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

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

Plaintiff,

v.

WOLFORD AMERICA, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 21STCV07870

Honorable Elihu M. Berle
Department SSC6

CLASS ACTION

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

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

Date: October 30, 2023
Time: 9:00 a.m.
Department: SSC6

Complaint Filed: March 1, 2021
FAC Filed: October 4, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 30, 2023 at 9:00 a.m., in Department
2 SSC6 of the above-entitled Court, located at 312 N Spring Street, Los Angeles, CA 90012,
3 Plaintiff Melissa Garcia (“Plaintiff”) will and hereby does move for an order granting final
4 approval of:

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

- 8 • A Net Settlement Amount of approximately **\$142,521.86** will be fully distributed to
9 the Class Members who did not timely opt out of the Settlement (“Participating Class
10 Member”);
11 • **No Notices of Objection** have been submitted to the settlement
12 administrator, Simpluris, Inc. (“Administrator”);
13 • **No Requests for Exclusion** were submitted to the Administrator;

14 2. Payment in the amount of **\$131,250.00** to Lawyers *for* Justice, PC (“Class
15 Counsel”), representing thirty-five percent (35%) of the Gross Settlement Amount, for attorneys’
16 fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-
17 check;

18 3. Payment in the amount of **\$13,728.14** to Class Counsel for reimbursement of
19 litigation costs and expenses;

20 4. Payment in the amount of **\$5,000.00** to the Administrator, Simpluris, Inc.
21 (“Simpluris”), for Administration Expenses Payment; and

22 5. Payment in the amount of **\$7,500.00** to Plaintiff Melissa Garcia, as Class
23 Representative Service Payment, for her time and effort in representing the Class.

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 \$75,000.00, of which seventy-five
26 percent (75%), or **\$56,250.00**, will be paid to the California Labor and Workforce Development
27 Agency and twenty-five percent (25%), or **\$18,750.00**, will be distributed to all current and
28 former hourly-paid or non-exempt employees who worked for Defendant within the State of

1 California at any time during the period from May 9, 2021 through May 18, 2022 (“Aggrieved
2 Employees”).

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

6 This motion is based upon the following Memorandum of Points and Authorities; the
7 Declaration of Class Counsel (Edwin Aiwarzian), Class Representative (Melissa Garcia), and
8 Administrator (Lindsay Kline of Simpluris) in support thereof; the pleadings and other records
9 on file with the Court in this matter; and such evidence and oral argument as may be presented at
10 the hearing on this Motion.

11 Dated: September 14, 2023

LAWYERS for JUSTICE, PC

12
13 By:



14 Brian J. St. John
15 Attorneys for Plaintiff and the Class
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Other Authorities

A. Conte, *Attorney Fee Awards* (2d Ed., 1993)..... 18

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Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47..... 15, 25

Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03..... 17

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Melissa Garcia (“Plaintiff”) seeks final approval of: (1) the Gross Settlement Amount of \$375,000.00; (2) attorneys’ fees in the amount of \$131,250.00 (“Class Counsel Fees Payment”), which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$13,728.14 (“Class Counsel Litigation Expenses Payment”) to Lawyers for Justice, PC (“Class Counsel”); (3) Administration Expenses Payment in the amount of \$5,000.00 to Simpluris, Inc. (“Simpluris ” or “Administrator”); (4) Class Representative Service Payment in the amount of \$7,500.00 to Plaintiff Melissa Garcia; and allocation of \$75,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid and/or non-exempt employees who worked for Defendant within the State of California at any time during the period from March 1, 2017 through May 18, 2023. (“Class” or “Class Members”)¹

This matter involved ongoing investigations, extensive formal and informal discovery, review and analysis of a large volume of information, documents, and data in the course of litigation and in connection with mediation conducted by Paul Grossman, Esq., and extensive settlement negotiations. This matter has required 348.0 hours of attorney time by 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 Class Representative Service Payment in the amount of \$7,500.00, to compensate Plaintiff for the time and effort that she expended spearheading this lawsuit on behalf of the Class, Aggrieved Employees, and the State of

¹ Class Action and PAGA Settlement Agreement (“Settlement Agreement”), ¶ 1.5. “Class Period” is defined as the period of time from February 24, 2017 through May 2, 2022. *See id.*, ¶ 1.12.

1 California. Plaintiff also moves for final approval of the payment to the Administrator in the
2 amount of \$5,000.00 for Administration Expenses Payment.

3 The requests for Class Counsel Fees Payment, Class Counsel Litigation Expenses
4 Payment, Class Representative Service Payment, Administration Expenses Payment, and
5 allocation for the PAGA Penalties were fully disclosed in the Notice of Class Action Settlement
6 (“Class Notice”) that was mailed to the Class Members. Most importantly, as of the date of this
7 Motion, *not a single Class Member has objected to or requested exclusion from any aspect of the*
8 *Settlement, including the requested Class Counsel Fees Payment and Class Counsel Litigation*
9 *Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, or*
10 *allocation for PAGA Penalties.*

11 The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length,
12 good-faith negotiations by experienced counsel presided over by a highly-regarded mediator who
13 is experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should
14 grant final approval of the Settlement, and award Class Counsel Fees Payment, Class Counsel
15 Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses
16 Payment, and allocation for the PAGA Penalties in the amounts as fully disclosed to the Class
17 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 Class Counsel Fees Payment, Class Counsel
20 Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses
21 Payment, and allocation for PAGA Penalties, Plaintiff also moves for an order permitting the
22 filing of this single consolidated memorandum, although it exceeds the page limit established by
23 California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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

25 Founded in 1996, Defendant sells clothing, lingerie, and hosiery in sixteen locations
26 across the United States. Plaintiff Melissa Garcia is a former employee of Defendant in
27 California.

28 ///

On March 1, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

On July 19, 2021, Plaintiff propounded multiple sets of discovery including Form Interrogatories (Set One), Requests for Production of Documents, (Set One) and Special Interrogatories, (Sets One & Two), on Defendant.

On August 6, 2021, Defendant filed an Answer to Plaintiff’s Class Action Complaint.

On October 4, 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”).

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

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

The Parties have actively litigated the Action since it was commenced on March 1, 2021. On April 28, 2022, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment

1 matters. With the aid of the mediator’s evaluation, the Parties ultimately reached the Settlement
2 described herein to resolve the Action in its entirety.

3 On October 13, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action
4 Settlement (“Motion for Preliminary Approval”) and supporting documents. On December 8,
5 2022, a hearing was held on Plaintiff’s Motion for Preliminary Approval wherein the Court
6 continued the hearing on the Motion for Preliminary Approval and requested the Parties to refile
7 the Settlement Agreement in a text-searchable format. On December 8, 2022, Plaintiff filed a
8 supplemental declaration in support of the Motion for Preliminary Approval. On May 9, 2023 a
9 hearing was held on Plaintiff’s Motion for Preliminary Approval wherein the Court preliminary
10 approved the Settlement. On May 18, 2023, the Court entered an Order Granting Plaintiff’s
11 Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”),
12 thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed
13 administration procedures and associated deadlines.

14 Plaintiff now moves for final approval of the Settlement, Class Counsel Fees Payment,
15 Class Representative Service Payment, Class Counsel Litigation Expenses Payment,
16 Administration Expenses Payment, and allocation for PAGA Penalties.

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

18 Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross
19 Settlement Amount of \$375,000.00 on a non-reversionary basis.² Subject to approval by the
20 Court, the Net Settlement Amount will be calculated by deducting the following amounts from
21 the Gross Settlement Amount: (1) Class Counsel Fees Payment, consisting of attorneys’ fees in
22 the amount of \$131,250.00 and reimbursement of litigation costs and expenses in the amount of
23 \$13,728.14, to Class Counsel; (2) Class Representative Service Payment in the amount of
24 \$7,500.00 to Plaintiff Melissa Garcia; (3) Administration Expenses Payment in the amount of
25 \$5,000.00 to Simpluris; and (4) the amount of \$75,000.00 allocated to penalties under the Private
26 Attorneys General Act (“PAGA”), of which 75% (i.e., \$56,250.00) will be distributed to the
27 Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$18,750.00) will be

28 ² Settlement Agreement; ¶ 1.23.

distributed on a *pro rata* basis to 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 May 9, 2021 through May 18, 2022 (“Aggrieved Employees”).³ The Net Settlement Amount, which is estimated to be \$142,521.86, 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 share of the Net Settlement Amount (“Individual Class Payment”), as follows:

- a. The Administrator will calculate each Participating Class Member’s based upon the number of weeks each Participating Class Member was employed by Defendant in California in a non-exempt and/or hourly-paid position during the Class Period (“Workweeks”) and the total number of Workweeks of all Participating Class Member.⁵
- b. The Administrator will divide the Net Settlement Amount by the total number of Workweeks of all Participating Class Member and multiply the result by each Participating Class Member’s Workweeks to yield his or her Individual Class Payment.⁶

The Administrator will calculate each Aggrieved Employee’s *pro rata* share of the 25% share of the PAGA Penalties (“Individual PAGA Payment”), in accordance with the Settlement Agreement and as follows:

- c. The Administrator will calculate each Aggrieved Employees number of PAGA Pay Periods and the total number of PAGA Pay Periods of all Aggrieved Employees.⁷
- d. The Administrator will divide the 25% share of the PAGA Penalties by the total number of pay periods during which the Aggrieved Employee worked for Defendant at least one day during the PAGA Period (“PAGA Pay Periods”) of all Aggrieved Employees and multiply the result by each Aggrieved Employee’s PAGA Pay Periods to yield his or her Individual PAGA Payment.⁸

Class Members have sixty (60) calendar days after the initial mailing of the Class Notice to Class Members to dispute the number of Workweeks and/or PAGA Pay Periods credited to

³ Settlement Agreement, ¶¶ 1.4 & 3.2.5. “PAGA Period” is defined as the period from May 9, 2021 to May 18, 2023. *See id.*, ¶ 1.33.

⁴ This amount is higher than the amount stated in Paragraph 16 of the accompanying Declaration of Lindsay Kline Regarding Notice and Settlement Administration (“Simpluris Declaration” or “Simpluris Decl.”) because the Settlement Administrator’s calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$18,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$13,728.14 for reimbursement of litigation costs and expenses, and the difference of \$4,271.86 will remain part of the Net Settlement Amount.

⁵ Settlement Agreement, ¶ 1.48.

⁶ *Id.*, ¶ 3.24.

⁷ *Id.*, ¶ 1.32.

⁸ *Id.*, ¶ 3.2.5.1.

each of them, opt out of the Class Settlement, and/or object to the Class Settlement (“Response Deadline”).⁹ The Response Deadline is August 21, 2023.¹⁰ As of this date, the Administrator has received zero (0) written requests for exclusion from the Class Settlement (“Requests for Exclusion”) and zero (0) written objections to the Class Settlement (“Notices of Objection”) from Class Members.¹¹

Individual Class Payments will be allocated as follows: thirty-three point three three percent (33.33%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining sixty-six point six seven percent (66.67%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹² Participating Class Members will assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.¹³ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Class Payments in addition to the Gross Settlement Amount.¹⁴ The Individual PAGA Payments to Aggrieved Employees will be allocated as one hundred percent (100%) penalties, and will not be subject taxes or withholdings.¹⁵

The Individual Class Payment checks issued to Participating Class Members and Individual PAGA Payment checks issued to Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁶ The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment, if applicable.¹⁷ Individual settlement checks that are not negotiated within the 180-day period will be cancelled.¹⁸ The funds from associated with such cancelled

⁹ Settlement Agreement, ¶¶ 1.46 & 7.5.

¹⁰ Simpluris Decl., ¶ 10 & Exh. A.

¹¹ *Id.*, ¶¶ 11 & 12.

¹² Settlement Agreement, ¶ 3.2.4.1.

¹³ *Ibid.*

¹⁴ *Id.*, ¶ 3.1.

¹⁵ *Id.*, ¶ 3.2.5.1.

¹⁶ *Id.*, ¶ 4.5.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

checks will be transmitted by the Administrator within (10) calendar days after the expiration of the 180-day period, and sent to the Legal Aid at Work.¹⁹

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 May 18 2023 Preliminary Approval Order.

On June 5, 2023, Simpluris received a mailing list from Defendant's counsel that contained each Class Member's (1) full name; (2) last-known mailing address; (3) last known telephone number; (4) last known email address, (5) Social Security number, and number of Workweeks and PAGA Pay Periods (collectively, "Class Data").²⁰

The Class Data contained information for forty-nine (49) individuals identified as Class Members.²¹ Simpluris processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data with any updated addresses located.²²

On June 22, 2023, Simpluris mailed the Class Notice via first class mail to 49 individuals identified as Class Members in the Class Data.²³

As of the date of this Motion, no Class Notices were returned as undeliverable with forwarding addresses.²⁴ Six (6) Class Notices were returned as undeliverable without forwarding addresses.²⁵ Simpluris performed a skip-trace search on the six (6) Class Notices that were returned to Simpluris without forwarding addresses, located an updated address for four (4) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²⁶ Ultimately, two (2) Class Notices remains undeliverable because an updated address was not located through skip-tracing.²⁷

///

¹⁹ Settlement Agreement, ¶ 4.7.

²⁰ Simpluris Decl., ¶ 6.

²¹ Ibid.

²² *Id.*, ¶ 7.

²³ *Id.*, ¶ 8.

²⁴ *Id.*, ¶ 9.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

As of the date of this Motion, the Administrator has received zero (0) Notices of Objection and zero (0) Requests for Exclusion from Class Members.²⁸

To date, there are 49 Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Participating Class Members.²⁹ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$142,521.86 will be distributed to Participating Class Members in accordance with the terms of the Settlement.³⁰ The highest Individual Class Payment is currently estimated to be at least \$12,937.88 and the average Individual Class Payment is currently estimated to be at least \$2,821.43.³¹ The highest Individual PAGA Payment is currently estimated to be at least \$2,321.85, and the average Individual PAGA Payment is currently estimated to be at least \$986.84.³²

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.

²⁸ Simpluris Decl., ¶¶ 11 & 12.

²⁹ *Id.*, ¶ 15.

³⁰ *Id.*, ¶ 16; see n.4, *supra*.

³¹ *Id.*, ¶ 17. The actual average and highest Individual Class Payment 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 \$18,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$4,271.86, will be part of the Net Settlement Amount). See n.4, *supra*.

³² *Id.*, ¶ 18.

1 “Due regard should be given to what is otherwise a private consensual agreement between the
2 parties.” *Dunk, supra*, 48 Cal.App.4th at 1801.

3 The proponent of the settlement has the burden to show that it is fair and reasonable.
4 *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness
5 exists where, as here: “(1) the settlement is reached through arm’s-length bargaining; (2)
6 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
7 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk,*
8 *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any
9 ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.
10 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.
11 The inquiry is not whether the settlement agreement is the best one that class members could
12 have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and
13 reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not
14 obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately,
15 meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords
16 relief that is substantially narrower than it would be if the case were to be successfully litigated,
17 that is no bar to a class settlement because the public interest may indeed be served by a
18 voluntary settlement in which each side gives ground in the interest of avoiding prolonged
19 litigation. *Id.*

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

22 The parties actively litigated the case since it was commenced on March 1, 2021.
23 Counsel for the parties used the pre-mediation time period to investigate the veracity, strength,
24 and scope of the claims, and also to prepare the matter for class certification and trial.³³ The
25 parties conducted extensive formal and informal discovery and investigation into the facts of the
26 case, and also informally exchanged information, documents, and data in preparation for
27

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

mediation.³⁴ Class Counsel propounded multiple sets of formal written discovery requests on Defendant (specifically, Form Interrogatories – General (Set One); Requests for Production of Documents (Set One); and Special Interrogatories (Sets One & Two)) and noticed the deposition of Defendant’s persons most knowledgeable regarding job duties and organizational structure of Defendant.³⁵ Class Counsel also had the opportunity to interview and obtain information from Plaintiff and Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed a large volume of documents and data obtained from Defendant, Plaintiff, and other sources.³⁶ The information, documents, and data reviewed and analyzed by Class Counsel included, and were not limited to, employment records of Plaintiff, a detailed sampling of Class Members’ time and pay data, multiple iterations of Defendant’s Employee Handbook, supplements and amendments thereto, company policy acknowledgements, internal memoranda, job descriptions, new hire orientation documents, Defendants’ operations and employment practices, forms, procedures, and policies (Staff Exclusive Policy, Electronic Resources Policy, Cell Phone and Handheld Mobile Device Usage policy, Meal and Rest Periods policy, Attendance and Punctuality policy, Dress Code Agreement, and Commissioned Sales Employment Agreement, among other information and documents.³⁷ Class Counsel researched applicable law, developed damages, penalties, and valuation models in preparation for mediation, and met and conferred with Defendant’s counsel on numerous occasions, e.g., to discuss issues relating to the case management, formal and informal discovery, and production of documents and data in the course of litigation and in connection to mediation and settlement negotiations.³⁸

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 Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment

³⁴ Aiwazian Decl., ¶ 6.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

1 matters.³⁹ In the course of litigation and in connection with mediation and settlement
2 discussions, the parties exchanged information and data, and discussed various aspects of the
3 case, including and not limited to, the risks and delays of further litigation, the risks and
4 expenses to the parties of proceeding with class certification and trial, the law relating to class
5 certification, off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-
6 and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals,
7 among other things.⁴⁰ During all settlement discussions, the parties conducted their negotiations
8 at arm's length in an adversarial position.⁴¹ Arriving at a settlement that was acceptable to the
9 parties was not easy.⁴² Defendant and its counsel felt very strongly about Defendant's ability to
10 prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class
11 Counsel believed that class certification would be obtained and Plaintiff would prevail at trial.⁴³
12 After conducting significant formal and informal discovery and investigations, extensive
13 settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that the
14 matter was well-suited for settlement given the legal issues relating to Plaintiff's principal
15 claims, as well as the costs and risks to the parties that would attend further litigation.⁴⁴

16 The Settlement takes into account the strengths and weaknesses of each side's position
17 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.
18 Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.⁴⁵
19 Class Counsel also reviewed and analyzed a large volume of documents obtained from
20 Defendant, Plaintiff, and other sources, and performed significant research into the applicable
21 law, which is constantly evolving as it relates to class certification, off-the-clock theory, meal
22 and rest periods, rounding, regular rate of pay calculations, PAGA representative actions, wage-
23 and-hour enforcement, Plaintiff's claims and damages, and Defendant's defenses, as well as facts
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25 ³⁹ Aiwazian Decl., ¶ 8.

26 ⁴⁰ Ibid.

27 ⁴¹ Ibid.

28 ⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ *Id.*, ¶ 6.

discovered.⁴⁶ The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁷ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class and representative action litigation.⁴⁸

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

The Settlement, which provides for a Gross Settlement Amount of \$375,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class claims through certification proceedings, trial, and/or appeals.⁴⁹ The Settlement was calculated using information and data uncovered through extensive case investigation, extensive formal and informal discovery, and the exchange of information in the context of mediation and settlement negotiations.⁵⁰ 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. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide. 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 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

⁴⁶ Aiwazian Decl., ¶ 6.

⁴⁷ *Id.*, ¶¶ 6 & 8.

⁴⁸ *Id.*, ¶¶ 16-19.

⁴⁹ *Id.*, ¶¶ 8 & 22.

⁵⁰ *Id.*, ¶¶ 5-8.

determination that the claims were unsuitable for class treatment, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the 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 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 \$375,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, extensive formal and informal discovery, and the exchange of information in the context of mediation and settlement negotiations. 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 \$131,250.00, litigation costs and expenses in the amount of \$13,728.14, Class Representative Service Payment in the amount of \$7,500.00, Administration Expenses Payment in the amount of \$5,000.00, and PAGA Penalties

in the amount of \$75,000.00 from the Gross Settlement Amount of \$375,000.00, the Net Settlement Amount is currently estimated to be \$142,521.86.⁵¹ 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 during the Class Period credited to him or her and each Aggrieved will be paid a *pro rata* share of the twenty-five percent share of the PAGA Penalties, based on the number of PAGA Pay Periods during the PAGA Period credited to him or her. To date, there are 49 Participating Class Members, representing 100% of the Class Members.⁵² The highest Individual Class Payment to a Participating Class Member is currently estimated to be at least \$12,937.88 and the average Individual Class Payment is currently estimated to be at least \$2,821.43.⁵³ The highest Individual PAGA Payment is currently estimated to be at least \$2,321.85, and the average Individual PAGA Payment is currently estimated to be at least \$986.84.⁵⁴ 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.⁵⁵ 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*

⁵¹ Simpluris Decl., ¶ 16; see n.4, *supra*.

⁵² *Id.*, ¶ 15.

⁵³ *Id.*, ¶ 17; see n.31, *supra*.

⁵⁴ *Id.*, ¶ 18.

⁵⁵ Aiwasian Decl., ¶ 22.

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

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

4 Class Counsel has extensive experience in employment class and representative action
5 law and complex wage-and-hour litigation.⁵⁶ Lawyers *for* Justice, PC has been appointed class
6 counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for
7 individuals in California.⁵⁷ Both parties' counsel were capable of assessing the strengths and
8 weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement
9 under the circumstances of the case and in the context of a private, consensual settlement
10 agreement.

11 **E. There are no Objections to the Settlement.**

12 The Settlement has been well received by the Class – *not a single Class Member objected*
13 *to the Settlement.*⁵⁸ Specifically, no objections have been made as to the Gross Settlement
14 Amount or requested Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
15 Class Representative Service Payment, Administration Expenses Payment, or the allocation for
16 PAGA Penalties. California courts have consistently found that a small number of objectors
17 indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*,
18 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*,
19 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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27 ⁵⁶ Aiwazian Decl., ¶¶ 16-19.

28 ⁵⁷ Ibid.

⁵⁸ Simpluris Decl., ¶ 12.

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

A. Legal Standard for Class Counsel Fees Payment in a Class Action Settlement.

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

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

“The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126

Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

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

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁹ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent, supra*, 557 F.2d at 769.

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⁵⁹ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

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

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

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

3 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
4 Amount of \$375,000.00 on a non-reversionary basis. The requested attorneys' fees are thirty-five
5 percent (35%) of the total value of the monetary settlement. In light of Class Counsel's
6 successful prosecution and resolution of the case, the requested attorneys' fees are appropriate
7 and reasonable.

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

15 The percentage method is consistent with, and is intended to mirror, the practice in the
16 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
17 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is
18 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
19 counsel's work to the class is to review the consideration agreed to be paid by the named
20 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
21 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
22 without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this
23 case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the
24 recovery.⁶⁰

25 Furthermore, a percentage-fee award is not dependent on a determination of the actual
26 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
27 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is

28 ⁶⁰ Aiwazian Decl., ¶ 10.

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

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff and the Class, 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 Class Counsel Fees Payment 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

1 in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d
2 768, 772.

3 Each and every one of these factors favors the attorneys' fees sought here; however,
4 some of the most relevant factors to this Court's fee determination will be addressed herein. The
5 award of attorneys' fees in the amount of \$131,250.00 (which is 35% of the Gross Settlement
6 Amount) is commensurate with the time, effort, and expense dedicated to the case, the
7 contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill
8 and determination required, the results that Class Counsel has achieved, and the value of the
9 settlement that Class Counsel has obtained for the Class Members.

10 **1. Time & Labor.**

11 Class Counsel used its experience and skills, and dedicated the full extent of resources, to
12 litigate and bring this matter to a successful conclusion on behalf of the Class, Aggrieved
13 Employees, and the State of California. Moreover, as demonstrated in the supporting
14 declaration, Class Counsel has extensive experience in the handling of class actions and complex
15 litigation matters.⁶¹

16 As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively
17 participated in litigation of this case.⁶² Prior to commencing the lawsuit, Class Counsel had
18 conducted a significant amount of investigation into the factual and legal issues, Defendant's
19 business, and its operations and employment policies, practices, and procedures.⁶³ During the
20 litigation of the action, Class Counsel interviewed Plaintiff and other Class Members;
21 propounded discovery on Defendant; reviewed and analyzed a large volume of information,
22 documents, and data obtained from Defendant, Plaintiff, and other sources; and prepared
23 liability, damages, and penalties valuation calculations.⁶⁴ Class Counsel also met and conferred
24 with Defendant's counsel over the issues relating to pleadings, case management, formal and
25 informal discovery, and production of documents and data, among other things; engaged in
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27 ⁶¹ Aiwasian Decl., ¶¶ 16-19.

⁶² *Id.*, Exh. A.

28 ⁶³ *Id.*, ¶ 6 & Exh. A.

⁶⁴ *Id.*, ¶ 6.

1 extensive settlement negotiations with Defendant's counsel; and prepared for and attended court
2 proceedings, mediation, and settlement negotiations. Other work performed by Class Counsel
3 included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising
4 pleadings, the mediation brief, and settlement approval motion papers; preparing and appearing
5 for court proceedings, among other tasks.⁶⁵

6 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
7 matter diligently and with maximum efficiency and has fully and actively participated in the
8 litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
9 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel
10 has spent performing tasks on behalf of Plaintiff and the Class.⁶⁶ The Task and Time Chart is
11 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
12 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
13 chart, which sets forth the history of the work performed by Class Counsel, commencing with
14 the pre-filing analysis and research, and continuing up to settlement and final approval. Class
15 Counsel has spent 348.0 hours performing tasks and to obtain a significant recovery on behalf of
16 Plaintiff and the Class.⁶⁷ These hours were required to bring this matter to its successful
17 conclusion. In light of the value of time expended and the carrying of costs involved in litigating
18 this case, the requested attorneys' fees are fair, adequate, and reasonable.

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

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

25 Class Counsel undertook significant investigation, analysis, and research prior to filing
26 this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the

27 ⁶⁵ Aiwarzian Decl., ¶ 6.

28 ⁶⁶ *Id.*, Exh. A.

⁶⁷ *Ibid.*

1 matter for class certification and had every intention of taking the case to trial on a class-wide
2 basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles
3 that had to be overcome, as demonstrated in the Declaration of Edwin Aiwarzian, Class Counsel
4 used its extensive experience in the handling of class actions and complex wage-and-hour
5 litigation matters in order to obtain the Settlement with maximum efficiency.⁶⁸

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

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

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

21 As a result of this litigation and extensive settlement negotiations, Defendant agreed to
22 pay a Gross Settlement Amount of \$375,000.00 to settle the matter. After deducting the
23 attorneys' fees (\$131,250.00), litigation costs and expenses (\$13,728.14), Class Representative
24 Service Payment (\$7,500.00), Administration Expenses Payment (\$5,000.00), and the PAGA
25 Penalties (\$75,000.00) from the Gross Settlement Amount, it is currently estimated that the Net
26 Settlement Amount is approximately \$142,521.86.⁶⁹ The Net Settlement Amount will be fully
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28 ⁶⁸ Aiwarzian Decl., ¶¶ 16-19.

⁶⁹ Simpluris Decl., ¶ 16; see n.4, *supra*.

distributed in accordance with the terms of the Settlement. The highest Individual Class Payment to a Participating Class Member is currently estimated to be at least \$12,937.88 and the average Individual Class Payment is currently estimated to be at least \$2,821.43.⁷⁰ The highest Individual PAGA Payment is currently estimated to be at least \$2,321.85, and the average Individual PAGA Payment is currently estimated to be at least \$986.84.⁷¹ The Settlement offers significant monetary relief to the Participating Class Members, the State of California, and Aggrieved Employees.

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 348.0 hours of time to obtain relief on behalf of Plaintiff and the Class.⁷² Class Counsel has also incurred litigation costs and expenses in the amount of \$13,728.14.⁷³

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁴ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷⁵ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel Fees Payment. 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 she 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

⁷⁰ Simpluris Decl., ¶ 17; see n.31, *supra*.

⁷¹ *Id.*, ¶ 18.

⁷² Aiwasian Decl., ¶ 12, Exh. A.

⁷³ See Part VII, *infra*.

⁷⁴ Aiwasian Decl., ¶ 20.

⁷⁵ See *id.*, ¶¶ 16-19.

market value of her work if she is paid only for the second of these functions. If she is paid no more, competent counsel will be reluctant to accept fee award cases.

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

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

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Settlement.⁷⁶

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

Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$375,000.00.⁷⁷ The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Class Payment to a Participating Class Member is currently estimated to be at least \$12,937.88 and the average Individual Class Payment is currently estimated to be at least \$2,821.43.⁷⁸ The highest Individual PAGA Payment is currently estimated to be at least \$2,321.85, and the average Individual PAGA Payment is currently estimated to be at least \$986.84.⁷⁹

⁷⁶ Simpluris Decl., ¶ 12.

⁷⁷ Aiwasian Decl., ¶¶ 5-8.

⁷⁸ Simpluris Decl., ¶ 17; see n.31, *supra*.

⁷⁹ *Id.*, ¶ 18.

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.⁸⁰

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

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

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

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

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

As discussed above, the case was highly contested and required a significant amount of

⁸⁰ Aiwazian Decl., ¶¶ 16-19.

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 treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class and representative actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward certification and trial, including taking and defending depositions of Defendant's Person Most Knowledgeable designees, percipient witnesses, and experts, propounding 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 data and documents that were produced by Defendant and obtained from Plaintiff and Class Members and through other sources. Class Counsel conducted extensive review and analysis of these documents, information, and data to strategize the action and to prepare for and attend mediation and engage in settlement discussions.

As discussed above in Part VII.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁸¹ The chart demonstrates that Class Counsel has spent a total of 348.0 hours litigating the case and finalizing the Settlement.⁸² 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

⁸¹ See Aiwazian Decl., Exh. A.

⁸² Aiwazian Decl., ¶ 12.

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 \$375,000.00.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$725 per hour for services provided by Class Counsel.⁸³ Lawyers for Justice, PC has been awarded attorneys' fees, compensating Lawyers for Justice, PC at the blended rate of at least \$725 for legal service performed, by courts of this state.⁸⁴ While the circumstances of every case

⁸³ Aiwarzian Decl., ¶ 13.

⁸⁴ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96;

are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members, Aggrieved Employees, and the State of California justify the requested attorneys' fees.

Applying the blended rate of \$725 per hour to 348.0 hours would place a reasonable value of \$252,300.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seek attorneys' fees in the amount of \$131,250.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

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

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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., ¶ 13.

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 \$131,250.00 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 \$18,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks reimbursement of \$13,728.14, in litigation costs and expenses incurred in this matter.⁸⁵ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.⁸⁶ The cost savings of \$4,271.86 will be part of the Net Settlement Amount, which will be distributed to the Participating Class Members in accordance with the Settlement.⁸⁷ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$13,728.14 to Class Counsel.

VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

As set forth in the accompanying Simpluris Declaration, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$5,000.00.⁸⁸ 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; 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, Notices of Objection, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Class Payments and Individual PAGA

⁸⁵ Aiwazian Decl., ¶ 20 & Exh. B.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Simpluris Decl., ¶ 20.

1 Payments and preparing the associated tax forms; and transmitting payments, among other
2 things.⁸⁹

3 Accordingly, the Court should grant final approval of payment to Simpluris, a necessary
4 third-party for handling of the notice and settlement process, in the amount of \$5,000.00.

5 **IX. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR**
6 **AND REASONABLE, AND SHOULD BE APPROVED.**

7 The Settlement provides for a Class Representative Service Payment in the amount of
8 \$7,500.00 to Plaintiff Melissa Garcia to compensate Plaintiff for the time and effort that she
9 expended on behalf of the Class, Aggrieved Employees, and the State of California. The
10 requested Class Representative Service Payment is both common and reasonable and should be
11 awarded.

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

19 The requested Class Representative Service Payment is fair and appropriate because
20 Plaintiff spent a substantial amount of time and effort producing relevant documents and past
21 employment records, as well as providing the facts and evidence necessary to attempt to prove
22 the allegations.⁹⁰ Plaintiff was available whenever Class Counsel needed her and actively tried to
23 obtain, and gave, information that would facilitate the pursuit of class and PAGA claims.⁹¹
24 Plaintiff spent numerous hours speaking with Class Counsel about her claims, describing her
25 work experiences with Defendant, and gathering and reviewing documents.⁹² These services
26

27 ⁸⁹ Simpluris Decl., ¶ 3.

28 ⁹⁰ Aiwasian Decl., ¶ 21; Declaration of Melissa Garcia ("Garcia Decl."), ¶¶ 3-5.

⁹¹ Aiwasian Decl., ¶ 21; Garcia Decl., ¶¶ 3-5.

⁹² Aiwasian Decl., ¶ 21; Garcia Decl., ¶¶ 2-6.

merit the requested Class Representative Service Payment to Plaintiff, who has not received any compensation for her efforts on behalf of the Class Members to date.⁹³

The requested Class Representative Service Payment was fully disclosed in the Notice that was mailed to the Class Members. No objections were made with regards to the requested Class Representative Service Payment. Accordingly, it is appropriate and just for Plaintiff Melissa Garcia to receive \$7,500.00 as a reasonable Class Representative Service Payment for her services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to her individual settlement payment.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, and allocation for the PAGA Penalties in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: July 13, 2023

LAWYERS for JUSTICE, PC

By: _____


Brian J. St. John
Attorneys for Plaintiff and the Class

⁹³ Garcia Decl., ¶ 9.