts on behalf of the Class Members to date.⁹¹

The requested Enhancement Payments were fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Enhancement Payments. Accordingly, it is appropriate and just for Plaintiffs Nakita Clark and Dawn Stephenson to receive \$7,500.00 each as a reasonable Enhancement Payment, for their services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to their individual settlement payments.

X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Attorneys' Fees and Costs, Enhancement Payments, Administration Costs, and allocation for the PAGA Payment, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: May 10, 2023

LAWYERS for JUSTICE, PC

By: _____



Yasmin Hosseini
Attorneys for Plaintiffs and the Class

⁸⁸ Clark Decl., ¶ 4; Stephenson Decl., ¶ 4.

⁸⁹ Aiwazian Decl., ¶ 21; Clark Decl., ¶¶ 3-4; Stephenson Decl., ¶¶ 3-4.

⁹⁰ Aiwazian Decl., ¶ 21; Clark Decl., ¶¶ 2-4; Stephenson Decl., ¶¶ 2-4.

⁹¹ Clark Decl., ¶ 8; Stephenson Decl., ¶ 8.