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

TED FERGUSON, individually, and on behalf
of other members of the general public
similarly situated, and LISA FLATHERS and
JOEL FLORES, individually, and on behalf of
all other aggrieved employees pursuant to the
California Private Attorney General Act,

Plaintiffs,

vs.

G3 ENTERPRISES, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CV-21-000848

Honorable John D. Freeland
Department 23

CLASS ACTION

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

[Declaration of Class Counsel
(Joanna Ghosh); Declaration of Class
Representatives (Ted Ferguson, Lisa
Flathers, and Joel Flores); Declaration of
Settlement Administrator (Lindsay Romo);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: February 15, 2024
Time: 8:30 a.m.
Department: 23

Complaint Filed: February 23, 2021
FAC Filed: June 27, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 15, 2024 at 8:30 a.m., in Department 23 of
2 the above-entitled Court, located at 801 10th Street, 4th Floor, Modesto, California 95354,
3 Plaintiff Ted Ferguson (“Plaintiff Ferguson”), Plaintiff Lisa Flathers (“Plaintiff Flathers”), and
4 Plaintiff Joel Flores (“Plaintiff Flores”) (collectively, the “Plaintiffs”) will and hereby does move
5 for an order granting final approval of:

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

- 9 • A Net Settlement Amount of approximately **\$1,562,562.59** will be fully distributed to
10 the Class Members who did not timely opt out of the Settlement (“Participating Class
11 Member”);
- 12 • **No Objections** were submitted to the settlement administrator, Simpluris, Inc.,
13 (“Settlement Administrator”);
- 14 • **Two (2) Requests for Exclusion** were submitted to the Settlement Administrator;

15 2. Payment in the amount of **\$1,460,129.86** to Lawyers for Justice, PC (“Class
16 Counsel”), representing thirty-eight percent (38%) of the Total Settlement Amount, for
17 attorneys’ fees, which is reasonable and justified on a percentage-basis and also based on a
18 lodestar cross-check with a multiplier of 1.85;

19 3. Payment in the amount of **\$15,337.55** to Class Counsel for reimbursement of
20 litigation costs and expenses;

21 4. Payment in the amount of **\$27,470.00** to the Settlement Administrator, Simpluris,
22 Inc. (“Simpluris”), for Settlement Administration Costs; and

23 5. Payment in the amount of **\$11,500.00** each to Plaintiff Ferguson, Plaintiff
24 Flathers, and Plaintiff Flores, as Enhancement Awards, for their time and effort in representing
25 the Class and/or Aggrieved Employees.

26 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
27 California Labor Code section 2698, *et seq.*, in the amount of **\$400,000.00**, of which seventy-five
28 percent (75%), or **\$300,000.00**, will be paid to the California Labor and Workforce Development

Agency and twenty-five percent (25%), or **\$100,000.00**, will be distributed *pro rata* to Aggrieved Employees based on their Workweeks during the PAGA Period.

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

This motion is based upon the following Memorandum of Points and Authorities; the Declaration of Class Counsel (Joanna Ghosh), Class Representatives (Ted Ferguson, Lisa Flathers, and Joel Flores), and Settlement Administrator (Lindsay Romo of Simpluris) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: January 23, 2024

LAWYERS for JUSTICE, PC

Giovani Pimentel

By: _____

Giovani Pimentel

Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Ted Ferguson (“Plaintiff Ferguson”), Plaintiff Lisa Flathers (“Plaintiff Flathers”), and Plaintiff Joel Flores (“Plaintiff Flores”) (collectively, the “Plaintiffs”) seek final approval of: (1) the Total Settlement Amount of \$3,842,447.00, which is inclusive of the Gross Settlement Amount and the Post-Action Payments¹; (2) the Gross Settlement Amount of \$3,500,000.00²; (3) attorneys’ fees in the amount of \$1,460,129.86, which is thirty-eight percent (38%) of the Total Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$15,337.55 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (4) Settlement Administration Costs in the amount of \$27,470.00 to Simpluris, Inc., (“Simpluris” or “Settlement Administrator”); and (5) Enhancement Awards in the amount of \$11,500.00 each to Plaintiffs, for a combined amount of \$34,500; and (6) allocation of \$400,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq* (“PAGA Settlement Amount”).

Plaintiffs seek relief on behalf of the following Class:

All current and former non-exempt or hourly-paid individuals who worked for Defendant in the State of California at any time during the Class Period from February 23, 2017 through August 11, 2023 (“Class Members”).³

This matter involved ongoing investigations, formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation and settlement negotiations. This matter has required **929.70** hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-eight percent (38%) of the Total 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

¹ Class Action and PAGA Action Settlement Agreement and Release (“Settlement Agreement”), ¶ 39. Post-Action Payments is defined in Paragraph 30 of the Settlement Agreement as “the sum of three hundred forty-two thousand four hundred forty-seven thousand dollars and zero cents (\$342,447.00) that Defendant paid to current and former non-exempt employees in pay adjustments, penalties, and settlement of California Labor Code and California Business and Professions Code section 17200 claims between the date the Action was filed and April 14, 2023.” Employer taxes will be paid separately and in addition to the Total Settlement Amount. Settlement Agreement, ¶ 56.

² The “Gross Settlement Amount” is equal to the Total Settlement Amount (\$3,842,447.00) less the Post-Action Payments (\$342,447.00). *Id.* ¶ 39.

³ *Id.*, ¶¶ 7-8.

recovery. The requested attorneys' fees are also supported under the lodestar cross-check method.⁴

Plaintiffs move for final approval of the Enhancement Awards in the amount of **\$11,500.00** to each of them, to compensate Plaintiffs for the time and effort that they expended spearheading these lawsuits on behalf of the Class. Plaintiffs also move for final approval of the payment to the Settlement Administrator in the amount of **\$27,470.00** for Settlement Administration Costs. Plaintiffs also moves for final approval of the allocation of **\$400,00.00** for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*, of which **\$300,000.00** will be paid to the California Labor Workforce and Development Agency ("LWDA") for its portion of the penalties, and **\$100,000.00** will be taken from the Gross Settlement Amount and will be distributed *pro rata* to Aggrieved Employees based on their Workweeks during the PAGA Period .

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

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

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award Attorneys' Fees and Costs, Enhancement

⁴ Applying a modest multiplier of 1.85, the total enhanced lodestar fees are \$1,461,953, and Class Counsel seeks an attorneys' fees award of \$1,460,129.86 (equal to 38% of the Total Settlement Amount).

Awards, and Settlement Administration Costs, and PAGA Settlement Amount, Plaintiffs also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant G3 Enterprises, Inc., (“Defendant”) manufactures packaging for various beverage industries, provides transportation services for the agricultural industry, has warehousing, trucking, and intermodal operations, and additionally provides label printing services for the wine, food and beverage industries. G3 has its headquarters in Modesto, California. G3 has 15 locations in California alone. Plaintiffs are all former employees of Defendant.

On February 23, 2021, Plaintiff Ted Ferguson filed a Class Action Complaint for Damages, thereby commencing the action entitled *Ferguson v. G3 Enterprises, Inc.*, Stanislaus County Superior Court Case No. CV-21-000848 (the “*Ferguson Action*”).

On April 29, 2021, Defendant filed an Answer to Plaintiff Ferguson’s Complaint.

On August 1, 2022, Plaintiffs Lisa Flathers and Joel Flores provided written notice to the LWDA by online submission and to Defendant by certified mail, of the specific provisions of the California Labor Code that Defendant allegedly violated (“PAGA Notice”).

On October 5, 2022, Plaintiffs Flathers and Flores filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) against Defendant, thereby commencing the action entitled *Flathers, et al. v. G3 Enterprises, Inc.*, Stanislaus Superior Court Case No. CV-22-004547 (“*Flathers Action*”).

The Parties have actively litigated the Actions since the Actions were commenced on February 23, 2021 and October 5, 2022, respectively. On April 15, 2023, the Parties participated in a private mediation session with mediator Lynn Frank, Esq, a well-regarded mediator experienced in mediating complex labor and employment matters.

///

On May 17, 2023, Plaintiffs Flathers and Flores served additional correspondence on the California Labor & Workforce Development Agency (“LWDA”) and on Defendant, providing notice of additional provisions of the California Labor Code alleged to have been violated by Defendant, and facts and theories to support the alleged violations.

On June 26, 2023, the above captioned Court entered an order on the Parties’ Joint Stipulation and Order Re: (1) Consolidating Case No. CV-21-000848 And CV-22-004548; (2) Granting Plaintiff Leave to File First Amended Complaint (“FAC”); (3) Continuing or Vacating CMC; and (4) Preserving Claims and Defenses that, among other things, consolidated the *Ferguson* Action and the *Flathers* Action for the sole purpose of implementing the Settlement and entry of judgment pursuant thereto and granted Plaintiffs leave to file the FAC.

On June 27, 2023, Plaintiffs filed the First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et. Seq* (“Operative Complaint” or the “Action”).

Plaintiff Ferguson’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*, unpaid overtime, unpaid meal and rest period premiums, unpaid minimum wages, untimely payment of final wages, untimely payment of wages during employment, non-compliant wage statements, failure to maintain requisite payroll records, and unreimbursed business expenses, as well as violations of the California Business and Professions Code.

Plaintiff Flathers and Flores’ core allegations are that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and other aggrieved employees, of, *inter alia*, violations of the California Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Plaintiffs contend that they, Class Members, and the Aggrieved Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties under 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 case, and further denies that the case is appropriate for class treatment for any purpose other than for settlement purposes only.

The parties have actively litigated the cases since they were commenced February 23, 2021 and October 5, 2022, respectively. The parties conducted significant formal and informal discovery and exchanged thousands of pages of documents and data. On April 15, 2023, the parties participated in a formal, full-day mediation conducted by Lynn Frank, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

On June 30, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On July 25, 2023, a hearing was held on Plaintiffs' Motion for Preliminary Approval, during which the Court raised certain points of inquiry. On August 1, 2023, Plaintiffs filed supplemental papers in support of the Motion for Preliminary Approval. On August 11, 2023, the Court entered an Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of the Settlement, Attorneys' Fees and Costs, Enhancement Awards, and Settlement Administration Costs, and allocation for the PAGA Settlement Amount.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant agreed to a Total Settlement Amount of \$3,842,447.00 on a non-reversionary basis, of which \$342,447.00 was already paid by Defendant between the date of the Action was filed and April 14, 2023.⁵ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount of \$3,500,000.00: (1) Attorneys' Fees and Costs, consisting

⁵ Settlement Agreement, ¶ 39.

of attorneys' fees in an amount equal to thirty-eight percent (38%) of the Total Settlement Amount (\$1,460,129.86) and reimbursement of litigation costs and expenses in the amount of \$15,337.55, to Class Counsel; (2) Enhancement Awards in the amount of \$11,500.00 each to Plaintiffs; (3) the amount of \$27,470.00 to Simpluris for Settlement Administration Costs; (4) PAGA Settlement Amount in the amount of \$400,000.00.⁶ The Net Settlement Amount, which is estimated to be \$1,562,956.59, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁷

The Settlement Administrator will calculate each Settlement Class Member's *pro rata* share of the Net Settlement Amount ("Individual Class Payment"), by dividing the Net Settlement Amount by the Workweeks of all Class Members during the Class Period to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his, her, or their estimated Individual Class Payment.⁸ A class members Workweeks will be the number of weeks that a Class Member performed work in California as an employee of Defendant in a non-exempt or hourly position during the Class Period ("Workweeks").⁹

Class Members had sixty (60) calendar days after the initial mailing of the Notice to Class Members to dispute the number of Workweeks credited to each of them, opt out of the Settlement, and/or object to the Settlement ("Response Deadline").¹⁰ The Response Deadline was November 18, 2023.¹¹ The Settlement Administrator has received two (2) written requests for exclusion from the Settlement ("Requests for Exclusion"), but zero (0) objections to the Settlement ("Objections") or Workweeks Disputes from Class Members.¹²

Individual Class Payments will be allocated as twenty percent (20%) wages, to be

⁶ Settlement Agreement, ¶¶ 5, 13, 28, 31, 51 & 53.

⁷ The amount is higher than the amount stated in Paragraph 15 of the accompanying Declaration of Lindsay Romo Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculations assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$30,000.00, which is allocated in the Settlement. However, Class Counsel seek the amount of only \$15,337.55 for reimbursement of litigation costs and expenses, and the different of \$14,662.45 will remain part of the Net Settlement Amount.

⁸ *Id.*, ¶ 55(a).

⁹ *Id.*, ¶ 40.

¹⁰ *Id.*, ¶ 36

¹¹ Simpluris Declaration, ¶¶ 10, 11, and 12.

¹² *Id.*, ¶¶ 11, 12 & 13.

reported on IRS Form W-2; and eighty percent (80%) constitutes payments for non-wage penalties (including wage statement penalties) and interest and will be reported to the IRS pursuant to Form 1099-MISC.¹³ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported by the Settlement Administrator to the IRS pursuant to Form 1099-MISC.¹⁴ The Settlement Administrator (and not Defendant) will remit all federal and state taxes owed by Defendant and will issue Form W-2s and 1099-MISCs on all funds distributed.¹⁵ The Employer Taxes will be paid separately and in addition to the Total Settlement Amount.¹⁶

Any and all Individual Settlement Payments and Individual PAGA Payment checks will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks were mailed, and thereafter, shall be cancelled.¹⁷ All funds associated with such cancelled checks will be distributed to State Controller's Office of Unclaimed Property Division in the name of the Class Members and/or Aggrieved Employee in the respective amount(s) payable to them.¹⁸

IV. THE SETTLEMENT ADMINISTRATION PROCESS

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

On August 14, 2023, Simpluris received the Court-approved text for the Notice.¹⁹

On August 24, 2023, Simpluris received a mailing list from Defendant's counsel containing Class Members' and PAGA Member's full names, most recent mailing address, Social Security numbers and end dates of employment as a non-exempt of hourly-paid employee of Defendant in California during the Class Period, Workweeks worked during the Class Period, and Workweeks worked during the PAGA Period as reflected in Defendant's records ("Class

¹³ Settlement Agreement, ¶ 56

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ *Id.*, ¶ 71.

¹⁸ Ibid.

¹⁹ Simpluris Declaration, ¶ 5

Member Data”)²⁰ The Class Member Data contained information for 1,219 individuals identified as Class Members.²¹ Simpluris processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class Member Data with any updated addresses located.²²

On September 19, 2023, Simpluris mailed the Notice in English and Spanish via first class mail to 1,219 individuals identified as Class Members in the Class Member Data.²³

A total of thirty (30) Notices were returned to Simpluris. Of these, six (6) Notices were returned as undeliverable with forwarding addresses, and Simpluris promptly re-mailed the Notice to the forwarding addresses.²⁴ Twenty-four (24) Notices were returned as undeliverable without forwarding addresses.²⁵ Simpluris performed a skip-trace search on the twenty-four (24) Notices that were returned to Simpluris without forwarding addresses, located an updated address for twenty-four (24) Class Members, and promptly re-mailed the Notice to the updated addresses.²⁶ As of the date of this Motion, there are not notices that remain undeliverable.²⁷

As of the date of this Motion, the Settlement Administrator has received no Objections, but has received two (2) Requests for Exclusion from Class Members.²⁸

To date, there are 1,217 Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Participating Class Members, representing 99.84% of the class.²⁹ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately **\$1,562,9562.59** 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 **\$3,495.23** and the average Individual Class Payment is currently estimated to be at

²⁰ *Id.*, ¶ 6.

²¹ Simpluris Declaration, ¶ 6.

²² *Id.*, ¶ 7.

²³ *Id.*, ¶ 8.

²⁴ *Id.*, ¶ 9.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Id.*, ¶¶ 11 & 12.

²⁹ *Id.*, ¶ 14.

³⁰ *Id.*, ¶ 15, see also, n.**Error! Bookmark not defined.**, *supra*.

1 least **\$1,271.90**.³¹

2 Of the 1219 Class Members, 813 are Aggrieved Employees and will be paid out of the
3 Aggrieved Employees' PAGA Settlement in accordance with the terms of the settlement.³²
4 Pursuant to the Settlement Agreement, 25% of the PAGA Settlement Amount will be distributed
5 to the Aggrieved Employees on a *pro rata* basis based on the total number of Workweeks
6 worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employees' PAGA
7 Settlement"), regardless of whether he or she opts out of the Class Settlement.³³ Aggrieved
8 Employees cannot opt out of the PAGA Settlement.³⁴

9 The average estimated Individual PAGA Payment is \$123.00 and the highest estimated
10 Individual PAGA Payment is \$194.54.³⁵

11 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION**
12 **SETTLEMENT.**

13 The trial court has broad discretion to determine whether a class action settlement is fair
14 and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether
15 the settlement is fair and reasonable, courts consider relevant factors such as:

16 the strength of plaintiffs' case, the risk, expense, complexity and likely duration
17 of further litigation, the risk of maintaining class action status through trial, the
18 amount offered in settlement, the extent of discovery completed and the stage of
19 the proceedings, the experience and views of counsel, the presence of a
20 governmental participant, and the reaction of the class members to the proposed
21 settlement.

22 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive
23 and the court is free to engage in a balancing and weighing of the factors depending on the
24 circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.
25 "Due regard should be given to what is otherwise a private consensual agreement between the
26 parties." *Dunk, supra*, 48 Cal.App.4th at 1801.

27 ³¹ *Id.*, ¶ 16. The actual average and highest Individual Class Payments will be larger than the amounts stated in the
28 Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel's request for
reimbursement of litigation costs and expenses in the amount that is less than \$30,000 (the difference between the
amount sought and the amount authorized under the Settlement, \$14,662.45, will be part of the Net Settlement
Amount. See n. 7, *supra*.

³² Simpluris Declaration, ¶¶ 14 & 18.

³³ *Id.*, ¶17, see also Settlement Agreement, ¶¶ 3 & 55(b)

³⁴ Simpluris Declaration, ¶ 17.

³⁵ *Id.*, 19

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 case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the cases since they commenced on February 23, 2021, and October 5, 2022. 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 cases for class certification and trial.³⁶ The parties conducted 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 thereto; and prepared and served numerous deposition

³⁶ Declaration of Joana Ghosh (“Ghosh Decl.”), ¶¶ 4, 5 & 6.

³⁷ *Ibid.*

1 notices.³⁸ Class Counsel also interviewed and obtained information from Plaintiffs, including
2 and not limited to the names of potential witnesses, and reviewed and analyzed thousands of
3 pages of documents and data produced by Defendant and obtained through other sources.³⁹ The
4 documents and data reviewed and analyzed by Class Counsel included, and were not limited to,
5 Plaintiffs' employment records, a sampling of Class Members' time and pay data, information
6 regarding true up payments and waiting-time penalty payments, various employee handbooks,
7 collective bargaining agreements (including list of employee ID numbers for employees that
8 signed collective bargaining agreements), arbitration agreements (including list of employee ID
9 numbers for employees that signed arbitration agreements), severance and general release
10 agreements (including list of employee ID numbers for employees that signed such agreements
11 and releases), wage and hour employee training materials (including timekeeping training,
12 expense reimbursement training, overtime policy training, meal and rest break training), expense
13 report logs, job descriptions, organization charts, and Defendant's other operations and
14 employment practices, policies, and procedures documents (including meal waiver agreements
15 (including list of employee ID numbers for employees that signed meal period waivers), meal
16 and rest attestations, payroll exemplar, meal and rest period premium exemplar, time correction
17 form exemplar, union wage statement exemplar, non-union wage statement exemplar, manual
18 check log, and expense reimbursement policies), among other information and documents.⁴⁰
19 Class Counsel developed liability, damages, and penalties valuation models in connection with
20 mediation and settlement negotiations, and met and conferred with Defendant's counsel on
21 numerous occasions, e.g., to discuss issues relating to the pleadings, case management, the
22 production of information, documents, and data in the course of litigation and in connection with
23 mediation and settlement negotiations, as well as mediation and settlement negotiation.⁴¹ Other
24 work performed by Class Counsel included, and was not limited to, case strategy, analysis; and
25 researching, outlining, and briefing internal memoranda regarding class certification and merits
26 issues, drafting, reviewing, and revising pleadings, the mediation brief; and settlement

³⁸ *Id.*, ¶ 5

³⁹ Ghosh Decl., ¶ 6.

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶ 7.

documents; case management; claims assessment and evaluation; and preparing for and/or attending court proceedings and mediation and settlement negotiations, among other tasks.⁴²

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 Lynn Frank, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.⁴³ Prior to and during mediation and settlement discussions, the parties exchanged information and data, and discussed various aspects of the cases, including and not limited to, the risks and delays of further litigation, the risks and expenses to the parties of proceeding with class certification and trial; the law relating to class certification, manageability, off-the-clock theory, meal and rest periods, waivers, representative PAGA claims and penalties, and wage-and-hour law and enforcement; alternative workweek schedules, arbitration agreements, collective bargaining agreements, exemption, preemption, waives, and releases/*Pick Up Stix* agreements, misclassification theory, exemptions, the evidence produced and analyzed; and the possibility of appeals, among other things.⁴⁴ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.⁴⁵ Arriving at a settlement that was acceptable to the parties was not easy.⁴⁶ Defendant and its counsel felt very strongly about Defendant's ability to compel arbitration of Class Members' and Aggrieved Employees' claims, enforce its individual settlement and release agreements obtained from Class Members and Aggrieved Employees, demonstrate California Labor Code exemptions apply based on its collective bargaining agreements, prevail on the merits and to obtain a denial of class certification, while Plaintiffs and Class Counsel believed that the arbitration and release agreements would not be enforced, that class certification would be obtained, and that Plaintiffs would prevail at trial.⁴⁷ After conducting significant formal and informal discovery and investigations, extensive settlement negotiations, with the aid of the mediator's evaluation, the parties agreed that the cases were well-suited for settlement given the legal issues relating to

⁴² *Id.*, ¶ 6.

⁴³ *Id.*, ¶ 8.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

1 Plaintiffs' principal claims, as well as the costs and risks to the parties that would attend further
2 litigation.⁴⁸

3 The Settlement takes into account the strengths and weaknesses of each side's position
4 and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals.
5 Class Counsel interviewed, and obtained information from Plaintiffs and other Class Members.⁴⁹
6 Class Counsel also reviewed and analyzed thousands of pages of documents produced by
7 Defendant and obtained through other sources, and performed significant research into the law
8 concerning certification, manageability, off-the-clock work, misclassification, exemptions, meal
9 and rest periods, waivers, rounding, representative PAGA claims and penalties, wage-and-hour
10 law and enforcement, alternative workweek schedules, arbitration agreements, collective
11 bargaining agreements, exemption, pre-emption, waivers, and releases/*Pick Up Stix*
12 agreements.⁵⁰ The Settlement was based on this large volume of facts, evidence, and
13 investigation.⁵¹ Additionally, Class Counsel has extensive experience in handling complex
14 wage-and-hour matters, including significant experience in employment class action litigation.⁵²

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

17 The Settlement, which provides for a Total Settlement Amount of \$3,842,447.00,
18 represents a fair, adequate, and reasonable resolution of the cases, given the risks inherent in
19 litigating class and representative claims through certification proceedings, trial, and/or appeals.⁵³
20 The Settlement was calculated using information and data uncovered through extensive case
21 investigation, formal and informal discovery, and the exchange of information in the context of
22 mediation.⁵⁴ Had the Action not settled, Defendant would have vigorously challenged class
23 certification and liability. Defendant contended that individualized questions of fact predominate
24 over any common issues, and these issues would pose challenges to certification. Defendant

25 _____
26 ⁴⁸ Ibid.

⁴⁹ *Id.*, ¶ 8

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² *Id.*, ¶¶ 14-18.

⁵³ Ghosh Decl., ¶¶ 8, 10, 19 & 21.

⁵⁴ *Id.*, ¶¶ 5-8.

would have likely argued again at trial, if any, that Plaintiffs' 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 Plaintiffs' 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 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 cases, and the real possibility of no recovery after years of litigation. Additionally, the parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Need for 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.

1 The Settlement, which provides for a Total Settlement Amount of \$3,842,447.00,
2 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
3 using information and data uncovered through extensive case investigation, formal and informal
4 discovery, and the exchange of information in the context of mediation. The Settlement takes
5 into account the potential risks and rewards inherent in any case and, in particular, in this matter.
6 Moreover, considering all of the facts in the case, the Total Settlement Amount represents a
7 considerable recovery.

8 Even after deducting attorneys' fees in the amount of \$1,460,129.86, litigation costs and
9 expenses in the amount of \$15,337.55, Enhancement Awards in the combined amount of
10 \$34,500.00, and Settlement Administration Costs in the amount of \$27,470.00, PAGA
11 Settlement Amount in the amount of \$400,000.00, and Post-Action Payments in the amount of
12 \$342,447.00 from the Total Settlement Amount of \$3,842,447.00, the Net Settlement Amount
13 is currently estimated to be \$1,562,562.59.⁵⁵ Under the Settlement Agreement, the Gross
14 Settlement Amount will be fully paid out without any reversion to Defendant, in accordance with
15 the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member
16 will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks
17 credited to him, her, or them. To date, there are 1217 Participating Class Members, representing
18 99.84% of the Class Members.⁵⁶ The highest Individual Class Payment to a Participating Class
19 Member is currently estimated to be at least \$3,495.23 and the average Individual Class Payment
20 is currently estimated to be at least \$1,271.90.⁵⁷ These are significant individual recoveries,
21 particularly in light of the risks of litigation.

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. The *pro rata* allocation here is a fair and reasonable way to
26 distribute the Net Settlement Amount. In light of the above considerations, Class Counsel

27
28 ⁵⁵ Simpluris Declaration., ¶ 15; see n.4, *supra*.

⁵⁶ Simpluris Declaration., ¶ 14.

⁵⁷ *Id.*, ¶ 16.

believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁵⁸ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁵⁹ Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁶⁰ Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the cases and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Settlement and only two (2) have opted out.*⁶¹ Specifically, no objections have been made as to the Total Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Awards, or Settlement Administration Costs, or the allocation for PAGA Settlement Amount. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

Here, the lack of any objections speaks volumes about the fairness, reasonableness, and adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair,

⁵⁸ Ghosh Decl., ¶ 21.

⁵⁹ *Id.*, ¶¶ 14-18.

⁶⁰ *Ibid.*

⁶¹ Simpluris Declaration ¶¶ 11 & 12.

reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

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

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

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

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

"The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175

Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao*, *supra*, 82 Cal.App.4th at 32.

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

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulity* (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, 34.⁶² 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.

⁶² 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 cases were originally filed, not only were they 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
28

efforts of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing the risks of engaging in litigation without certainty of compensation).

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of \$3,842,447.00, which is inclusive of the Gross Settlement Amount of \$3,500,00.00 and Post-Action Payments already paid in the amount of \$342,447.00, on a non-reversionary basis. The requested attorneys' fees are thirty-eight percent (38%) of the total value of the monetary settlement.⁶³ Both state and federal courts in California have awarded fees based on a percentage of the recovery that is inclusive of both "new" money to be paid upon reaching a negotiated settlement and also inclusive of payments made to putative class members for releases obtained by the employer directly from putative class members. See, e.g., *Feao v. UFP Riverside, LLC*, United States District Court for the Central District of California, Case No. 2:17-CV-03080-PSG-JPR (awarding 35% attorneys' fees based on a settlement amount that included payments made to putative class members subject to individual releases); *Morgan, et al. v. Citizens Business Bank*, Los Angeles County Superior Court Case No. BC568004 (same); *Contreras v. Towne Center Property Management, Inc., et al.*, Los Angeles County Superior Court Case No. BC513621 (awarding attorneys' fees based on a settlement amount that included payments made to putative class members subject to individual releases); *Brooks v. Lereta, LLC*, Los Angeles County Superior Court Case No. BC594511 (awarding attorneys' fees based on a settlement amount that included payments made to putative class members subject to individual releases); *Gutierrez v. Stericycle, Inc.*, 2018 WL 10150821; *Gutierrez v. Southern Counties Oil, Co., et al.*, San Diego County Superior Court, Case No. 37-2017-00040850-CU-OE-CTL; *Oda, et al v. Gucci America, Inc.*, Los Angeles County Superior Court, Case No. BC551545. Thus, it is appropriate for the award of attorneys' fees to Class Counsel to be based on a total recovery that includes the value of the Prior Settlement Payments made to the Class as a result of the litigation and Class Counsel's efforts. In light of Class Counsel's successful prosecution and resolution of the cases, the requested attorneys' fees are appropriate and reasonable.

⁶³ The Total Settlement amount of \$3,842,447.00 is inclusive of the Gross Settlement Amount and the Post-Action Payments. Settlement Agreement, ¶ 39; see *supra* n.1 & 2.

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 cases; 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 in this matter satisfy all of those factors such 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. Named plaintiffs' agreements 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 plaintiffs. If the named plaintiffs have 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 plaintiffs. In this case, Plaintiffs have agreed to a contingency fee of at least forty percent (38%) of the recovery.⁶⁴

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 settlement “for the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

⁶⁴ Ghosh Decl., ¶ 9.

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

6 Class Counsel has obtained a substantial recovery on behalf of Plaintiffs and the Class,
7 and the results achieved justify an attorneys' fees award that is the equivalent of the standard
8 market fee and that is consistent with the contingency-fee agreement entered into by and between
9 Plaintiffs and Class Counsel. Thus, the requested attorneys' fees are appropriate.

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

12 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
13 to be considered in determining whether fee awards are reasonable: (1) the time and labor
14 required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform
15 the legal services properly; (4) the preclusion of other employment by the attorney due to the
16 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
17 limitation imposed by the client or the circumstances; (8) the amount involved and results
18 obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the
19 case; (11) the nature and length of the professional relationship with the client; and (12) awards
20 in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d
21 768, 772.

22 Each and every one of these factors favors the attorneys' fees sought here; however,
23 some of the most relevant factors to this Court's fee determination will be addressed herein. The
24 award of attorneys' fees in the amount of \$1,460,129.86 (which is 38% of the Total Settlement
25 Amount) is commensurate with the time, effort, and expense dedicated to the cases, the
26 contingent nature of Class Counsel's fee and the risks taken in commencing the cases, the skill
27 and determination required, the results that Class Counsel has achieved, and the value of the
28 settlement that Class Counsel has obtained for the Class Members.

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

2 Class Counsel used its experience and skills, and dedicated the full extent of resources, to
3 litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as
4 demonstrated in the supporting declaration, Class Counsel has extensive experience in the
5 handling of class actions and complex litigation matters.⁶⁵

6 As outlined in the Declaration of Joanna Ghosh, Class Counsel has fully and actively
7 participated in litigation of these cases.⁶⁶ Prior to commencing the lawsuit, Class Counsel had
8 conducted a significant amount of investigation into the factual and legal issues, Defendant's
9 business, and its operations and employment policies, practices, and procedures.⁶⁷ During the
10 litigation of the action, Class Counsel interviewed Plaintiffs and other Class Members;
11 propounded formal written discovery requests and reviewed Defendant's responses thereto;
12 reviewed and analyzed thousands of pages of pages of documents and data produced by
13 Defendant and obtained through other sources; and prepared damages/valuation calculations.⁶⁸
14 Class Counsel also met and conferred with Defendant's counsel on numerous occasions, e.g., to
15 discuss issues relating to the pleadings, case management, the production of information,
16 documents, and data in the course of litigation and in connection with mediation and settlement
17 negotiations, as well as mediation and settlement negotiation.⁶⁹

18 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
19 matter diligently and with maximum efficiency and has fully and actively participated in the
20 litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
21 accompanying Declaration of Joanna Ghosh, sets forth in detail the hours that Class Counsel has
22 spent performing tasks on behalf of Plaintiffs and the Class and Aggrieved Employees.⁷⁰ The
23 Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can
24 peruse it without having to set forth each and every task in the body of this Motion. The Court is
25 respectfully referred to the chart, which sets forth the history of the work performed by Class

26 ⁶⁵ Ghosh Decl., ¶¶ 14-18.

27 ⁶⁶ *Id.*, Exh. A.

27 ⁶⁷ *Id.*, ¶¶ 5-8 & Exh. A.

28 ⁶⁸ Ghosh Decl., ¶ 6.

⁶⁹ *Id.*, ¶¶ 5-8.

⁷⁰ *Id.*, Exh. A.

Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent **929.70** hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs and the Class and Aggrieved Employees.⁷¹ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating these cases, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

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

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

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

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

⁷¹Id., ¶ 12.

⁷² Ghosh Decl., ¶¶ 14-18.

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

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Total Settlement Amount of \$3,842,447.00 to settle the cases. After deducting the attorneys' fees (\$1,460,129.86), litigation costs and expenses (\$15,337.55), Enhancement Awards (in total, \$34,500.00), and Settlement Administration Costs (\$27,470.00), PAGA Settlement Amount (\$400,000.00), and Post-Action Payments already paid in the amount of \$342,447.00 from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$1,562,562.59.⁷³ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Class Payment to a Settlement Class Member is currently estimated to be at least \$3,495.23 and the average Individual Class Payment is currently estimated to be at least \$1,271.90.⁷⁴ The Settlement offers significant monetary relief to the Participating Class Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the cases without knowing whether any recovery would be obtained. Class Counsel has invested **929.70** hours of time to obtain relief on behalf of Plaintiffs and the Class and Aggrieved Employees.⁷⁵ Class Counsel has also incurred litigation costs and expenses in the amount of \$15,337.55.⁷⁶

⁷³ Simpluris Declaration., ¶ 15; see n.4, *supra*.

⁷⁴ *Id.*, ¶ 16.

⁷⁵ Ghosh Decl., ¶ 12, Exh. A.

⁷⁶ See Part VII, *infra*.

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁷ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷⁸ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

Cates v. Chiang (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class Counsel litigated the cases 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 cases 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 and only two (2) have opted out.⁷⁹

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,

⁷⁷ Ghosh Decl., ¶ 19.

⁷⁸ See *id.*, ¶¶ 14-18.

⁷⁹ Simpluris Declaration, ¶¶ 11 & 12

1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

Here, the results achieved and obtained on behalf of Plaintiffs and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a Total Settlement Amount of \$3,842,447.00.⁸⁰ The Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Class Payment to a Settlement Class Member is currently estimated to be at least \$3,495.23 and the average Individual Class Payment is currently estimated to be at least \$1,271.90.⁸¹

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 these cases 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.⁸²

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

⁸⁰ Ghosh Decl., ¶¶ 5-9.

⁸¹ Simpluris Declaration, ¶¶ 16

⁸² Simpluris Declaration., ¶ 15-18.

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 cases were highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of the allegations of the cases and disputed that the cases were 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 cases involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the cases moved toward certification and trial, including taking and defending depositions of Defendant's Person Most Knowledgeable designees, percipient witnesses, and experts, propounding additional discovery requests and conducting additional document production, and engaging in additional, 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 Plaintiffs and Class Members and through other sources. Class Counsel conducted extensive review and analysis of these documents and data to strategize the actions and to prepare for and attend mediation and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Joanna Ghosh is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class and Aggrieved Employees, and the time required for completing those tasks.⁸³ The chart demonstrates that Class Counsel has spent a total of **929.70** hours litigating the cases and finalizing the Settlement.⁸⁴ In light of the facts and circumstances of the cases, as well as the results that Class Counsel has achieved on behalf of Plaintiffs and the Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

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

Class Counsel has been actively involved in these cases, prior to their 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 Total Settlement Amount of **\$3,842,447.00**.

As set forth in the Declaration of Joanna Ghosh, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$850 per hour for services provided by Class Counsel.⁸⁵ Lawyers for Justice, PC has been awarded

⁸³ See Ghosh Decl., Exh. A.

⁸⁴ Ghosh Decl., ¶ 13.

⁸⁵ Ghosh Decl., ¶ 13.

attorneys' fees, compensating the firm at the rate of at least \$850 for legal service performed, by courts of this state. While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

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

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

Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved, the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers [...] is for contingency risk."). 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*, 24 Cal.4th at 1132-33. 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.

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

- The time and labor required
- The skill requisite to perform the legal services properly
- The preclusion of other employment by the attorney due to the acceptance of the case
- The contingent nature of the fee
- The amount involved and results obtained

- The experience, reputation, and ability of the attorney
- Awards in similar cases

Ketchum at 1134.

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

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

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts

1 and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is
2 entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are
3 significant here. Class Counsel was successful in achieving substantial results in the form of a
4 Total Settlement Amount of **\$3,842,447.00**. Also, Class Counsel's efforts throughout the case
5 demonstrate dedication to the interests of the Class Members.

6 Class Counsel's application for attorneys' fees in light of the facts and circumstances
7 surrounding the cases are well within the range of reasonableness. While handling this matter,
8 Class Counsel devoted the hours in legal time summarized above and detailed in the Task and
9 Time Chart, which is attached as EXHIBIT A to the Declaration of Joanna Ghosh.⁸⁶ As the chart
10 indicates, Class Counsel has worked **929.70** hours in the pursuit of this matter. The attorney task
11 and time chart presents the entire picture. Applying a reasonable rate of **\$850** per hour to **929.70**
12 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of
13 **\$790,245.00** on Class Counsel's services, and applying a modest multiplier of 1.85, the total
14 enhanced lodestar fees are **\$1,461,953.25**.⁸⁷ Class Counsel seeks an attorneys' fee award of
15 \$1,460,129.86 (equal to 38% of the Total Settlement Amount based on the Settlement
16 Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of
17 fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases.
18 Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even**
19 **higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v.*
20 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at
21 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005)
22 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal.
23 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with
24 cross-check **multipliers ranging from 4.5 to 19.6**).

25 Therefore, application of a modest multiplier of 1.85 is warranted, and the lodestar as a
26 cross-check to the percentage figure sought herein, strongly supports the reasonableness of the
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28 ⁸⁶ Ghosh Decl., Exh. A

⁸⁷ Ghosh Decl., ¶ 13; *see n.4, supra*.

requested attorneys' fees award. Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of **\$1,460,129.86** 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 \$15,337.55. As set forth in the Declaration of Joanna Ghosh, Class Counsel has incurred a total of \$15,337.55 in litigation costs and expenses.⁸⁸ 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.⁸⁹ The cost savings of **\$14,662.45** will be part of the **Net Settlement Amount**, which will be distributed to the Participating Class Members in accordance with the Settlement.⁹⁰ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$15,337.55 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 \$27,470.00.⁹¹ The costs incurred and to be incurred include, but are not limited to, expenses for establishing and maintaining a related settlement fund account; establishing and maintaining a calendar of administrative deadlines and responsibilities; processing and mailing payments to the Plaintiffs, Class Counsel, Aggrieved Employees and Participating Class Members; translating, printing and mailing the Notice, Notice of Objection Form, and Request for Exclusion Form to Class Members; receiving and validating Requests for Exclusion, Objections or Disputes of Workweeks submitted by Class Members; calculating Employer Payroll Taxes and providing appropriate forms and calculations to Defendants; calculating and distributing Individual Class Payments to Participating Class Members and Individual PAGA Payments to Aggrieved

⁸⁸ *Id.*, ¶ 19.

⁸⁹ *Ibid.*

⁹⁰ Ghosh Decl., ¶ 19.

⁹¹ Simpluris Declaration., ¶ 15 & 20.

Employees as provided under the Settlement, providing counsel with weekly reports, among other things.⁹²

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 \$27,470.00.

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

The Settlement provides for Enhancement Awards in the amount of \$11,500.00 each to Plaintiff Ferguson, Plaintiff Flathers, and Plaintiff Flores to compensate Plaintiffs for the time and effort that they expended on behalf of the Class and Aggrieved Employees. The requested Enhancement Awards are both common and reasonable and should be awarded.

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

The requested Enhancement Awards are fair and appropriate because Plaintiffs spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁹³ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that would benefit the Class and Aggrieved Employees.⁹⁴ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.⁹⁵ These services merit the requested Enhancement Awards to Plaintiffs, who have not received any compensation

⁹² *Id.*, ¶ 3.

⁹³ Ghosh Decl., ¶ 20; Declaration of Ted Ferguson (“Ferguson Decl.”), ¶¶ 3-5; Declaration of Lisa Flathers (“Flathers Decl.”) ¶¶ 3-5; Declaration of Joel Flores (“Flores Decl.”) ¶¶ 3-5.

⁹⁴ Ghosh Decl., ¶ 20; Ferguson Decl., ¶¶ 3-5; Flathers Decl. ¶¶ 3-5; Flores Decl. ¶¶ 3-5.

⁹⁵ Ghosh Decl., ¶ 20; Ferguson Decl., ¶¶ 2-6; Flathers Decl. ¶¶ 2-6; Flores Decl. ¶¶ 2-6.

1 for their efforts on behalf of the Class Members and Aggrieved Employees to date.⁹⁶

2 The requested Enhancement Awards were fully disclosed in the Notice that was mailed to
3 the Class Members. No objections were made with regards to the requested Enhancement
4 Awards. Accordingly, it is appropriate and just for Plaintiffs to each receive \$11,500.00 as a
5 reasonable Enhancement Award, in addition to their Individual Settlement Payment, for their
6 services on behalf of the Class.

7 **X. CONCLUSION**

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

12
13 Dated: January 23, 2024

LAWYERS for JUSTICE, PC

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15 By: *Giovani Pimentel*
16 Giovanni Pimentel
17 Attorneys for Plaintiffs and the Class
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⁹⁶ Ferguson Decl., ¶ 9; Flathers Decl. ¶ 9; Flores Decl. ¶ 9.