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

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

Plaintiff,

vs.

PACE SUPPLY CORP., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: SCV258764

Honorable René Auguste Chouteau
Department 18

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwarzian); Declaration of Class
Representative (Seth Swan); Declaration of
Settlement Administrator (Jeremiah
Kincannon); and [Proposed] Final Approval
Order and Judgment filed concurrently
herewith]

Date: February 6, 2019
Time: 3:00 p.m.
Department: 18

Complaint Filed: May 6, 2016
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 6, 2019 at 3:00 p.m., in Department 18 of
2 the above-entitled Court, located at 3055 Cleveland Avenue, Santa Rosa, California 95403,
3 Plaintiff Seth Swan ("Plaintiff") will and hereby does move for an order granting final approval
4 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 Fund of approximately **\$2,917,579.10** will be fully distributed to
9 the Class Members who have not submitted a timely and valid Request for Exclusion
10 ("Settlement Class" or "Settlement Class Members");
- 11 • The amount of **\$250,000.00** that was allocated as penalties under the Private
12 Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA
13 Payment") was approved by the Court and will be fully distributed, in accordance
14 with the Settlement, as follows: seventy-five percent (75%), or \$187,500, to the
15 California Labor and Workforce Development Agency and twenty-five percent
16 (25%), or \$62,500, to PAGA Group Members;
- 17 • **No Objections** were submitted to the Settlement Administrator;
- 18 • **Only one (1) Request for Exclusion** was submitted to the Settlement Administrator;

19 2. Attorneys' fees in the amount of **\$1,750,000.00** to Lawyers for Justice, PC ("Class
20 Counsel"), representing thirty-five percent (35%) of the Gross Settlement Fund, which is
21 reasonable and justified on a percentage-basis and also based on a lodestar cross-check with a
22 multiplier of 1.32;

23 3. Payment in the amount of **\$63,354.90** to Class Counsel for reimbursement of
24 litigation costs and expenses;

25 4. Payment in the amount of **\$13,066.00** to the Settlement Administrator, Simpluris,
26 Inc. ("Simpluris"), for Settlement Administration Expenses; and

27 5. Payment in the amount of **\$6,000.00** to Plaintiff Seth Swan as a Service Award
28 for his time and effort in representing the Class.

1 This motion is based upon the following Memorandum of Points and Authorities; the
2 Declarations of Class Counsel (Edwin Aiwazian), Class Representative (Seth Swan), and
3 Settlement Administrator (Jeremiah Kincannon) in support thereof; the pleadings and other
4 records on file with the Court in this matter; and such evidence and oral argument as may be
5 presented at the hearing on this motion.

6 Dated: January 14, 2019

LAWYERS for JUSTICE, PC

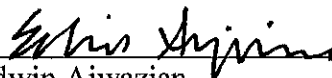
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8 By: 
Edwin Aiwazian
9 Attorneys for Plaintiff and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Seth Swan ("Plaintiff") seeks final approval of: (1) the Gross Settlement Fund of \$5,000,000; (2) the Settlement as it relates to the settlement and release of Released Claims which do not arise under California Labor Code section 2698, *et seq.* ("Class Settlement")¹; (3) attorneys' fees in the amount of \$1,750,000, which is thirty-five percent (35%) of the Gross Settlement Fund, to Lawyers for Justice, PC ("Class Counsel"); (4) reimbursement of litigation costs and expenses in the amount of \$63,354.90 to Class Counsel; (5) Settlement Administration Expenses in the amount of \$13,066 to Simpluris, Inc. ("Simpluris" or "Settlement Administrator"); and (6) Service Award in the amount of \$6,000 to Plaintiff Seth Swan.

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who directly worked for Defendant Pace Supply Corp. ("Defendant") within the State of California at any time during the period from May 6, 2012 continuing up to and including August 9, 2017.²

This litigation involved ongoing investigations, extensive formal and informal discovery, review and analysis of tens of thousands of pages of documents and data prior to and during mediation conducted by Mark S. Rudy, Esq., and extensive settlement negotiations. This matter has required 2,044.50 hours of attorney time from Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represents thirty-five percent (35%) of the Gross Settlement Fund, 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.³

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¹ Class Action and PAGA Settlement Agreement ("Settlement Agreement"), § 52; see also Order Granting Approval of PAGA Settlement and Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), ¶ 3.

² Settlement Agreement, § 3.

³ Applying a modest multiplier of 1.32, the total enhanced lodestar fees are \$1,754,181, and Class Counsel seeks an attorneys' fees award of \$1,750,000 (equal to 35% of the Gross Settlement Fund).

1 Plaintiff moves for final approval of the Service Award in the amount of \$6,000 to
2 Plaintiff Seth Swan to compensate him for the time and effort that he expended spearheading this
3 lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the
4 Settlement Administrator in the amount of \$13,066 for Settlement Administration Expenses.

5 The requests for attorneys' fees, reimbursement of litigation costs and expenses,
6 Service Award, and Settlement Administration Expenses were fully disclosed in the Notice of
7 Class Action Settlement ("Notice") that was mailed to the Class Members. Most importantly, as
8 of the date of this motion, *not a single Class Member has objected to the requests for attorneys'*
9 *fees, reimbursement of litigation costs and expenses, Service Award, or Settlement*
10 *Administration Expenses.*

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 Class Settlement, attorneys' fees, reimbursement of litigation costs
15 and expenses, Service Award, and Settlement Administration Expenses in the amounts as fully
16 disclosed to the Class and as requested herein.

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

18 Defendant Pace Supply Corp. provides wholesale services and products related to
19 plumbing, hydronics, fire protection, water treatment, pump, water well, septic, sewer and water
20 works. Defendant has approximately nineteen (19) locations throughout California and Hawaii.
21 Plaintiff Seth Swan, a former employee of Defendant, commenced this action against Defendant
22 on May 6, 2016, individually, and on behalf of other members of the general public similarly
23 situated and aggrieved employees pursuant to the Private Attorneys General Act of 2004,
24 California Labor Code section 2698, *et seq.* ("PAGA"). The lawsuit was filed in the Superior
25 Court of California for the County of Sonoma, Case No. SCV-258764.

26 On July 22, 2016, Defendant filed an Answer to Class Action Complaint for Damages.
27 On January 11, 2017, Defendant filed a First Amended Answer to Class Action Complaint for
28 Damages.

1 On December 1, 2016, Plaintiff filed a Motion to Compel Defendant Pace Supply Corp.
2 to Provide Further Responses to Plaintiff's Special Interrogatories (Set One) Nos. 1 and 2
3 ("Motion to Compel Contact Information"). On December 5, 2016, the parties participated in an
4 informal telephonic discovery conference with the Court, and the Motion to Compel Contact
5 Information was later withdrawn.

6 On January 11, 2017, Plaintiff filed a Consolidated Motion to Compel Defendant Pace
7 Supply Corp. to Provide Further Response to Plaintiff's Special Interrogatories (Set Two), Form
8 Interrogatories (Set One), & Requests for Production (Set One) and Request for Sanctions
9 ("Consolidated Motion to Compel"). On February 16, 2017, Defendant filed an opposition to
10 Plaintiff's Consolidated Motion to Compel. On February 21, 2017, Plaintiff filed a reply in
11 support of Plaintiff's Consolidated Motion to Compel. On May 4, 2017, the Court entered an
12 Order Granting Plaintiff's Consolidated Motion to Compel.

13 Plaintiff's core allegation is that Defendant violated the California Labor Code by
14 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
15 of, *inter alia*, failing to properly pay minimum and overtime wages, failing to provide compliant
16 meal and rest periods and associated premium pay, failing to timely pay wages during
17 employment and upon termination, failing to provide compliant wage statements, failing to keep
18 complete and accurate payroll records, and failing to reimburse necessary business expenses, and
19 thereby engaged in unfair business practices under the California Business and Professions Code
20 and conduct giving rise to penalties recoverable under the PAGA.

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

25 The parties have actively litigated this case since it was commenced on May 6, 2016. On
26 May 9, 2017, the parties participated in a formal, full-day mediation conducted by Mark S. Rudy,
27 Esq., a well-regarded mediator experienced in mediating complex labor and employment
28 matters. After conducting significant investigations and discovery, extensive settlement

1 negotiations, and with the aid of the mediator's evaluations, the parties reached the Settlement
2 described herein to resolve this action in its entirety.

3 On July 23, 2018, Plaintiff filed a Motion for Approval of PAGA Settlement and
4 Preliminary Approval of Class Settlement ("Motion for Preliminary Approval"). On
5 September 7, 2018, the Court entered the Order Granting Approval of PAGA Settlement and
6 Preliminary Approval of Class Action Settlement ("September 7, 2018 Order"), thereby
7 approving the PAGA Settlement and payment of \$250,000 from the Gross Settlement Fund for
8 penalties pursuant to PAGA ("PAGA Payment"),⁴ and preliminarily approving the terms of the
9 Class Settlement and associated notice and administration procedures and deadlines.

10 Plaintiff now moves for final approval of the Class Settlement, attorneys' fees,
11 reimbursement of litigation costs and expenses, Settlement Administration Expenses, and
12 Service Award.

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

14 Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross
15 Settlement Fund of \$5,000,000 on a non-reversionary basis.⁵ The Net Settlement Fund will be
16 calculated by deducting the following amounts from the Gross Settlement Fund: (1) attorneys'
17 fees in the amount of \$1,750,000, which is thirty-five percent (35%) of the Gross Settlement
18 Fund, to Class Counsel, subject to approval by the Court; (2) reimbursement of litigation costs
19 and expenses in the amount of \$63,354.90 to Class Counsel, subject to approval by the Court;
20 (3) Service Award in the amount of \$6,000 to Plaintiff Seth Swan, subject to approval by the
21 Court; (4) Settlement Administration Expenses in the amount of \$13,066 to Simpluris, subject to
22 approval by the Court; and (5) PAGA Payment in the amount of \$250,000, which was already
23 approved by the Court.⁶

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26 ⁴ It was recently discovered that a typographical error exists in the September 7, 2018 Order, and as a result, the
27 September 7, 2018 Order contains two (2) references to the incorrect date of February 25, 2016 (instead of the
28 correct date of February 25, 2015) as the beginning date for the time period used to determine if an individual is a
PAGA Group Member and covered by the PAGA Settlement. The parties are meeting and conferring to submit a
stipulation with the Court to address the issue.

⁵ Settlement Agreement, §§ 10 & 29(a).

⁶ *Id.*, §§ 12, 15, 21, 29(a)(ii) - (vi), 29(b), 29(c).

The Net Settlement Fund, which is estimated to be \$2,917,579.10, will be fully distributed, and there is no reversion to Defendant.⁷ Each Class Member who does not submit a timely and valid request to be excluded from the Class Settlement (“Request for Exclusion”) (i.e., Settlement Class Member) will be entitled to a *pro rata* share of the Net Settlement Fund (“Individual Settlement Share”) calculated based on the number of weeks that he or she worked for Defendant during the period from May 6, 2012 continuing up to and including August 9, 2017 (“workweeks”), divided by the total number of workweeks worked by all Settlement Class Members and then multiplied by the Net Settlement Fund.⁸ Class Members had until December 17, 2018 (“Response Deadline”),⁹ or in the case of a re-mailed Notice, not more than ten (10) calendar days after the date the Notice was re-mailed (“Extended Response Deadline”), to submit a Request for Exclusion, objection to the Class Settlement (“Objection”), or dispute regarding the number of workweeks credited to each of them.¹⁰ As of the date of this Motion, the Settlement Administrator has received only one (1) Request for Exclusion and has not received any Objections from Class Members.¹¹

The PAGA Payment of \$250,000 will be fully distributed as follows: \$187,500 (75% of \$250,000) to be paid to the Labor and Workforce Development Agency (“LWDA”) and \$62,500 (25% of \$250,000) to be paid to PAGA Group Members¹² on a *pro rata* basis, based on each PAGA Group Member’s number of workweeks, divided by the total number of workweeks worked by all PAGA Group Members and then multiplied by \$62,500 (i.e., 25% of the PAGA Payment).¹³

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⁷ This amount is higher than the amount stated in Paragraph 16 of the accompanying Declaration of Jeremiah Kincannon (“Simpluris Declaration” or “Simpluris Decl.”) because the Settlement Administrator’s calculation assumes that Class Counsel will obtain reimbursement of litigation costs and expenses in the maximum amount of \$80,000, which is allocated under the Settlement. However, Class Counsel seeks reimbursement of litigation costs and expenses in the amount of only \$63,354.90, and the difference of \$16,654.10 will remain a part of the Net Settlement Fund.

⁸ Settlement Agreement, §§ 11 & 29(d)(i); see also Notice, p.2.

⁹ Simpluris Decl., ¶ 11; Exh. A.

¹⁰ Settlement Agreement, §§ 42, 44, & 50.

¹¹ Simpluris Decl., ¶¶ 13 & 14.

¹² As discussed in n. 4, *supra*, the parties are in the process of submitting a stipulation to address an inconsistency in the description of PAGA Group Members that was recently discovered in the September 7, 2018 Order.

¹³ Settlement Agreement, §§ 15 & 29(d)(ii); see also Notice, p.2.

Individual Settlement Shares will be allocated as 33.34% wages, to be reported on IRS Form W-2, 33.33% interest, to be reported on IRS Form 1099 (if applicable), and 33.33% penalties, to be reported on IRS Form 1099 (if applicable).¹⁴ Individual Settlement Shares will be paid out to Settlement Class Members subject to reduction for all employee's share of taxes and withholdings with respect to the wage portion of the Individual Settlement Shares.¹⁵ All applicable employer's share of payroll taxes and contributions owed with respect to the wage portions of the Individual Settlement Shares will be paid by Defendant separately and in addition to the Gross Settlement Fund.¹⁶

Checks for payment of Individual Settlement Shares to Settlement Class Members, along with PAGA Settlement Shares to PAGA Group Members, will remain valid and negotiable for one hundred eighty (180) calendar days from the date they are issued, and if not cashed within the 180-day period, the checks will be cancelled.¹⁷ Sixty (60) calendar days before these checks expire, the Settlement Administrator will send one (1) reminder postcard to Settlement Class Members and PAGA Group Members whose checks remain uncashed, to remind them of their deadline to cash the checks.¹⁸ The funds associated with cancelled Individual Settlement Share checks will be transmitted twenty-five percent (25%) to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund and seventy-five percent (75%) to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch, while the funds associated with cancelled PAGA Settlement Share checks will be transmitted to the California Department of Industrial Relations Unpaid Wage Fund, in the name of the PAGA Group Member whose check is cancelled, within ten (10) calendar days of the expiration of the 180-day period.¹⁹

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¹⁴ Settlement Agreement, §§ 31 & 32.

¹⁵ *Id.*, §§ 29(d)(i), 31, & 32.

¹⁶ *Id.*, §§ 9, 29(a), & 33.

¹⁷ *Id.*, § 40.

¹⁸ Settlement Agreement, § 40.

¹⁹ *Id.*, §§ 40(a) & 40(b).

1 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

2 The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps
3 to effectuate the notice and settlement administration process, as set forth in the Court's
4 September 7, 2018 Order.

5 On September 19, 2018, Simpluris received the Court-approved text for the Notice.²⁰

6 On November 8, 2018, Simpluris received data from Defendant's counsel that contained
7 the names, last known addresses, Social Security numbers, and last known telephone numbers
8 for Class Members, as well as the dates of employment and number of workweeks that each
9 Class Member worked for Defendant during the period from May 6, 2012 to August 9, 2017
10 ("Class Data").²¹ The Class Data contained information for one thousand thirty (1,030)
11 individuals identified as Class Members.²² Simpluris processed the names and addresses through
12 the National Change of Address Database ("NCOA") and updated its records with any addresses
13 located.²³

14 On November 16, 2018, Simpluris mailed the Notice to one thousand thirty (1,030)
15 individuals identified as Class Members in the Class Data via first class U.S. mail.²⁴

16 As of the date of this Motion, one (1) Notice was returned by the Post Office with a
17 forwarding address, and Simpluris promptly re-mailed the Notice to the forwarding address.²⁵
18 Forty-three (43) Notices were returned to Simpluris as undeliverable without forwarding
19 addresses.²⁶ Simpluris performed a skip-trace search on the forty-three (43) Notices that were
20 returned without forwarding addresses, located an updated address for twenty-seven (27)
21 Notices, and promptly re-mailed the Notice to the updated addresses via first class U.S. mail.²⁷
22 As of this date, sixteen (16) Notices remain undeliverable because a more current address was
23 not located through skip-tracing.²⁸

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25 ²⁰ Simpluris Decl., ¶ 4.

26 ²¹ *Id.*, ¶ 5.

27 ²² *Ibid.*

28 ²³ *Id.*, ¶ 6.

²⁴ Simpluris Decl., ¶ 7.

²⁵ *Id.*, ¶ 8.

²⁶ *Id.*, ¶ 9.

²⁷ *Ibid.*

²⁸ Simpluris Decl., ¶ 9.

1 The Response Deadline was December 17, 2018, and for any Notice that was re-mailed,
2 the Response Deadline was extended ten (10) calendar days after the Notice was re-mailed, the
3 latest of which was December 20, 2018.²⁹

4 After the Response Deadline lapsed, it was discovered that due to a typo in the September
5 7, 2018 Order, the incorrect date of February 25, 2016 (instead of February 25, 2015) was
6 inserted in one place on the Notice in connection with the definition of PAGA Group Members
7 and used for the calculation of each PAGA Group Member's estimated PAGA Settlement
8 Share.³⁰

9 As of the date of this Motion, the Settlement Administrator has received one (1) Request
10 for Exclusion and has not received any Objections or workweeks disputes.³¹

11 There are one thousand twenty-nine (1,029) Class Members who have not submitted a
12 timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class
13 Members.³² Pursuant to the terms of the Settlement, the Net Settlement Fund of approximately
14 \$2,917,579.10 will be fully distributed to the Settlement Class Members, \$62,500 of the PAGA
15 Payment will be fully distributed to PAGA Group Members, and \$187,500 of the PAGA
16 Payment will be fully distributed to the LWDA.³³ It is currently estimated that the highest
17 Individual Settlement Share to a Settlement Class Member is at least \$6,688.05 and the average
18 Individual Settlement Share is at least \$2,819.18.³⁴ Additionally, PAGA Group Members will be
19 paid PAGA Settlement Shares.³⁵

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24 ²⁹ Simpluris Decl., ¶ 11.

³⁰ *Id.*, ¶ 12; see n.4, *supra*.

³¹ *Id.*, ¶¶ 13-15.

³² *Id.*, ¶ 16.

³³ Simpluris Decl., ¶ 16; see also, n.7, *supra*.

³⁴ *Id.*, ¶ 17. The actual average and highest Individual Settlement Shares will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Fund is larger due to Class Counsel's request for a reimbursement of litigation costs and expenses in an amount that is less than \$80,000 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$16,645.10, will be part of the Net Settlement Fund). See n.7, *supra*.

³⁵ *Id.*, ¶ 18.

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS 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. Importantly, "[d]ue regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk, supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement taken as a whole is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the lawsuit was 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 this case since it was commenced on May 6, 2016. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for class certification and trial.³⁶ The parties extensive formal and informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation.³⁷ Class Counsel propounded multiple sets of written discovery requests in various forms, reviewed Defendant's responses and supplemental responses thereto, served multiple deposition notices, and worked with Plaintiff Seth Swan to respond to requests for production of documents and form interrogatories that were propounded by Defendant.³⁸ Class Counsel prepared for and took the depositions of Defendant's Person Most Knowledgeable designee and prepared for and defended the deposition of Plaintiff Seth Swan.³⁹ Class Counsel also interviewed and obtained information from Plaintiff and other Class Members, including and not limited to, the names of potential witnesses, and reviewed and analyzed tens of thousands of pages of documents and data produced by Defendant and obtained through other sources.⁴⁰ Additionally, Class Counsel obtained the contact information of Class Members at the Santa Rosa location.⁴¹ The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiff's and other Class Members' employment records, a detailed sampling of Class Members' time and pay data, Defendant's Employee Handbook, agreements (including, and not limited to, Defendant's Meal Break Waiver Agreement and Arbitration Agreement), internal memoranda, forms, acknowledgments, and Defendant's operations and employment policies, practices, and

³⁶ Aiwasian Decl., ¶ 6.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Aiwasian Decl., ¶ 6.

⁴¹ *Ibid.*

procedures (such as, *inter alia*, Defendant's Personnel Guide and Human Resources Policies & Procedures Manual), among other information and documents.⁴² Class Counsel engaged in motion practice, researched applicable law, and developed damages/valuation models in preparation for mediation.⁴³ Counsel for the parties also met and conferred on numerous occasions, e.g., to discuss issues relating to motion practice, pleadings, discovery, mediation, settlement negotiations (including, and not limited to, a lengthy conference call in which counsel and experts for both parties went over the analytical framework and calculations), and production of documents and data prior to mediation.⁴⁴

After conducting extensive formal and informal discovery and investigation into the facts of the case, the parties participated in a formal, full-day mediation conducted by Mark S. Rudy, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.⁴⁵ Prior to and during mediation, the parties exchanged class information and data, and engaged in an intensive discussion regarding their evaluations of the case and various factual aspects of the 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, representative adjudication, and/or 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.⁴⁶ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.⁴⁷ Arriving at a settlement that was acceptable to the parties was not easy.⁴⁸ 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.⁴⁹ After conducting extensive formal and informal discovery and investigations, settlement negotiations, and with the aid of the mediator's

⁴² Aiwazian Decl., ¶ 6.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Id.*, ¶ 8.

⁴⁶ Aiwazian Decl., ¶ 8.

⁴⁷ *Id.*, ¶ 8.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

1 evaluation, the parties agreed that this case was well-suited for settlement given the legal issues
2 relating to Plaintiff's principal claims, as well as the costs and risks to the parties that would
3 attend further litigation.⁵⁰

4 The Settlement takes into account the strengths and weaknesses of each side's position,
5 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.
6 Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.⁵¹
7 Class Counsel also reviewed and analyzed a large volume of documents produced by Defendant
8 and obtained through other sources, and performed significant research into the law concerning
9 certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-
10 and-hour enforcement, Plaintiff's claims, and Defendant's defenses, as well as facts discovered.⁵²
11 The Settlement was based on this volume of facts, evidence, and investigation.⁵³ Additionally,
12 Class Counsel has extensive experience in handling complex wage-and-hour matters, including
13 significant experience in employment class action litigation.

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

16 The Gross Settlement Fund of \$5,000,000 represents a fair, adequate, and reasonable
17 resolution of this case, given the risks inherent in litigating class and representative claims
18 through certification proceedings, trial, and/or appeals.⁵⁴ The Settlement was calculated using
19 information and data uncovered through extensive case investigation, formal and informal
20 discovery, and the exchange of information in the context of mediation.⁵⁵ Had the case not
21 settled, Defendant would have vigorously challenged certifiability, manageability of
22 representative adjudication, and liability. Defendant contended that individualized questions of
23 fact predominate over any common issues, and these issues would pose challenges to
24 certification and representative adjudication. Defendant would have likely argued again at trial,
25 if any, that Plaintiff's claims were not appropriate for class-wide and/or representative

26 ⁵⁰ Aiwasian Decl., ¶ 8.

27 ⁵¹ *Id.*, ¶ 6.

28 ⁵² *Ibid.*

⁵³ *Id.*, ¶¶ 6 & 8.

⁵⁴ Aiwasian Decl., ¶¶ 8 & 21.

⁵⁵ *Id.*, ¶¶ 5-8.

1 adjudication. On the other hand, Defendant also faced the risk of the Court certifying the case
2 and allowing a jury to decide Plaintiff's claims on a class and/or representative basis.
3 Additionally, preparation for trial would have been expensive for all parties.

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

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

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28 ///

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

2 The Gross Settlement Fund of \$5,000,000 represents a fair, reasonable, and adequate
3 resolution of this case. The Settlement was calculated using information and data uncovered
4 through extensive case investigation, formal and informal discovery, and the exchange of
5 information in the context of mediation. The Settlement takes into account the potential risks
6 and rewards inherent in any case and, in particular, in this case. Moreover, considering all of the
7 facts in this case, the Gross Settlement Fund represents a considerable recovery.

8 Even after deducting attorneys' fees in the amount of \$1,750,000, reimbursement of
9 litigation costs and expenses in the amount of \$63,354.90, Service Award in the amount of
10 \$6,000, Settlement Administration Expenses in the amount of \$13,066, and PAGA Payment in
11 the amount of \$250,000 from the Gross Settlement Fund of \$5,000,000, the Net Settlement
12 Fund is currently estimated to be \$2,917,579.10.⁵⁶ Under the Settlement Agreement, the Gross
13 Settlement Fund will be fully paid out without any reversion to Defendant. As discussed in
14 Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net
15 Settlement Fund, and each PAGA Group Member will be paid a *pro rata* share of twenty-five
16 percent (25%) of the PAGA Payment (\$62,500), based on the number of workweeks credited to
17 him or her. To date, there are one thousand twenty-nine (1,029) Settlement Class Members,
18 representing approximately 99.9% of the Class Members.⁵⁷ The highest Individual Settlement
19 Share to a Settlement Class Member is currently estimated to be at least \$6,688.05 and the
20 average Individual Settlement Share is currently estimated to be at least \$2,819.18.⁵⁸
21 Additionally, PAGA Group Members will be paid PAGA Settlement Shares.⁵⁹

22 At the final approval stage, "[a]n allocation formula need only have a reasonable, rational
23 basis [to warrant approval], particularly if recommended by experienced and competent class
24 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
25 127 F.Supp.2d 418, 429-30. In light of the above considerations, Class Counsel believes that the
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27 ⁵⁶ Simpluris Decl., ¶ 16.

28 ⁵⁷ *Ibid.*

⁵⁸ *Id.*, ¶ 17; see n.34, *supra*.

⁵⁹ *Id.*, ¶ 18.

1 Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class
2 Members.⁶⁰ Although the recommendations of Class Counsel are not conclusive, the Court can
3 properly take the recommendations into account, particularly if Class Counsel appears to be
4 competent, have experience with this type of litigation, and significant discovery and
5 investigation has been completed, as is the case here. Conte & Newberg, *Newberg on Class*
6 *Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Class
7 Settlement.

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

9 Class Counsel has extensive experience in employment class action law and complex
10 wage-and-hour litigation.⁶¹ Lawyers for Justice, PC has been appointed class counsel in
11 numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in
12 California.⁶² Both parties' counsel were capable of assessing the strengths and weaknesses of the
13 Class Members' claims against Defendant and the benefits of the Settlement under the
14 circumstances of the case and in the context of a private, consensual settlement agreement.

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

16 The Settlement has been well received by the Class – *not a single Class Member has*
17 *objected to the Class Settlement.*⁶³ Specifically, no objections have been made as to the Gross
18 Settlement Fund or request for attorneys' fees, reimbursement of litigation costs and expenses,
19 Service Award, or Settlement Administration Expenses. California courts have consistently
20 found that a small number of objectors indicates the class' support for a settlement and strongly
21 favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite
22 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted
23 despite 9 objectors).

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27 ⁶⁰ Aiwasian Decl., ¶ 21.

28 ⁶¹ *Id.*, ¶¶ 15-18.

⁶² *Ibid.*

⁶³ Simpluris Decl., ¶ 14.

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

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

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

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement. Weil and Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *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. Therefore, fees in class and

representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 48.

“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 fund 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).

B. A Fee Award of a Percentage of the Settlement Amount 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. *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,

34.⁶⁴ 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 others may derive benefits from a litigant's efforts, 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 monetary benefits that have, 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 lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he percentage [...] method survives in California." *Id.* (internal quotes omitted).

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

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⁶⁴ 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.

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

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Fund of \$5,000,000 on a non-reversionary basis. Class Counsel’s attorneys’ fees are to be calculated as a percentage of the total monetary recovery under the Settlement. In light of Class Counsel’s successful prosecution and resolution of this case, the requested attorneys’ fees are appropriate and reasonable.

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. The named plaintiff’s agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel’s work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this

case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁶⁵

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

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, and the State of California, and the results achieved justify the award of a fee 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

⁶⁵ Aiwazian Decl., ¶ 9.

1 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
2 limitation imposed by the client or the circumstances; (8) the amount involved and results
3 obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the
4 case; (11) the nature and length of the professional relationship with the client; and (12) awards
5 in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d
6 768, 772.

7 Each and every one of these factors favors the attorneys' fees sought herein; however,
8 some of the most relevant factors to this Court's fee determination will be addressed herein. The
9 award of attorneys' fees of thirty-five percent (35%) of the Gross Settlement Fund is
10 commensurate with the time, effort, and expense dedicated to the case, the contingent nature of
11 Class Counsel's fee and the risks taken in commencing this action, the skill and determination
12 required, the results that Class Counsel has achieved, and the value of the settlement that Class
13 Counsel has obtained for the Class Members and the State of California.

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

15 Class Counsel used its class action experience and skills to litigate and bring this matter
16 to a successful conclusion. Prior to commencing this lawsuit, Class Counsel had conducted a
17 significant amount of investigation into the factual and legal issues, Defendant's business, and its
18 operations and employment policies, practices, and procedures.⁶⁶ During the litigation of this
19 case, Class Counsel engaged in motion practice; obtained the contact information of Class
20 Members who worked at the Santa Rosa location; interviewed and obtained information from
21 Plaintiff and other Class Members; conducted extensive formal and informal discovery and legal
22 research; propounded multiple sets of formal discovery requests and reviewed Defendant's
23 responses and supplemental responses thereto; worked with Plaintiff to prepare responses to
24 discovery requests that were propounded by Defendant; prepared for and took depositions of
25 Defendant's Person Most Knowledgeable designee; prepared for and defended the deposition of
26 Plaintiff; reviewed and analyzed tens of thousands of pages of documents and data; and prepared
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⁶⁶ Aiwasian Decl., ¶ 5 & Exh. A.

1 damages/valuation calculations.⁶⁷ Class Counsel also met and conferred with Defendant's
2 counsel over issues relating to motion practice, pleadings, discovery, and the production of
3 documents and data, among other things; engaged in extensive settlement negotiations with
4 Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement
5 negotiations.⁶⁸

6 Class Counsel dedicated staffing and monetary resources necessary to prosecute the case
7 diligently and with maximum efficiency and has fully and actively participated in this litigation
8 process. The Attorney 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, the Class, and State of California. Class
11 Counsel has spent **2,044.50 hours** to obtain a significant recovery in this matter, and these hours
12 were required to bring this case to its successful conclusion. In light of the value of time
13 expended and the carrying of costs involved in this litigation, the requested attorneys' fees are
14 fair, adequate, and reasonable.

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

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

21 Class Counsel undertook significant investigation, analysis, and research prior to filing
22 the lawsuit, during the litigation, and prior to mediation. Class Counsel took steps to prepare the
23 case for class certification and had every intention of taking the case to trial on a class-wide basis
24 if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that
25 had to be overcome, as demonstrated in the Declaration of Edwin Aiwarzian, Class Counsel used
26 its extensive experience in the handling of class actions and complex wage-and-hour litigation
27

28 ⁶⁷ Aiwarzian Decl., ¶ 6.

⁶⁸ *Ibid.*

1 matters in order to obtain the Settlement with maximum efficiency.⁶⁹

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

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

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

18 As a result of this litigation, Defendant agreed to pay a Gross Settlement Fund of
19 \$5,000,000 to settle the matter. After deducting attorneys' fees (\$1,750,000), litigation costs and
20 expenses (\$63,354.90), Service Award (\$6,000), Settlement Administration Expenses (\$13,066),
21 and PAGA Payment (\$250,000) from the Gross Settlement Fund, it is currently estimated that
22 the Net Settlement Fund is approximately \$2,917,579.10.⁷⁰ The Net Settlement Fund will be
23 fully distributed to Settlement Class Members, twenty-five percent (25%) of the PAGA Payment
24 (\$62,500) will be fully distributed to PAGA Group Members, and seventy-five percent (75%) of
25 the PAGA Payment (\$187,500) will be fully distributed to the LWDA and State of California, in
26 accordance with the terms of the Settlement Agreement. The highest Individual Settlement
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28 ⁶⁹ Aiwazian Decl., ¶¶ 15-18.

⁷⁰ Simpluris Decl., ¶ 16; see n.7, *supra*.

Share is currently estimated to be at least \$6,688.05 and the average Individual Settlement Share is currently estimated to be at least \$2,819.18.⁷¹ In addition, PAGA Group Members will be paid PAGA Settlement Shares.⁷² The Settlement offers significant monetary relief to the Settlement Class Members, PAGA Group Members, and State of California.

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 this case without knowing whether any recovery would be obtained. Class Counsel has invested 2,044.50 hours of time to obtain relief on behalf of Plaintiff, the Class, and State of California.⁷³ Class Counsel has also incurred litigation costs and expenses in the amount of \$63,354.90.⁷⁴

In this case, Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁵ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain an excellent result.⁷⁶ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested attorneys' fees and costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

⁷¹ Simpluris Decl., ¶ 17; see n.34, *supra*.

⁷² *Id.*, ¶ 18.

⁷³ Aiwasian Decl., ¶ 11, Exh. A.

⁷⁴ See Part VII, *infra*.

⁷⁵ Aiwasian Decl., ¶ 19.

⁷⁶ See *id.*, ¶¶ 15-18.

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

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

7 The results achieved, in light of the difficulties inherent in similar cases and the specific
8 difficulties faced in this case, are considerable. The Settlement yielded a positive response from
9 the Class Members—no Class Member objected to the Class Settlement and only one (1) Class
10 Member, representing less than 0.1% of the Class, opted out of the Class Settlement.⁷⁷

11 The California Supreme Court expressly held that “it is equitable that [the attorney’s]
12 compensation and expenses should come from the entire fund saved for all classes concerned
13 before it is distributed.” *Harold G. Ferguson Corp, supra*, 25 Cal.2d at 284. Likewise, *Lealao*
14 expressly recognizes that a percentage-based fee “may be calculated on the basis of the total fund
15 made available rather than the actual payments made to the class.” *Lealao, supra*, 82
16 Cal.App.4th at 51; see also *Boeing, supra*, 444 U.S. at 478.

17 Here, the results achieved and obtained on behalf of Plaintiff, Settlement Class Members,
18 PAGA Group Members, and the State of California are reasonable in light of the risks inherent in
19 further litigating this case. Class Counsel’s efforts have resulted in a settlement that provides for
20 a Gross Settlement Fund of \$5,000,000, and the Net Settlement Fund (currently estimated to be
21 \$2,917,579.10) will be fully distributed to the Settlement Class Members, twenty-five percent
22 (25%) of the PAGA Payment will be fully distributed to PAGA Group Members, and seventy-
23 five percent (75%) of the PAGA Payment will be fully distributed to the LWDA and State of
24 California, in accordance with the terms of the Settlement Agreement.⁷⁸ The highest Individual
25 Settlement Share of a Settlement Class Member is currently estimated to be at least \$6,688.05
26 and the average Individual Settlement Share is currently estimated to be at least \$2,819.18.⁷⁹ In

27
28 ⁷⁷ Simpluris Decl., ¶¶ 13 & 14.

⁷⁸ *Id.*, ¶ 16; see n.7, *supra*.

⁷⁹ *Id.*, ¶ 17; see n.34, *supra*.

1 addition, PAGA Group Members will be paid a PAGA Settlement Share from twenty-five
2 percent (25%) of the PAGA Payment (\$62,500).

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

4 Class Counsel is a recognized class action law firm that employed its attorneys'
5 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
6 has years of complex and class action litigation experience, has recovered millions of dollars on
7 behalf of thousands of individuals in California, and has successfully handled numerous
8 significant wage-and-hour class action and complex cases.⁸⁰

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

12 While the percentage-of-the-benefit approach is endorsed as the better approximation of
13 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
14 method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining
15 that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
16 spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*,
17 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method,
18 the lodestar may provide a useful perspective on the reasonableness of a given percentage
19 award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary
20 determination of the fee as a percentage” of the settlement amount and “does not impose an
21 absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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

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⁸⁰ Aiwazian Decl., ¶¶ 15-18.

1 ***1. Class Counsel Performed Work for a Reasonable Number of Hours.***

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, this 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 lawsuit and disputed that the case was appropriate for class and/or representative treatment.
8 Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved
9 gathering and analyzing data not only from Defendant but also from the Class Members. The
10 handling of this litigation 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 additional depositions of Defendant’s Person Most Knowledgeable designees,
15 percipient witnesses, and experts, propounding additional discovery requests and conducting
16 additional document production, and engaging in additional extensive motion practice. As Class
17 Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to
18 resolve the entire 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 case and to prepare for and attend mediation and engage in settlement discussions.

23 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwarzian
24 is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Class
25 Counsel performed in this matter and the time required for completing those tasks.⁸¹ The chart
26 demonstrates that Class Counsel has spent a total of 2,044.50 hours litigating this case and
27 finalizing the Settlement. In light of the facts and circumstances of this case, as well as the
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⁸¹ See Aiwarzian Decl., Exh. A.

1 results that Class Counsel has achieved on behalf of Plaintiff, the Class Members, and State of
2 California, Class Counsel has spent a reasonable number of hours on this matter.

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

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

12 Class Counsel has been actively involved in this case, prior to the commencement of the
13 case and all the way up to the present, and Class Counsel's dedication to providing
14 representation in this case has precluded other employment. Here, Class Counsel bore the risk
15 that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class
16 Counsel was successful in reaching a settlement of \$5,000,000.

17 As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and
18 experience of Class Counsel support a reasonable hourly rate of compensation of at least \$650
19 per hour for services provided by Class Counsel.⁸² The rate of at least \$650 has been found to be
20 a reasonable hourly rate of compensation for legal services performed by Lawyers for Justice,
21 PC.⁸³ While the circumstances of every case is unique, the fact remains that the work performed
22

23 ⁸² Aiwarzian Decl., ¶ 12.

24 ⁸³ For example, final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare*
25 *Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the
26 award of attorneys' fees involved a higher hourly rate of \$831.38; final approval of the class and representative
27 action settlement in *Ruben Sanchez, et al. v. CalPortland Company, et al.* (Los Angeles County Superior Court Case
28 No. BC590426) was granted on August 8, 2018, and the award of attorneys' fees involved a higher hourly rate of
\$730.16; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett*
Petroleum (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of
attorney's fees involved a higher hourly rate of \$780.77; final approval of the class and representative action
settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-
2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved a higher hourly rate of
\$845.64. Aiwarzian Decl., ¶ 12.

1 and efforts undertaken by Class Counsel on behalf of the Class Members and State of California
2 justify the requested attorneys' fees award.

3 **3. The Risks Involved, Skill Required, Complexity of the Case, and Results**
4 **Obtained Warrant Upward Enhancement of the Lodestar.**

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

9 Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved,
10 the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051;
11 *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 ("One of the most common fee
12 enhancers [...] is for contingency risk."). Such an enhancement "mirrors the established practice
13 in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying
14 them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290
15 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the
16 financial incentives for enforcing important rights "into line with incentives [attorneys] have to
17 undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal. 4th at
18 1132.

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

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

1 *Ketchum* at 1134.

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

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

22 Most importantly, all services were performed by Class Counsel on a contingent basis.
23 Both California and federal courts recognize that attorneys should be compensated for taking on
24 such contingent risks and provided with financial incentives to enforce important rights and
25 protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051;
26 *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts
27 and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is
28 entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are

significant here. Class Counsel was successful in achieving substantial results in the form of a settlement of \$5,000,000. Also, Class Counsel's efforts throughout the case demonstrate dedication to the interests of the Class Members.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this case, Class Counsel devoted the hours in legal time summarized above and detailed in the Attorney Task & Time Chart. As the Attorney Task & Time Chart indicates, the firm has worked 2,044.50 hours in the pursuit of this case. The Attorney Task & Time Chart presents the entire picture. Applying a reasonable hourly rate of \$650 per hour to 2,044.50 hours of work performed by Class Counsel, would place a base lodestar value of \$1,328,925 on Class Counsel's services, and applying a modest multiplier of 1.32, the total enhanced lodestar fees is \$1,754,181, and Class Counsel seeks an attorneys' fee award of \$1,750,000 (equal to 35% of the Gross Settlement Fund based on the Settlement Agreement).⁸⁴

Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

Therefore, application of a modest multiplier of 1.32 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiff respectfully requests that the Court grant final approval of and award attorneys' fees in the amount of \$1,750,000 to Class Counsel.

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⁸⁴ See n.3, *supra*.

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 \$80,000. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$63,354.90 in litigation costs and expenses.⁸⁵ This amount was reasonable and necessary in the prosecution of this matter, and is less than the maximum amount allocated under the Settlement Agreement.⁸⁶ The cost savings of \$16,645.10 will be part of the Net Settlement Fund, which will be distributed to the Settlement Class Members.⁸⁷ Accordingly, Class Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$63,354.90 to Class Counsel.

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

As set forth in the accompanying Declaration of Jeremiah Kincannon, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$13,066.⁸⁸ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Notice to the Class Members; performing skip-trace searches and re-mailing the Notice to any updated addresses located; receiving, reviewing, and processing Requests for Exclusion and Objections; processing disputes regarding the number of workweeks credited to each Class Member; handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares to Settlement Class Members and PAGA Settlement Shares to PAGA Group Members and preparing the associated tax forms; establishing and administering a settlement account; and transmitting payments, among other things.⁸⁹

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 \$13,066.

⁸⁵ Aiwazian Decl., ¶ 19.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ Simpluris Decl., ¶ 19.

⁸⁹ *Id.*, ¶ 3.

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

The Settlement provides for a Service Award in the amount of \$6,000 to Plaintiff Seth Swan, to be paid in addition to his Individual Settlement Share and PAGA Settlement Share, to compensate Plaintiff for the time and effort that he expended in the case. The requested Service Award is both common and reasonable and should be awarded.

In determining whether to make a service payment, 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 representative; (3) the amount of time and efforts spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative).

The requested Service Award in the amount of \$6,000 to Plaintiff Seth Swan is fair and appropriate because he 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 working with Class Counsel to provide responses to requests for production of documents and form interrogatories that were propounded by Defendant and preparing for and attending a full-day deposition.⁹⁰ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information that would benefit the Class.⁹¹ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendant, and gathering and reviewing documents.⁹² These services merit the requested Service Award to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members to date.⁹³

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⁹⁰ Aiwazian Decl., ¶ 20; Declaration of Seth Swan ("Swan Decl."), ¶¶ 3-5.

⁹¹ Aiwazian Decl., ¶ 20; Swan Decl., ¶¶ 3-5.

⁹² Aiwazian Decl., ¶ 20; Swan Decl., ¶¶ 2-6.

⁹³ Swan Decl., ¶ 9.

1 The requested Service Award was fully disclosed in the Notice that was mailed to the
2 Class Members. No objections were made with regards to the requested Service Award.
3 Accordingly, it is appropriate and just for Plaintiff Seth Swan to receive \$6,000 as a reasonable
4 Service Award, in addition to his Individual Settlement Share and PAGA Settlement Share, for
5 his services in this matter.

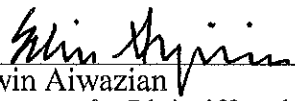
6 **X. CONCLUSION**

7 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
8 approval of the Class Settlement, attorneys' fees, reimbursement of litigation costs and expenses,
9 Service Award, and Settlement Administration Expenses in their entirety, as sought herein.

10 Dated: January 14, 2019

LAWYERS for JUSTICE, PC

11 By:


12 Edwin Aiwarzian
13 Attorneys for Plaintiff and the Class
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