

Edwin Aiwazian (SBN 232943)  
Arby Aiwazian (SBN 269827)  
Joanna Ghosh (SBN 272479)  
Janardana Burns (SBN 337696)  
**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 SACRAMENTO**

RAHMAD PERRY; individually, and on  
behalf of other members of the general  
public similarly situated;

Plaintiff,

vs.

BELLA BRU NATOMAS, LLC, an  
unknown business entity; and DOES 1  
through 100, inclusive,

Defendants.

Case No.: 34-2020-00281583-CU-OE-GDS

Honorable Jill H. Talley  
Department 25

**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 (Rahmad Perry); Declaration  
of Settlement Administrator (Lindsay Kline);  
and [Proposed] Final Approval Order and  
Judgment filed concurrently herewith]

Date: January 20, 2023  
Time: 9:00 a.m.  
Department: 25

Complaint Filed: July 8, 2020  
FAC Filed: February 14, 2022  
Trial Date: None Set

1           **PLEASE TAKE NOTICE** that on January 20, 2023 at 9:00 a.m., in Department 25 of  
2 the above-entitled Court, located at 720 9th Street, Sacramento, California 95814, Plaintiff  
3 Rahmad Perry (“Plaintiff”) will and hereby does move for an order granting final approval of:

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

- 7           • A Net Settlement Amount of approximately **\$121,069.20** will be fully distributed to  
8 the Class Members who did not submit a timely and valid Request for Exclusion  
9 (“Participating Class Members”);
- 10          • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.  
11 (“Settlement Administrator”);
- 12          • **No Requests for Exclusion** were submitted to the Settlement Administrator;

13          2.       Payment in the amount of **\$113,540.00** to Lawyers for Justice, PC (“Class  
14 Counsel”), representing thirty-five percent (35%) of the Gross Settlement Amount, for attorneys’  
15 fees, which is reasonable and justified on a percentage-basis;

16          3.       Payment in the amount of **\$14,795.80** to Class Counsel for reimbursement of  
17 litigation costs and expenses;

18          4.       Payment in the amount of **\$7,495.00** to the Settlement Administrator, Simpluris,  
19 Inc. (“Simpluris”), for Settlement Administration Expenses;

20          5.       Payment in the amount of **\$7,500.00** to Plaintiff Rahmad Perry, as an  
21 Enhancement Payment, for his time and effort in representing the Class; and

22          6.       Allocation of the penalties under the Private Attorneys General Act of 2004,  
23 California Labor Code section 2698, *et seq.*, in the amount of **\$60,000.00**, of which seventy-five  
24 percent (75%), or **\$45,000.00**, will be paid to the California Labor and Workforce Development  
25 Agency and twenty-five percent (25%), or **\$15,000.00**, will be distributed to PAGA Employees.

26           This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules  
27 of Court, which require approval by the Court of a Class Action and PAGA Settlement  
28 Agreement and permit the Court to extend the page limit for memoranda.

1 This motion is based upon the following Memorandum of Points and Authorities; the  
2 Declaration of Class Counsel (Edwin Aiwarzian), Class Representative (Rahmad Perry), and  
3 Settlement Administrator (Lindsay Kline of Simpluris) in support thereof; the pleadings and  
4 other records on file with the Court in this matter; and such other evidence and oral argument as  
5 may be presented at the hearing on this Motion.

6 Dated: December 27, 2022

**LAWYERS for JUSTICE, PC**

7  
8 By:   
9 Janardana Burns  
Attorneys for Plaintiff and the Class

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Rahmad Perry (“Plaintiff”) seeks final approval of: (1) the Gross Settlement Amount of \$324,400.00; (2) attorneys’ fees in the amount of \$113,540.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$14,795.80 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Expenses in the amount of \$7,495.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Rahmad Perry; and (5) allocation of \$60,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Fund”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly or non-exempt individuals who worked for Defendant in the State of California at any time during the period from July 8, 2016 through May 31, 2022 (“Class” or “Class Members”).<sup>1</sup>

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 Warren Jackson, Esq., and extensive settlement negotiations. This matter has required 467.10 hours of attorney time from Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.

Plaintiff moves for final approval of the Enhancement Payment in the amount of \$7,500.00 to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$7,495.00 for Settlement Administration Expenses. Plaintiff also moves for final approval of the allocation of \$60,000.00 for the PAGA Fund, of

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<sup>1</sup> Class Action and PAGA Settlement Agreement (“Settlement Agreement”), Exh. 1, § 1.5.

1 which \$45,000.00 will be paid to the California Labor Workforce and Development Agency  
2 (“LWDA”) for its portion of the PAGA Fund (“LWDA Payment”), and \$15,000.00 will be  
3 distributed to all individuals who worked for Defendant in California as non-exempt employees  
4 at any time during the period from November 22, 2020 through May 31, 2022 (“PAGA  
5 Employees”) on a *pro rata* basis (“PAGA Employee Amount”).<sup>2</sup>

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

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

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

## 24 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

25 Defendant Bella Bru Natomas, LLC (“Defendant”) a café and catering organization  
26 operating in Sacramento, California. Plaintiff Rahmad Perry is a former employee of Defendant.

27 On July 8, 2020, Plaintiff filed a Class Action Complaint for Damages in the Sacramento  
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<sup>2</sup> Settlement Agreement, §§ 1.22-24, & 1.26.

County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On September 16, 2020, Defendant filed an Answer to Plaintiff’s Class Action Complaint for Damages, and thereafter, on October 1, 2020, Defendant filed a First Amended Answer to Plaintiff’s Class Action Complaint for Damages.

On September 28, 2020, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Sets One and Two); Special Interrogatories, (Sets One, Two, and Three); and Form Interrogatories, (Set One), on Defendant, and noticed the deposition of Defendant’s person most knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on November 17, 2020, February 12, 2021, April 22, 2021, and May 4, 2021, Defendant responded to Plaintiff’s discovery requests.

Defendant, in turn, propounded Requests for Production of Documents and noticed the deposition of Plaintiff. Thereafter, on October 22, 2020, Plaintiff responded and objected to Defendant’s discovery and deposition requests.

On February 08, 2022, the Court granted the Parties’ Joint Stipulation requesting Plaintiff leave to file a First Amended Complaint in order to add a cause of action for damages and enforcement under the Private Attorneys General Act, California Labor Code § 2698, *Et. Seq.* On February 14, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* (“Operative Complaint”), adding a PAGA cause of action.

Plaintiff’s core allegation is that Defendant has violated the California Labor Code and Industrial Welfare Commission Wage Orders by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA Employees, of, inter alia, failing to pay wages (including minimum and regular wages), failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment, failing to timely pay wages upon termination of employment and waiting-time penalties, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of

1 California Business and Professions Code section 17200, et seq. and conduct that gives rise to  
2 civil penalties recoverable under PAGA. Plaintiff contends that he, and the Class Members, are  
3 entitled to, inter alia, unpaid wages, penalties (including and not limited to, penalties pursuant to  
4 PAGA), and attorneys' fees.

5 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind  
6 associated with any of Plaintiff's allegations in the Action, and further denies that Plaintiff's  
7 claims or the Action are appropriate for class treatment or representative adjudication for any  
8 purpose other than for settlement purposes only.

9 The Parties have actively litigated the Action since it was commenced on July 8, 2020.  
10 On November 3, 2021, the Parties participated in a formal, full-day mediation conducted by  
11 Warren Jackson, Esq., a well-regarded mediator experienced in mediating complex labor and  
12 employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the  
13 Settlement described herein to resolve the Action in its entirety.

14 On May 10, 2022, Plaintiff filed his motion for preliminary approval of Class Action and  
15 PAGA Settlement Agreement ("Motion for Preliminary Approval"). On May 31, 2022, the Court  
16 entered a Minute Order granting preliminary approval of the settlement and setting a hearing on  
17 Plaintiff's motion for final approval of Class Action and PAGA Settlement Agreement ("Motion  
18 for Final Approval") for September 9, 2022, at 9:00 a.m. in Department 25 of the above-entitled  
19 Court.

20 On June 13, 2022, the Parties filed a Joint Stipulation to Continue Final Approval  
21 Hearing. On July 5, 2022, the Court entered the Order to Continue Final Approval Hearing and  
22 Set the hearing on Plaintiff's Motion for Final Approval for December 2, 2022, at 9:00 a.m. in  
23 Department 25 of the above-entitled Court.

24 On October 12, 2022, the Parties filed a Joint Stipulation to Further Continue Final  
25 Approval Hearing to allow adequate time for Class Members to submit Requests for Exclusion,  
26 Workweek Disputes, and/or Objections. On October 25, 2022, the Court entered an order  
27 granting the Joint Stipulation to Further Continue Final Approval Hearing and setting the Final  
28 Approval Hearing for January 20, 2023 at 9:00 a.m. in Department 25.

Plaintiff now moves for final approval of the Settlement, Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Expenses, and the PAGA Fund.

**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 \$324,400.00 on a non-reversionary basis, in three (3) installments – an initial payment of One Hundred Thousand Dollars (\$100,000.00) within fifteen (15) calendar days after the Court grants preliminary court approval, but no earlier than May 1, 2022, a second payment of One Hundred Thousand Dollars (\$100,000.00) within fifteen (15) calendar days of final court approval, but no earlier than August 1, 2022, and a final payment of One Hundred and Twenty-Four Thousand and Four Hundred Dollars (\$124,400.00) within nine (9) months of final court approval.<sup>3</sup> 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 Costs, consisting of attorneys' fees in the amount of \$113,540.00 and reimbursement of litigation costs and expenses in the amount of \$14,795.80, to Class Counsel; (2) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Rahmad Perry; (3) Settlement Administration Expenses in the amount of \$7,495.00 to Simpluris; and (4) PAGA Fund in the amount of \$60,000.00.<sup>4</sup> The Net Settlement Amount, which is estimated to be \$121,069.20, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.

The Settlement Administrator will calculate each Participating Class Member's share of the Net Settlement Amount that a Settlement Class Member is eligible to receive for the Class Settlement ("Individual Settlement Payment") in accordance with the Settlement Agreements follows: Defendant will provide the Settlement Administrator with the number of number of weeks worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period ("Workweeks") credited to each Class Member.<sup>5</sup> The Settlement Administrator will calculate the total number of Workweeks worked by all Participating Class Members ("Total Workweeks").<sup>6</sup> The Settlement Administrator will divide each Participating Class Member's

<sup>3</sup> Settlement Agreement; § 15.2(a)-(c).

<sup>4</sup> *Id.*, §§ 11, 12, 13, & 14.

<sup>5</sup> *Id.*, §§ 1.17, 1.41, & 10.1.

<sup>6</sup> *Id.*, § 10.1.

1 respective individual Workweeks by the Total Workweeks, and multiply the resulting figure by  
2 the Net Settlement Amount to yield each Participating Class Member's Individual Settlement  
3 Payment.<sup>7</sup>

4 The PAGA Employee Amount will be distributed to PAGA Employees on a *pro rata*  
5 basis and the Settlement Administrator will calculate each PAGA Employee's individual share of  
6 the PAGA Employee Amount ("Individual PAGA Payment") as follows: Defendants will  
7 provide the Settlement Administrator with the number of Workweeks worked during the PAGA  
8 Period ("PAGA Workweeks") credited to each PAGA Employee.<sup>8</sup> The Settlement Administrator  
9 will calculate the total number of PAGA Workweeks by all PAGA Employees ("Total PAGA  
10 Workweeks").<sup>9</sup> The Settlement Administrator will divide each PAGA Employees respective  
11 PAGA Workweeks by the Total PAGA Workweeks and multiply the resulting figure by the  
12 PAGA Employee Amount to yield each PAGA Employee's Individual PAGA Payment.<sup>10</sup>

13 Class Members had sixty (60) calendar days after the initial mailing of the Class Notice  
14 to Class Members to dispute the number of Workweeks credited to each of them, opt out of the  
15 Class Settlement, and/or object to the Settlement ("Response Deadline").<sup>11</sup> The Response  
16 Deadline is December 31, 2022.<sup>12</sup> In the event that the Class Notice is re-mailed to a Class  
17 Member, the Response Deadline for that Class Member will be extended by fifteen (15)  
18 calendar days.<sup>13</sup> As of the date of filing, the Settlement Administrator has not received any  
19 written requests for exclusion from the Settlement ("Requests for Exclusion"), objections to the  
20 Class Settlement ("Objections"), or disputes regarding Workweeks ("Workweeks Disputes")  
21 from Class Members.<sup>14</sup>

22 Each Individual Settlement Payment will be allocated as twenty (20%) wages, to be  
23 reported on IRS Form W-2 ("wage portion"); and eighty percent (80%) as penalties, interest, and  
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25 <sup>7</sup> Settlement Agreement, § 10.1.

26 <sup>8</sup> *Id.*, §§ 1.16, 1.28, & 12.2.

26 <sup>9</sup> *Id.*, § 12.2.

27 <sup>10</sup> *Ibid.*

27 <sup>11</sup> *Id.*, §§ 7.2(c), 7.2(d), 7.4, & 7.6.

28 <sup>12</sup> Simpluris Decl., ¶ 10, Exh. A.

<sup>13</sup> Settlement Agreement, § 1.38.

<sup>14</sup> Simpluris Decl., ¶¶ 11, 12, & 13.

non-wage damages (“non-wage portion”), to be reported on IRS Form 1099 (if applicable).<sup>15</sup> Participating Class Members will be issued payment of their Individual Settlement Payment subject to reduction for the employee’s share of taxes, and withholdings, with respect to the wages portion of each Individual Settlement Payment.<sup>16</sup> Defendant will pay the employer’s share of taxes and contributions with respect to the wages portion of Individual Settlement Payments in addition to the Gross Settlement Amount with the third and final installment as set forth in the Settlement Agreement.<sup>17</sup>

Each Individual PAGA Payment will be allocated as 100% penalties, and PAGA Employees will be issued an IRS Form 1099 for their Individual PAGA Payments and will assume full responsibility and liability for the payment of taxes due on such awards, if any.<sup>18</sup>

Individual Settlement Payments and Individual PAGA Payments will be paid by the Settlement Administrator to the Participating Class Members and PAGA Employees, respectively, within fifteen (15) calendar days after receipt of the full Gross Settlement Amount from the Defendant.<sup>19</sup>

Any and all Individual Settlement Payment checks issued to Participating Class Members and Individual PAGA Payment checks issued to PAGA Employees will remain valid for 180 calendar days from the date the checks are issued, and thereafter, shall be cancelled.<sup>20</sup> The Settlement Administrator shall perform a skip-trace search on any checks that are returned as undeliverable after the initial mailing, and perform a single re-mailing to any address located.<sup>21</sup> The funds associated with such canceled checks will be transmitted by the Settlement Administrator to Saint John’s Program For Real Change.<sup>22</sup>

#### IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court’s May 31,

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<sup>15</sup> Settlement Agreement, § 16.1.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> *Id.*, § 15.3.

<sup>20</sup> *Id.*, § 15.4.

<sup>21</sup> *Id.*, § 7.2(d).

<sup>22</sup> *Id.*, § 15.4.

2022 Preliminary Approval Order.

On June 1, 2022, Simpluris received the Court-approved text for the Class Notice.<sup>23</sup>

On September 21, 2022, Simpluris received a mailing list from Defendant's counsel that contained the full names, mailing addresses, telephone numbers, Social Security Numbers, and number of Workweeks during the Class Period and, as applicable, during the PAGA Period (collectively, "Class List and Data").<sup>24</sup> The Class Data List contained information for two hundred and fifty-two (252) individuals identified as Class Members.<sup>25</sup> Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data List with any updated addresses located.<sup>26</sup>

On November 1, 2022, Simpluris mailed the Class Notice via first class mail to two hundred and fifty-two (252) individuals identified as Class Members in the Class List and Data.<sup>27</sup>

As of the date of this Motion, zero (0) Class Notices were returned as undeliverable with forwarding addresses.<sup>28</sup> Fifty-five (55) Class Notices were returned as undeliverable without forwarding addresses.<sup>29</sup> Simpluris performed a skip-trace search on the fifty-five (55) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for thirty-three (33) Class Members, and promptly re-mailed the Class Notice to the updated addresses.<sup>30</sup> Ultimately, twenty-two (22) 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.<sup>31</sup>

As of the date of this Motion, the Settlement Administrator has not received any Objections or Requests for Exclusion from Class Members.<sup>32</sup>

To date, there are two hundred and fifty-two (252) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Participating Class

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<sup>23</sup> Simpluris Decl., ¶ 5.

<sup>24</sup> *Id.*, ¶ 6.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Id.*, ¶ 7.

<sup>27</sup> *Id.*, ¶ 8.

<sup>28</sup> *Id.*, ¶ 9.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Id.*, ¶¶ 11 & 12.

Members.<sup>33</sup> The Net Settlement Amount of approximately \$121,069.20 will be distributed to Participating Class Members in accordance with the terms of the Settlement.<sup>34</sup> The highest Individual Settlement Payment is currently estimated to be \$2,638.14 and the average Individual Settlement Payment is currently estimated to be \$539.96.<sup>35</sup>

**V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AND PAGA SETTLEMENT AGREEMENT.**

The trial court has broad discretion to determine whether a Class Action and PAGA Settlement Agreement 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.

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<sup>33</sup> Simpluris Decl., ¶ 14.

<sup>34</sup> *Id.*, ¶ 15.

<sup>35</sup> *Id.*, ¶ 16.

7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the Action since it was commenced on July 8, 2020. Class Counsel investigated the veracity, strength, and scope of the claims, and were preparing the matter for class certification and trial, prior to reaching the Settlement.<sup>36</sup> The parties conducted extensive formal and informal discovery and investigation into the facts of the case, and also informally exchanged a large volume of information, documents, and data in connection with mediation and settlement negotiations.<sup>37</sup> Class Counsel prepared and served multiple sets of written discovery requests on Defendant in various forms (specifically, Requests for Production of Documents (Sets One and Two); Special Interrogatories (Sets One, Two, and Three); and Form Interrogatories (Set One), prepared and served numerous notices of depositions of Defendant’s Person(s) Most Knowledgeable designees (along with accompanying requests for production of documents), and reviewed Defendant’s responses and supplemental responses to Plaintiff’s discovery requests.<sup>38</sup> Class Counsel also worked with Plaintiff to review and prepare objections to a notice of deposition of Plaintiff Rahmad Perry.<sup>39</sup> The parties also engaged in the *Belaire-West* Process, and Class Counsel received the Contact Information Release List for non-

<sup>36</sup> Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

opt out putative class members.<sup>40</sup> Class Counsel also interviewed and obtained information from Plaintiff and other Class Members, and reviewed and analyzed thousands of pages of documents and data produced by Defendant and obtained through other sources.<sup>41</sup> The documents and data reviewed and analyzed by Class Counsel included, and were not limited to: Plaintiff and other Class Members' and PAGA Employees' employment records, a detailed sampling of Class Members' and PAGA Employees' time and pay data, list of stores and offices with seasonal hours and schedules, multiple versions of Defendant's Employee Handbook and Training Manual, multiple iterations of Defendant's Code of Conduct, company policy acknowledgments, internal memoranda, job descriptions, Defendant's operations and employment practices, procedures, and policies (including but not limited to Defendant's Pregnancy Disability Leave, Pregnancy Accommodation & Job Transfers, Family Care and Medical Leave, Procedure for Requesting Family Care, Medical and Military Family Leave Pay Period and Work Week Policy, Overtime Policy, Timekeeping Policy for Non-Exempt Employees, Off-the Clock Work Policy for Non-Exempt Employees, Attendance Policy, and Expense Reimbursement Policy), among other information, documents, and data.<sup>42</sup> Class Counsel researched applicable law, developed violation, damages, and penalties valuation models in preparation for mediation and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, case management, motion practice, and production of various documents and data in the course of litigation and in connection with mediation and settlement negotiations, among other tasks.<sup>43</sup>

After conducting significant formal and informal discovery and investigation into the facts of the case, the parties participated in a formal, full-day mediation conducted by Warren Jackson, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.<sup>44</sup> Prior to, during, and after the mediation and settlement discussions, the parties exchanged information and data, and discussed and considered various aspects of the

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<sup>40</sup> Aiwazian Decl., ¶ 6.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> *Id.*, ¶ 8.

case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the parties of proceeding with class certification and trial, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.<sup>45</sup> During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.<sup>46</sup> Arriving at a settlement that was acceptable to the parties was not easy.<sup>47</sup> Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class certification would be obtained and Plaintiff would prevail at trial.<sup>48</sup> After conducting significant formal and informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the parties that would attend further litigation.<sup>49</sup>

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.<sup>50</sup> Class Counsel also reviewed and analyzed a large volume of information, documents, and data obtained from Plaintiff, Defendant, or other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, PAGA representative claims, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, *Pick-Up Stix* release agreements, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.<sup>51</sup> The Settlement was based on this large volume of facts, evidence, and

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<sup>45</sup> Aiwazian Decl., ¶ 8.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> *Id.*, ¶ 6.

<sup>51</sup> Ibid.

investigation.<sup>52</sup> Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.<sup>53</sup>

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

The Settlement, which provides for a Gross Settlement Amount of \$324,400.00, 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.<sup>54</sup> The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation.<sup>55</sup> 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, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, class de-certification after certification of a class, allowing a jury to decide the

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<sup>52</sup> Aiwazian Decl., ¶¶ 6 & 8.

<sup>53</sup> *Id.*, ¶¶ 15-18.

<sup>54</sup> *Id.*, ¶¶ 8 & 21.

<sup>55</sup> *Id.*, ¶¶ 5-8.

claims asserted in the case, and the real possibility of no recovery after years of litigation. Additionally, the parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, depositions of Defendant's Person Most Knowledgeable designees, 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.

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

The Settlement, which provides for a Gross Settlement Amount of \$324,400.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation. 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 \$113,540.00, litigation costs and expenses in the amount of \$14,795.80, Enhancement Payment of \$7,500.00, Settlement Administration Expenses in the amount of \$7,495.00, and PAGA Fund in the amount of \$60,000.00 from the Gross Settlement Amount of \$324,400.00, the Net Settlement Amount is

currently estimated to be \$121,069.20.<sup>56</sup> Under the Settlement Agreement, the Gross Settlement 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 Participating 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 two hundred and fifty-two (252) Participating Class Members, representing one hundred percent (100%) of the Class Members.<sup>57</sup> The highest Individual Settlement Payment to a Participating Class Member is currently estimated to be \$2,638.14 and the average Individual Settlement Payment is currently estimated to be \$539.96.<sup>58</sup> 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.<sup>59</sup> Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

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

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.<sup>60</sup> Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in

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<sup>56</sup> Simpluris Decl., ¶ 15.

<sup>57</sup> *Id.*, ¶ 14.

<sup>58</sup> *Id.*, ¶ 16.

<sup>59</sup> Aiwasian Decl., ¶ 21.

<sup>60</sup> *Id.*, ¶¶ 15-18.

California.<sup>61</sup> Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

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

The Settlement has been well received by the Class – not a single Class Member objected to or opted out of the Class Settlement.<sup>62</sup> Specifically, no objections have been made as to the Gross Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Expenses, or the PAGA Fund. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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

**A. Legal Standard for Attorneys' Fees in a Class Action and PAGA Settlement Agreement.**

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

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<sup>61</sup> Aiwasian Decl., ¶¶ 15-18.

<sup>62</sup> Simpluris Decl., ¶¶ 11 & 12.

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.<sup>63</sup> 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

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<sup>63</sup> 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 case 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 \$324,400.00 on a non-reversionary basis. The requested attorneys’ fees are thirty-five  
21 percent (35%) of the total value of the monetary settlement. In light of Class Counsel’s  
22 successful prosecution and resolution of the case, the requested attorneys’ fees are appropriate  
23 and 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 percentage 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 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 percentage 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, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the  
12 recovery.<sup>64</sup>

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.

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<sup>64</sup> Aiwasian Decl., ¶ 9.

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

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

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$113,540.00 (which is 35% of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for the Class Members.

**1. *Time & Labor.***

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

handling of class actions and complex litigation matters.<sup>65</sup>

As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively participated in litigation of this case.<sup>66</sup> 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.<sup>67</sup> During the litigation of the Action, Class Counsel interviewed Plaintiff and other Class Members; propounded formal written discovery requests; worked with Plaintiff to provide responses to discovery requests that were propounded by Defendant; noticed the depositions of Defendant's Person(s) Most Knowledgeable designees regarding organizational structure, wage and hour practices, and affirmative defenses; reviewed and analyzed a large volume of pages of information, documents, and data obtained from Plaintiff, Defendant, or other sources; and prepared damages/valuation calculations.<sup>68</sup> Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, discovery, and the production of documents and data, among other things; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.<sup>69</sup>

Class Counsel has devoted a considerable number of hours to this matter over the course of the litigation process. The task and time chart, which is attached as EXHIBIT A to the accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Lawyers for Justice, PC has spent performing tasks on behalf of Plaintiff and the Class.<sup>70</sup> The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Lawyers for Justice, PC, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Attorneys at Lawyers for Justice, PC have spent **467.10** hours performing tasks

<sup>65</sup> Aiwarzian Decl., ¶¶ 15-18.

<sup>66</sup> *Id.*, Exh. A.

<sup>67</sup> *Id.*, ¶ 6 & Exh. A.

<sup>68</sup> *Id.*, ¶ 6.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Id.*, Exh. A.

and to obtain a significant recovery in this case.<sup>71</sup> These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

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

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

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.<sup>72</sup>

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

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

The Settlement at this stage is preferred over continued litigation because such resolutions save time and money that would otherwise go to litigation. The risks and expenses of

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<sup>71</sup> Aiwazian Decl., ¶ 11.

<sup>72</sup> *Id.*, ¶¶ 15-18.

further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Participating Class Members 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 \$324,400.00 to settle the matter. After deducting the attorneys' fees (\$113,540.00), litigation costs and expenses (\$14,795.80), Enhancement Payment (\$7,500.00), Settlement Administration Expenses (\$7,495.00), and PAGA Fund (\$60,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$121,069.20.<sup>73</sup> The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a Participating Class Member is currently estimated to be \$2,607.58 and the average Individual Settlement Payment is currently estimated to be \$533.59.<sup>74</sup> The Settlement offers significant monetary relief to the Participating Class Members.

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

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested **467.10** hours of time to obtain relief on behalf of Plaintiff and the Class.<sup>75</sup> Class Counsel has also incurred litigation costs and expenses in the amount of **\$14,795.80**.<sup>76</sup>

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.<sup>77</sup> Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.<sup>78</sup> The skill

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<sup>73</sup> Simpluris Decl., ¶ 15.

<sup>74</sup> *Id.*, ¶ 16.

<sup>75</sup> Aiwasian Decl., ¶ 11, Exh. A.

<sup>76</sup> See Part VII, *infra*.

<sup>77</sup> Aiwasian Decl., ¶ 19.

<sup>78</sup> See *id.*, ¶¶ 15-18.

1 and determination that Class Counsel has shown, along with the results obtained, justify the  
2 requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed,  
3 and the risks incurred, the requested fees and costs are reasonable and should be awarded.

4 In determining the reasonableness of a fee award in a Class Action and PAGA Settlement  
5 Agreement, whether or not representation is provided on a contingency basis is an important  
6 factor:

7 A contingent fee must be higher than a fee for the same legal services paid as they  
8 are performed. The contingent fee compensates the lawyer not only for the legal  
9 services he renders but for the loan of those services. A lawyer who both bears the  
10 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.

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

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

17 The results achieved, in light of the difficulties inherent in similar cases and the specific  
18 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response  
19 from the Class Members—no Class Members objected to or opted out of the Class Settlement.<sup>79</sup>

20 The court in *Camden* noted that, “a key element of the common fund case is that fees are  
21 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]  
22 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,  
23 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,  
24 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

25 Here, the results achieved and obtained on behalf of Plaintiff, the Class, PAGA  
26 Employees, and the State of California are reasonable in light of the risks inherent in further  
27 litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a  
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<sup>79</sup> Simpluris Decl., ¶¶ 11 & 12.

Gross Settlement Amount of \$324,400.00.<sup>80</sup> The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment to a Participating Class Member is currently estimated to be \$2,607.58 and the average Individual Settlement Payment is currently estimated to be \$533.59.<sup>81</sup>

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

Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys' knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.<sup>82</sup>

**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.

<sup>80</sup> Aiwazian Decl., ¶¶ 5-8.

<sup>81</sup> *Id.*, ¶ 16.

<sup>82</sup> *Id.*, ¶¶ 15-18.

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

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

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

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

24              As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian  
25      is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed  
26      on behalf of Plaintiff and the Class, and the time required for completing those tasks.<sup>83</sup> The chart  
27      demonstrates that Lawyers for Justice, PC has spent a total of 467.10 hours litigating the case  
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<sup>83</sup> See Aiwazian Decl., Exh. A.

and finalizing the Settlement.<sup>84</sup> In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiff and the Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

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

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 \$324,400.00.

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Lawyers for Justice, PC support a reasonable blended hourly rate of compensation of at least 700 per hour for services provided by Class Counsel.<sup>85</sup> Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least TBD for legal service performed, by courts of this state.<sup>86</sup> While the circumstances of every case is unique, the fact

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<sup>84</sup> Aiwazian Decl., ¶ 11.

<sup>85</sup> *Id.*, ¶ 12.

<sup>86</sup> For example, final approval of the Class Action and PAGA Settlement Agreement 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

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 \$700 per hour to 467.10 hours would place a reasonable value of \$326,970.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$113,540.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

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 \$113,540.00 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 \$16,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks reimbursement of \$14,795.80 in litigation costs and expenses incurred in this case.<sup>87</sup> This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.<sup>88</sup> The cost savings of \$1,204.20 will be part of the Net Settlement Amount, which will be distributed to the Participating Class Members in accordance with the Settlement.<sup>89</sup> Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$14,795.80 to Class Counsel.

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*Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved an hourly rate of \$845.64. Aiwazian Decl., ¶ 12.

<sup>87</sup> Aiwazian Decl., ¶ 19.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

**VIII. THE SETTLEMENT ADMINISTRATION EXPENSES 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 \$7,495.00.<sup>90</sup> The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Class Notice to the Class Members in both English and Spanish; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Objections, and Workweeks Disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and Individual PAGA Payments and preparing the associated tax forms; and transmitting payments, among other things.<sup>91</sup>

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 \$7,495.00.

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

The Settlement provides for an Enhancement Payment in the amount of \$7,500.00 to Plaintiff Rahmad Perry. 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 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).

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<sup>90</sup> Simpluris Decl., ¶ 17.

<sup>91</sup> *Id.*, ¶ 3.

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, including and not limited to, by way of working with Class Counsel to prepare responses to discovery requests that were propounded on Plaintiff by Defendant.<sup>92</sup> Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information that would support the pursuit of Class and PAGA claims.<sup>93</sup> Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendant, and gathering and reviewing documents.<sup>94</sup> 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.<sup>95</sup>

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 Rahmad Perry to receive \$7,500.00 as a reasonable Enhancement Payment for his services in the Action, in addition to his individual payment under the Settlement.

**X. CONCLUSION**

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

Dated: December 27, 2022

**LAWYERS for JUSTICE, PC**

By: \_\_\_\_\_

  
Janardana Burns  
Attorneys for Plaintiff and the Class

<sup>92</sup> Aiwasian Decl., ¶ 20; Declaration of Rahmad Perry ("Perry Decl."), ¶¶ 3-5.

<sup>93</sup> Aiwasian Decl., ¶ 20; Perry Decl., ¶¶ 3-5.

<sup>94</sup> Aiwasian Decl., ¶ 20; Perry Decl., ¶¶ 2-6.

<sup>95</sup> Perry Decl., ¶ 9.