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

QUENTIN COSTEIU; 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.

INTERTEK TESTING SERVICES, an
unknown business entity; INTERTEK USA
INC., an unknown business entity; and DOES
1 through 100, inclusive,

Defendants.

Case No.: 34-2016-00189662

Honorable Christopher E. Krueger
Department 54

CLASS ACTION

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

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

Date: July 15, 2019
Time: 9:00 a.m.
Department: 54

Complaint Filed: January 26, 2016
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 15, 2019, at 9:00 a.m., in Department 54 of the
2 above-entitled Court, located at Hall of Justice, 813 6th Street, Sacramento, California 95814,
3 Plaintiff Quentin Costeiu ("Plaintiff") will and hereby does move for an order granting final
4 approval of:

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

- 8 • The Net Settlement Amount of approximately **\$659,877.62** will be distributed to the
9 Class Members who have not submitted a timely and validly Request for Exclusion
10 ("Settlement Class" or "Settlement Class Members") in accordance with the
11 Settlement;
- 12 • **No objections** to the Settlement were filed with the Court and served on the
13 settlement administrator, Simpluris, Inc. ("Settlement Administrator");
- 14 • **Only three (3) Requests for Exclusion** were submitted to the Settlement
15 Administrator;

16 2. Payment in the amount of **\$385,000.00** to Lawyers for Justice, PC ("Class
17 Counsel"), representing thirty-five percent (35%) of the Gross Settlement Amount for attorneys'
18 fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-
19 check;

20 3. Payment in the amount of **\$24,559.38** to Class Counsel for reimbursement of
21 litigation costs and expenses;

22 4. Payment in the amount of **\$14,313.00** to the Settlement Administrator, Simpluris,
23 Inc., for Settlement Administration Costs;

24 5. Payment in the amount of **\$8,000.00** to Plaintiff Quentin Costeiu, as Service
25 Award, for his time and effort in representing the Class; and

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6. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*, in the amount of **\$11,000.00**, of which seventy-five percent (75%), or \$8,250, will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or \$2,750, will be part of the Net Settlement Amount for distribution to the Settlement Class Members.

This Motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Edwin Aiwarzian), Class Representative (Quentin Costeiu), and Settlement Administrator (Lindsay Kline of Simpluris, Inc.) 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.

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: June 20, 2019

LAWYERS for JUSTICE, PC

By:

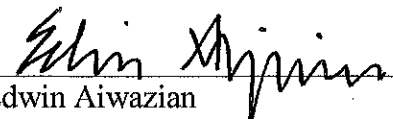

Edwin Aiwarzian
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Quentin Costeiu ("Plaintiff") seeks final approval of: (1) the Gross Settlement Amount of \$1,100,000; (2) attorneys' fees in the amount of \$385,000 and reimbursement of litigation costs and expenses in the amount of \$24,559.38 to Lawyers for Justice, PC ("Class Counsel"); (3) Settlement Administration Costs in the amount of \$14,313 to Simpluris, Inc. ("Simpluris" or "Settlement Administrator"); (4) Service Award in the amount of \$8,000 to Plaintiff Quentin Costeiu; and (5) allocation of \$11,000 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA Settlement Amount").

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time from January 26, 2012 to March 27, 2019 ("Class" or "Class Members").¹

This litigation involved ongoing investigations, significant formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by Louis M. Marlin, Esq., motion practice, and extensive settlement negotiations. This matter has required 779.20 hours of attorney time from Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represents thirty-five percent (35%) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys' fees are also supported under the lodestar cross-check method.

Plaintiff moves for final approval of the Service Award in the amount of \$8,000 to Plaintiff to compensate him for the time and effort that he expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$14,313 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of \$11,000 for the PAGA Settlement Amount, of which \$8,250 will be paid to the California Labor Workforce and Development Agency

¹ Class Action and PAGA Settlement Agreement ("Settlement Agreement"), § 1.2.

1 (“LWDA”) for its portion of the PAGA Settlement Amount (“LWDA Payment”), and \$2,750
2 will be part of the Net Settlement Amount that will be distributed to Class Members who do not
3 submit timely and valid requests for exclusion from the Settlement (“Settlement Class
4 Members”).

5 The contemplated attorneys’ fees, reimbursement of litigation costs and expenses,
6 Service Award, Settlement Administration Costs, and allocation for the PAGA Settlement
7 Amount were fully disclosed in the Notice of Settlement of Class Action and Settlement Hearing
8 (“Class Notice”) that was mailed to the Class Members. Most importantly, as of the date of this
9 Motion, *not a single Class Member has objected to the requested attorneys’ fees, reimbursement*
10 *of litigation costs and expenses, Service Award, Settlement Administration Costs, or allocation*
11 *for PAGA Settlement Amount.*

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

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

19 Defendants Intertek USA, Inc. and Intertek Testing Services N.A., Inc. (collectively,
20 “Defendants”) are a quality assurance provider to industries worldwide, and their services
21 include testing, inspecting, and certifying products. Plaintiff Quentin Costeiu is a former
22 employee of Defendants who commenced this putative class and representative action against
23 Defendants on January 26, 2016, individually and on behalf of all current and former hourly-paid
24 or non-exempt employees who worked for Defendants in the State of California at any time since
25 January 26, 2012. The action was filed in the Superior Court of California for the County of
26 Sacramento, Case No. 34-2016-00189662.

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1 Plaintiff's core allegation is that Defendants have violated the California Labor Code by
2 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
3 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
4 and rest periods and associated premium pay, failing to timely pay wages during employment
5 and upon termination, failing to provide compliant wage statements, failing to maintain requisite
6 payroll records, and failing to reimburse necessary business expenses, and thereby engaged in
7 unfair business practices under the California Business and Professions Code and conduct giving
8 rise to penalties under California Labor Code § 2698, *et seq.* (Private Attorneys General Act of
9 2004) ("PAGA").

10 On March 18, 2016, Defendants filed an Answer to Plaintiff's Complaint. Defendants
11 have denied, and continue to deny, any liability and wrongdoing of any kind associated with any
12 of the allegations in the case, and further deny that the case is appropriate for class and/or
13 representative treatment for any purpose other than for settlement purposes only.

14 On March 21, 2016, Defendants removed the action to the United States District Court
15 for the Eastern District of California ("Federal Court").

16 On April 8, 2016, Plaintiff filed a Motion to Strike Portions of Defendants' Answer to
17 Plaintiff's Complaint ("Motion to Strike").

18 On April 21, 2016, Plaintiff filed a Motion to Remand Pursuant to 28 U.S.C. § 1447
19 ("Motion to Remand").

20 On May 31, 2016, Defendants filed an opposition to Plaintiff's Motion to Strike and an
21 opposition to Plaintiff's Motion to Remand.

22 On June 7, 2016, Plaintiff filed a reply in support of the Motion to Strike and a reply in
23 support of the Motion to Remand.

24 On June 14, 2016, the Federal Court granted Plaintiff's Motion to Remand and denied
25 Plaintiff's Motion to Strike at moot.

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1 The parties have actively litigated this matter since it was commenced on January 26,
2 2016. Throughout the litigation, the parties have conducted significant formal and informal
3 discovery. Both sides propounded and responded to multiple sets of formal written discovery
4 requests and prepared initial disclosures while the action was pending in Federal Court.
5 Defendants' counsel took and Class Counsel defended the deposition of Plaintiff Quentin
6 Costeiu, and Class Counsel took two (2) depositions of Defendants' Person Most Knowledgeable
7 designees.

8 On September 29, 2016, the parties participated in a formal, full-day mediation
9 conducted by the Louis M. Marlin, Esq., a well-regarded mediator experienced in mediating
10 complex labor and employment matters. After conducting extensive investigations, discovery,
11 and settlement negotiations, and with the aid of the mediator's evaluation, the parties ultimately
12 reached the Settlement described herein to resolve the case in its entirety.

13 On March 5, 2019, Plaintiff filed a Motion for Preliminary Approval of Class Action
14 Settlement ("Motion for Preliminary Approval"). On March 27, 2019, the Court entered the
15 Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval
16 Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the
17 proposed administration procedures and associated deadlines.

18 Plaintiff now moves for final approval of the Settlement, attorneys' fees, reimbursement
19 of litigation costs and expenses, Service Award, Settlement Administration Costs, and allocation
20 for the PAGA Settlement Amount.

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

22 Under the terms of the Settlement Agreement, Defendants have agreed to pay a Gross
23 Settlement Amount of \$1,100,000.² Subject to approval by the Court, the Net Settlement
24 Amount will be calculated by deducting the following amounts from the Gross Settlement
25 Amount: (1) attorneys' fees in the amount of \$385,000 to Class Counsel, which is thirty-five
26 percent (35%) of the Gross Settlement Amount; (2) reimbursement of litigation costs and
27 expenses in the amount of \$24,559.38 to Class Counsel; (3) Service Award in the amount of
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² Settlement Agreement, §§ 1.14 & 4.

\$8,000 to Plaintiff; (4) Settlement Administration Costs in the amount of \$14,313 to Simpluris; and (5) the LWDA's portion of the PAGA Settlement Amount (i.e., LWDA Payment) in the amount of \$8,250.³

The Net Settlement Amount, which is estimated to be \$659,877.62, will be distributed to Settlement Class Members without a claims process, in accordance with the Settlement Agreement.⁴ Each Settlement Class Member will be entitled to a portion of the Net Settlement Amount ("Class Member Payment") based on the number of weeks that he or she was credited to have worked for Defendants as a non-exempt, hourly employee in California during the period from January 26, 2012 through March 27, 2019 ("Work Weeks").⁵ The Class Member Payments will be calculated by dividing each Settlement Class Member's Work Weeks by the total Work Weeks of all the Class Members, and then multiplying the resulting figure by the Net Settlement Amount.⁶ The Class Member Payments for Class Members who submit a timely and valid request for exclusion from the Settlement ("Request for Exclusion") will be retained by Defendants.⁷

Class Members had forty-five (45) calendar days after the Settlement Administrator initially mailed the Class Notice to the Class Members ("Response Deadline") to submit a Request for Exclusion or dispute regarding the number of Work Weeks credited to each of them to the Settlement Administrator and/or file an objection to the Settlement with the Court and serve it on the Settlement Administrator.⁸ The Response Deadline was June 10, 2019.⁹ As of the date of this Motion, the Settlement Administrator has not received any objections to the Settlement or Work Weeks disputes and has received only three (3) Requests for Exclusion from

³ Settlement Agreement, §§ 1.16, 1.17, 1.22, 6, 7, 8.1 & 9.

⁴ This amount is higher than the amount stated in Paragraph 11 of the accompanying Declaration of Lindsay Kline Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain reimbursement of litigation costs and expenses in the maximum amount of \$45,000, which is allocated under the Settlement. However, Class Counsel seeks reimbursement of litigation costs and expenses in the amount of only \$24,559.38, and the difference of \$20,440.62 will remain a part of the Net Settlement Amount.

⁵ Settlement Agreement, §§ 5.1 & 5.1.1

⁶ *Id.*, § 5.1.1.

⁷ *Id.*, §§ 4 & 5.1.2.

⁸ *Id.*, §§ 1.21, 12, 15.3.2, 16, 17.1.

⁹ Simpluris Decl., ¶ 8; Exh. A.

1 Class Members, representing 0.48% of the Class.¹⁰

2 Thirty percent (30%) of each Settlement Class Member's Class Member Payment will be
3 allocated as wages ("wage portion"), to be reported on IRS Form W-2.¹¹ Fifty percent (50%) of
4 the Class Member Payment will be allocated as penalties and interest and twenty percent (20%)
5 of the Class Member Payment will be allocated as reimbursement of non-wage expenses
6 (collectively, "non-wage portion"), to be reported on IRS Form 1099 (if required).¹² Class
7 Member Payments will be paid out to Settlement Class Members subject to reduction for
8 employee's share of taxes and withholdings with respect to the wage portion.¹³ Defendants will
9 pay the employer's portion of payroll taxes on the wage portion separately and in addition to the
10 Gross Settlement Amount.¹⁴

11 All checks for payment of Class Member Payments issued to Settlement Class Members
12 ("Class Member Payment Checks") will remain valid for one hundred eighty (180) calendar days
13 from the date they are issued.¹⁵ Class Member Payment Checks that have not been cashed within
14 the 180-day period will be cancelled, and the funds associated with such cancelled checks will be
15 transmitted to Legal Aid at Work.¹⁶

16 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

17 The Court-appointed Settlement Administrator, Simpluris, has taken all necessary steps
18 to effectuate the notice and settlement administration process, as set forth in the Court's March
19 27, 2019 Preliminary Approval Order.

20 On March 28, 2019, Simpluris received the Court-approved text for the Class Notice
21 from Class Counsel.¹⁷

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25 ¹⁰ Simpluris Decl., ¶¶ 13-15.

26 ¹¹ Settlement Agreement, § 11.1.

27 ¹² *Ibid.*

28 ¹³ *Id.*, §§ 11.1.

¹⁴ *Id.*, § 11.2.

¹⁵ Settlement Agreement, § 10.3.

¹⁶ *Ibid.*

¹⁷ Simpluris Decl., ¶ 5.

On December 17, 2018, Simpluris received data from Defendants' counsel that contained the names, employment identification numbers, last known addresses and telephone numbers, Social Security numbers, and dates of employment during the period from January 26, 2012 through March 27, 2019, and number of Work Weeks for individuals identified as Class Members ("Class Data List").¹⁸ The Class Data List contained information for six hundred twenty-seven (627) individuals identified as Class Members.¹⁹ Simpluris processed and updated the addresses in the Class Data List through the National Change of Address Database ("NCOA").²⁰

On April 26, 2019, Simpluris mailed the Class Notice to six hundred twenty-seven (627) individuals identified as Class Members in the Class Data List via first class mail.²¹

As of the date of this Motion, forty-five (45) Class Notices have been returned to Simpluris by the United States Postal Service as undeliverable, of which two (2) had a forwarding address and were promptly re-mailed to the forwarding addresses.²² Simpluris performed an advanced address search (i.e., skip-tracing) on Class Notices returned as undeliverable without forwarding addresses, located an updated address for thirty-nine (39) undeliverable Class Notices, and promptly re-mailed the Class Notices to the updated addresses located through skip-tracing.²³ Ultimately, four (4) Class Notices remain undeliverable.²⁴

As of the date of this Motion, the Settlement Administrator has received only three (3) Requests for Exclusion and has not received any objections to the Settlement or Work Weeks disputes from Class Members.²⁵

To date, there are six hundred twenty-four (624) Class Members who have not opted out of the Settlement and are, therefore, deemed to be Settlement Class Members.²⁶ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$659,877.62 will be

¹⁸ Simpluris Decl., ¶ 6.

¹⁹ *Ibid.*

²⁰ *Id.*, ¶ 7.

²¹ *Id.*, ¶ 8.

²² Simpluris Decl., ¶ 9.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, ¶¶ 10-12.

²⁶ Simpluris Decl., ¶ 13.

distributed to Settlement Class Members in accordance with the Settlement.²⁷ It is currently estimated that the highest gross Class Member Payment to a Settlement Class Member is at least \$3,042.30 and the average gross Class Member Payment is at least \$1,017.38.²⁸

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

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

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

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. 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

²⁷ Simpluris Decl., ¶ 14; see also, n.4, *supra*.

²⁸ *Id.*, ¶ 15. The actual average and highest gross Class Member Payments will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$45,000 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$20,440.62, will be part of the Net Settlement Amount). See n.4, *supra*.

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 the action since it was commenced on January 26, 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.²⁹ 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.³⁰ Class Counsel propounded multiple sets of written discovery requests in various forms, reviewed Defendants’ responses thereto, and served multiple deposition notices.³¹ Class Counsel worked with Plaintiff Quentin Costeiu to prepare initial disclosures while the action was pending in Federal Court and provide responses to requests for production of documents that were propounded by Defendants.³² Class Counsel also prepared for and took two (2) depositions of Defendants’ Person Most Knowledgeable witnesses and defended the deposition of Plaintiff Quentin Costeiu.³³ Class Counsel interviewed and obtained information from Plaintiff and other Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed thousands of pages of documents and data produced by Defendants and obtained

²⁹ Aiwazian Decl., ¶ 6.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ Aiwazian Decl., ¶ 6.

1 through other sources.³⁴ The documents and data reviewed and analyzed by Class Counsel
2 included, and were not limited to, Plaintiff's employment records, a detailed sampling of Class
3 Members' time and pay data, Defendants' Employee Handbook, agreements (including, but not
4 limited to, Six-Hour Meal Period Waiver and Second Meal Period Waiver), acknowledgements
5 (including, but not limited to, Defendants' Acknowledgement of Receipt of Employee Handbook
6 and Acknowledgement of Meal and Rest Period Policy), internal memoranda, forms, job
7 descriptions, and Defendants' operations and employment practices, procedures, and policies
8 (including, but not limited to, Defendants' Meal and Rest Period Policy), among other
9 information and documents.³⁵ Class Counsel also engaged in motion practice regarding
10 jurisdiction, the pleadings, and trial, researched applicable law, developed damages/valuation
11 models in preparation for mediation, and met and conferred with Defendants' counsel on
12 numerous occasions, e.g., to discuss issues relating to jurisdiction, the pleadings, motion
13 practice, discovery, and production of documents and data prior to mediation.³⁶

14 After conducting extensive informal and formal discovery and investigation into the facts
15 of the case, the parties participated in a formal, full-day mediation conducted by Louis M.
16 Marlin, Esq., a well-regarded mediator experienced in mediating complex labor and employment
17 matters.³⁷ Prior to and during mediation and settlement discussions, the parties exchanged
18 information and data, and discussed various aspects of the case, including and not limited to, the
19 risks and delays of further litigation, the risks and expenses to the parties of proceeding with
20 class certification, representative adjudication, and trial, the law relating to off-the-clock theory,
21 meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the
22 evidence produced and analyzed, and the possibility of appeals, among other things.³⁸ During all
23 settlement discussions, the parties conducted their negotiations at arm's length in an adversarial
24 position.³⁹ Arriving at a settlement that was acceptable to the parties was not easy.⁴⁰ Defendants

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26 ³⁴ Aiwazian Decl., ¶ 6.

27 ³⁵ *Ibid.*

28 ³⁶ *Id.*, ¶ 6.

³⁷ *Id.*, ¶ 8.

³⁸ Aiwazian Decl., ¶ 8.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

1 and their counsel felt very strongly about Defendants' ability to prevail on the merits and to
2 obtain a denial of class certification, while Plaintiff and Class Counsel believed that class
3 certification would be obtained and Plaintiff would prevail at trial.⁴¹ After conducting extensive
4 formal and informal discovery and investigations, settlement negotiations, and with the aid of the
5 mediator's evaluation, the parties agreed that this case was well-suited for settlement given the
6 legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the parties that
7 would attend further litigation.⁴²

8 The Settlement takes into account the strengths and weaknesses of each side's position
9 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.
10 Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.⁴³
11 Class Counsel also reviewed and analyzed a large volume of documents produced by Defendants
12 and obtained through other sources, and performed significant research into the law concerning
13 certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-
14 and-hour enforcement, Plaintiff's claims, and Defendants' defenses, as well as facts discovered.⁴⁴
15 The Settlement was based on this volume of facts, evidence, and investigation.⁴⁵ Additionally,
16 Class Counsel has extensive experience in handling complex wage-and-hour matters, including
17 significant experience in employment class action litigation.

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

20 The Gross Settlement Amount of \$1,100,000 represents a fair, adequate, and reasonable
21 resolution of this case, given the risks inherent in litigating class and representative claims
22 through certification proceedings, trial, and/or appeals.⁴⁶ The Settlement was calculated using
23 information and data uncovered through extensive case investigation, formal and informal
24 discovery, and the exchange of information in the context of mediation.⁴⁷ Had the case not

25
26 ⁴¹ Aiwazian Decl., ¶ 8.

27 ⁴² *Ibid.*

28 ⁴³ *Id.*, ¶ 6.

⁴⁴ *Ibid.*

⁴⁵ Aiwazian Decl., ¶¶ 6 & 8.

⁴⁶ *Id.*, ¶¶ 8 & 21.

⁴⁷ *Id.*, ¶¶ 5-8.

1 settled, Defendants would have vigorously challenged certifiability, manageability of
2 representative adjudication, and liability. Defendants contended that individualized questions of
3 fact predominate over any common issues, and these issues would pose challenges to
4 certification and representative adjudication. Defendants would have likely argued again at trial,
5 if any, that Plaintiff's claims were not appropriate for class-wide and/or representative
6 adjudication. On the other hand, Defendants also faced the risk of the Court certifying the case
7 and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis.
8 Additionally, preparation for trial would have been expensive for all parties.

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

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

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

8 The Gross Settlement Amount of \$1,100,000 represents a fair, reasonable, and adequate
9 resolution of the case. The Settlement was calculated using information and data uncovered
10 through case investigation, formal and informal discovery, and the exchange of information in
11 the context of mediation. The Settlement takes into account the potential risks and rewards
12 inherent in any case and, in particular, in this case. Moreover, considering all of the facts in this
13 case, the Gross Settlement Amount represents a considerable recovery.

14 Even after deducting attorneys' fees in the amount of \$385,000, reimbursement of
15 litigation costs and expenses in the amount of \$24,559.38, Service Award in the amount of
16 \$8,000, Settlement Administration Costs in the amount of \$14,313, and LWDA Payment in the
17 amount of \$8,250 from the Gross Settlement Amount of \$1,100,000, the Net Settlement
18 Amount is currently estimated to be \$659,877.62.⁴⁸ Under the Settlement Agreement, the Gross
19 Settlement Amount will be paid out, in accordance with the terms of the Settlement. As
20 discussed in Section III, *supra*, each Settlement Class Member will be paid a share of the Net
21 Settlement Amount, based on the number of Work Weeks credited to him or her. To date, there
22 are six hundred twenty-four (624) Settlement Class Members, representing 99.52% of the Class
23 Members.⁴⁹ It is currently estimated that the highest gross Class Member Payment to a
24 Settlement Class Member is at least \$3,042.30 and the average gross Class Member Payment is
25 at least \$1,017.38.⁵⁰

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28 ⁴⁸ Simpluris Decl., ¶ 14.

⁴⁹ *Id.*, ¶¶ 10 & 13.

⁵⁰ *Id.*, ¶ 15; see n.28, *supra*.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁵¹ 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, have 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.⁵² 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.⁵³ Both parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendants and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Settlement.*⁵⁴ Specifically, no objections have been made as to the Gross Settlement Amount or request for attorneys’ fees, reimbursement of litigation of costs and expenses, Service Award, 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*,

⁵¹ Aiwazian Decl., ¶ 21.

⁵² *Id.*, ¶¶ 15-18.

⁵³ *Ibid.*

⁵⁴ Simpluris Decl., ¶ 11.

85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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

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

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. *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,

34.⁵⁵ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. See *Vincent, supra*, 557 F.2d at 769.

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

The propriety of calculating and awarding attorneys' fees as a percentage of a monetary settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a 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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⁵⁵ 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 this lawsuit was originally filed, not only was it inescapably contingent, but the
2 prospect of a long, drawn-out battle with Defendants represented by experienced counsel, was
3 almost a certainty. By taking on this “battle” on a contingency basis, Class Counsel risked
4 substantial economic loss if the results were not successful. This substantial risk is the reason
5 that the courts approve the use of the percentage method when a settlement is obtained by the
6 efforts of class counsel. *See Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49
7 (quotations omitted) (discussing the risks of engaging in litigation without certainty of
8 compensation).

9 Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement
10 Amount of \$1,100,000 in accordance with the Settlement Agreement. The requested attorneys’
11 fees award is thirty-five percent (35%) of the total value of the monetary settlement. In light of
12 Class Counsel’s successful prosecution and resolution of this case, the requested attorneys’ fees
13 are appropriate and reasonable.

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

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

1 case, Plaintiff has agreed to a contingency fee of thirty-five percent (35%) of the recovery.⁵⁶

2 Furthermore, a percentage-fee award is not dependent on a determination of the actual
3 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
4 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
5 equitable that [the attorney’s] compensation and expenses should come from the entire fund
6 saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.*
7 (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be
8 calculated on the basis of the total fund made available rather than the actual payments made to
9 the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a
10 litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or
11 his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

17 Class Counsel has obtained a substantial recovery on behalf of Plaintiff and the Class,
18 and the results achieved justify the award of a fee that is the equivalent of the standard market
19 fee and that is consistent with the contingency-fee agreement entered into by and between
20 Plaintiff and Class Counsel. Thus, the requested award of attorneys’ fees is appropriate.

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

23 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
24 to be considered in determining whether fee awards are reasonable: (1) the time and labor
25 required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform
26 the legal services properly; (4) the preclusion of other employment by the attorney due to the
27 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
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⁵⁶ Aiwazian Decl., ¶ 9.

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

6 Each and every one of these factors favors the attorneys' fees sought here; however,
7 some of the most relevant factors to this Court's fee determination will be addressed herein. The
8 award of attorneys' fees in the amount of \$385,000, which is thirty-five percent (35%) of the
9 Gross Settlement Amount, is commensurate with the time, effort, and expense dedicated to the
10 case, the contingent nature of Class Counsel's fee and the risks taken in commencing this
11 lawsuit, the skill and determination required, the results that Class Counsel has achieved, and the
12 value of the settlement that Class Counsel has obtained for the Class Members.

13 **1. Time & Labor.**

14 Class Counsel used its class action experience and skills to litigate and bring this matter
15 to a successful conclusion. Prior to commencing this lawsuit, Class Counsel had conducted a
16 significant amount of investigation into the factual and legal issues, Defendants' business, and
17 their operations and employment policies, practices, and procedures.⁵⁷ During the litigation of
18 the action, Class Counsel conducted extensive formal and informal discovery and legal research,
19 propounded multiple sets of formal discovery requests and reviewed Defendants' responses
20 thereto, worked with Plaintiff to prepare initial disclosures and respond to requests for
21 production of documents that were propounded by Defendants, prepared for and took two (2)
22 depositions of Defendants' Person Most Knowledgeable witnesses, prepared for and defended
23 the deposition of Plaintiff, engaged in motion practice, interviewed and obtained information
24 from Plaintiff and other Class Members, reviewed and analyzed thousands of pages of
25 documents and data, and prepared damages/valuation calculations.⁵⁸ Class Counsel also met and
26 conferred with Defendants' counsel over issues relating to jurisdiction, the pleadings, motion
27

28 ⁵⁷ Aiwazian Decl., ¶ 5 & Exh. A.

⁵⁸ *Id.*, ¶ 6.

1 practice, discovery, and the production of documents and data, among other things; engaged in
2 extensive settlement negotiations with Defendants' counsel; and prepared for and attended court
3 proceedings, mediation, and settlement negotiations.⁵⁹

4 Class Counsel dedicated staffing and monetary resources necessary to prosecute the case
5 diligently and with maximum efficiency and has fully and actively participated in this litigation
6 process. The Attorney Task and Time Chart, which is attached as "**EXHIBIT A**" to the
7 accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that Class Counsel
8 has spent performing tasks on behalf of Plaintiff and the Class. Class Counsel has spent **779.20**
9 **hours** to obtain a significant recovery on behalf of Plaintiff and the Class Members. These hours
10 were required to bring this case to its successful conclusion. In light of the value of time
11 expended and the carrying of costs involved in this litigation, the requested attorneys' fees are
12 fair, adequate, and reasonable.

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

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

19 Class Counsel undertook significant investigation, analysis, and research prior to filing
20 the lawsuit, during the litigation, and prior to mediation. Class Counsel took steps to prepare the
21 case for class certification and representative adjudication and had every intention of taking the
22 case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide
23 settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the
24 Declaration of Edwin Aiwazian, Class Counsel used its extensive experience in the handling of
25 class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with
26 maximum efficiency.⁶⁰

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28 ⁵⁹ Aiwazian Decl., ¶ 6.

⁶⁰ *Id.*, ¶¶ 15-18.

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

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

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

16 As a result of this litigation and extensive settlement negotiations, Defendants agreed to
17 pay a Gross Settlement Amount of \$1,100,000 to settle this matter. After deducting attorneys'
18 fees (\$385,000), litigation costs and expenses (\$24,559.38), Service Award (\$8,000), Settlement
19 Administration Costs (\$14,313), and LWDA Payment (\$8,250) from the Gross Settlement
20 Amount, it is currently estimated that the Net Settlement Amount is approximately
21 \$659,877.62.⁶¹ The Net Settlement Amount will be distributed to Settlement Class Members in
22 accordance with the terms of the Settlement. It is currently estimated that the highest gross Class
23 Member Payment to a Settlement Class Member is at least \$3,042.30 and the average gross Class
24 Member Payment is at least \$1,017.38.⁶² The Settlement offers significant monetary relief to the
25 Settlement Class Members.

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28 ⁶¹ Simpluris Decl., ¶ 14; see n.4, *supra*.

⁶² *Id.*, ¶ 15; see n.28, *supra*.

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

2 Plaintiff entered into a contingency-fee agreement with Class Counsel, and the
3 representation of the Class provided by Class Counsel has been wholly contingent. Class
4 Counsel took on this case without knowing whether any recovery would be obtained. Class
5 Counsel has invested 779.20 hours of time to obtain relief on behalf of Plaintiff and the Class.⁶³
6 Class Counsel has also incurred litigation costs and expenses in the amount of \$24,559.38.⁶⁴

7 In this case, Class Counsel has borne all of the risks and costs of litigation and will not
8 receive any compensation until recovery is obtained.⁶⁵ Class Counsel is well-experienced in
9 wage-and-hour class action litigation and used that experience to obtain a great result.⁶⁶ The skill
10 and determination that Class Counsel has shown, along with the results obtained, justify the
11 requested attorneys' fees and reimbursement of litigation costs and expenses. Considering the
12 amounts requested, the work performed, and the risks incurred, the requested fees and costs are
13 reasonable and should be awarded.

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

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

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

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63 Aiwazian Decl., ¶ 11, Exh. A.

64 See Part VII, *infra*.

65 Aiwazian Decl., ¶ 19.

66 See *id.*, ¶¶ 15-18.

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

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this case, are considerable. The Settlement has yielded a positive response
4 from the Class Members—no Class Members objected to the Settlement, and only three (3)
5 Class Members, representing less than 0.5% of the Class Members, submitted Requests for
6 Exclusion.⁶⁷

7 The court in *Camden* noted that, “a key element of the common fund case is that fees are
8 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
9 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
10 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
11 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

12 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
13 in light of the risks inherent in further litigating this case. Class Counsel’s efforts have resulted
14 in a settlement that provides for a Gross Settlement Amount of \$1,100,000.⁶⁸ The Gross
15 Settlement Amount will be paid out, in accordance with the terms of the Settlement Agreement.
16 It is currently estimated that the highest gross Class Member Payment of a Settlement Class
17 Member is at least \$3,042.30 and the average gross Class Member Payment is at least
18 \$1,017.38.⁶⁹

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

20 Class Counsel is a recognized class action law firm that employed its attorneys’
21 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
22 has years of complex and class action litigation experience, has recovered millions of dollars on
23 behalf of thousands of individuals in California, and has successfully handled numerous
24 significant wage-and-hour class action and complex cases.⁷⁰

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27 ⁶⁷ Simpluris Decl., ¶¶ 11 & 12.

28 ⁶⁸ Aiwazian Decl., ¶¶ 5-8.

⁶⁹ Simpluris Decl., ¶ 15; see n.28, *supra*.

⁷⁰ Aiwazian Decl., ¶¶ 15-18.

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

4 While the percentage-of-the-benefit approach is endorsed as the better approximation of
5 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
6 method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining
7 that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
8 spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*,
9 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method,
10 the lodestar may provide a useful perspective on the reasonableness of a given percentage
11 award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary
12 determination of the fee as a percentage” of the settlement amount and “does not impose an
13 absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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

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

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

21 As discussed above, this case was highly contested and required a significant amount of
22 time and labor. Defendants made it clear very early on that they disputed all of the allegations of
23 the lawsuit and disputed that the action was appropriate for class or representative treatment.
24 Defendants raised affirmative defenses and denied liability, and the pursuit of this case involved
25 gathering and analyzing data not only from Defendants but also from the Class Members. The
26 handling of this litigation involved a great amount of effort, and also required and involved the
27 exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in
28 employment class actions and complex wage-and-hour litigation. Long and difficult battles

1 would have followed as the case moved toward certification and trial, including taking and
2 defending additional depositions of Defendants' Person Most Knowledgeable designees,
3 percipient witnesses, and experts, propounding additional discovery requests and conducting
4 additional document production, and engaging in additional, extensive motion practice. As Class
5 Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to
6 resolve the entire matter through mediation.

7 Class Counsel had to bring together a large volume of data and documents that were
8 produced by Defendants and obtained from Plaintiff and Class Members and through other
9 sources. Class Counsel conducted extensive review and analysis of these documents and data to
10 strategize the case and to prepare for and attend mediation and engage in settlement discussions.

11 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
12 is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that Class
13 Counsel performed on behalf of Plaintiff and the Class, and the time required for completing
14 those tasks.⁷¹ The chart demonstrates that Class Counsel has spent a total of 779.20 hours
15 litigating this case and finalizing the Settlement. In light of the facts and circumstances of this
16 case, as well as the results that Class Counsel has achieved on behalf of Plaintiff and the Class
17 Members, Class Counsel has spent a reasonable number of hours on this matter.

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

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

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⁷¹ See Aiwazian Decl., Exh. A.

Class Counsel has been actively involved in this case, prior to the commencement of the action and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$1,100,000.

As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$500 per hour for services provided by Class Counsel.⁷² Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$500 for legal service performed, by courts of this state.⁷³ 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

⁷² Aiwasian Decl., ¶ 12.

⁷³ For example, final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved a higher hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved a higher hourly rate of \$831.38; final approval of the class and representative action settlement in *Luis Carlos Deluna v. Amerit Fleet Solutions, Inc., et al.* (San Bernardino County Superior Court Case No. CIVDS1721564) was granted on October 19, 2018, and the award of attorneys' fees involved a higher hourly rate of \$671.72; final approval of the class and representative action settlement in *Patrick Sinay, et al. v. Essendant Co., et al.* (Los Angeles County Superior Court Case No. BC651043) was granted on September 28, 2018, and the award of attorneys' fees involved a higher hourly rate of \$624.81; final approval of the class and representative action settlement in *Samuel Guerra, et al. v. Graphic Packaging International, Inc.* (Sacramento County Superior Court Case No. 34-2016-00203789) was granted on June 5, 2018, and the award of attorneys' fees involved a higher hourly rate of \$600; 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 *Renee Rivera, et al. v. Farmers and Merchants Bank of Long Beach* (Los Angeles County Superior Court Case No. BC569646) was granted on December 11, 2017, and the award of attorneys' fees involved a higher hourly rate of \$629.96; 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; final approval of the class and representative action settlement in *Mark Aceves v. Cambro Manufacturing Company* (Orange County Superior Court Case No. 30-2015-00810013-CU-OE-CXC) was granted on April 14, 2017; final approval of the class and representative action settlement in *East West Bank Wage and Hour Cases* (San Francisco County Superior Court Case No. CJC-13-004839) was granted on November 18, 2016; approval of the Private Attorneys General Act settlement in *Tatiana Kemp v. The Irvine Company Apartment Communities, Inc.* (Orange County Superior Court Case No. 30-2015-00775439) was granted on November 4, 2016; final approval of the class and representative action settlement in *Erick Guzman, et al. v. Banana Republic, LLC* (Los Angeles County Superior Court Case No. BC488069) was granted on August 5, 2016; final approval of the class and representative action settlement in *Restoration Hardware Wage & Hour Cases* (Los Angeles County Superior Court Case No. JCCP4794) was granted on April 28, 2016; and final approval of the class and representative action settlement in *Kevin Coonce v. Ferguson Enterprises, Inc.* (Sacramento County Superior Court Case No. 34-2021-00136285) was granted on May 22, 2014, and the award of attorneys' fees involved a higher hourly rate of \$625. Aiwasian Decl., ¶ 12.

1 the requested attorneys' fees.

2 Applying the rate of \$500 per hour to 779.20 hours would place a reasonable value of
3 \$389,600, based on lodestar, for the work performed by Class Counsel. However, Class
4 Counsel only seeks attorneys' fees in the amount of \$385,000, which is thirty-five percent (35%)
5 of the total recovery, as provided for by the Settlement Agreement.

6 It also bears noting that a court may apply a multiplier in consideration for risk,
7 efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-
8 check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to
9 compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the
10 established practice in the private legal market of rewarding attorneys for taking the risk of
11 nonpayment by paying them a premium over their normal hourly rates for winning contingency
12 cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk
13 multiplier also serves to bring the financial incentives for enforcing important rights "into line
14 with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services
15 basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2
16 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78
17 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255
18 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases*
19 (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez*,
20 *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

21 The lodestar method as a cross-check to the percentage figure sought strongly supports
22 the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests
23 that the Court grant final approval of, and award, attorneys' fees in the amount of \$385,000 to
24 Class Counsel.

25 **VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND**
26 **REASONABLE, AND SHOULD BE APPROVED.**

27 The Settlement provides for reimbursement of litigation costs and expenses of up to
28 \$45,000. As set forth in the Declaration of Edwin Aiwarzian, Class Counsel has incurred a total

of \$24,559.38 in litigation costs and expenses.⁷⁴ This amount was reasonable and necessary in the prosecution of this matter, and is less than the maximum amount allocated under the Settlement Agreement.⁷⁵ The cost savings of \$20,440.62 will be part of the Net Settlement Amount, which will be available for distribution to the Settlement Class Members.⁷⁶ Accordingly, Class Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$24,559.38 to Class Counsel.

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

As set forth in the accompanying Declaration of Lindsay Kline, the total costs incurred and to be incurred by Simpluris for the notice and settlement administration process are \$14,313.⁷⁷ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members; performing skip-trace searches; re-mailing the Class Notice to any updated addresses located; reviewing and processing Requests for Exclusion, objections to the Settlement, and disputes regarding Work Weeks credited to Class Members (if any); handling inquiries from Class Members regarding the Settlement; calculating Class Member Payments and preparing the associated tax forms; and transmitting payments, among other things.⁷⁸

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 \$14,313.

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

The Settlement provides for a Service Award in the amount of \$8,000 to Plaintiff Quentin Costeiu, to be paid in addition to his Class Member Payment, to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Service Award is both common and reasonable and should be awarded.

⁷⁴ Aiwazian Decl., ¶ 19.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Simpluris Decl., ¶ 16.

⁷⁸ *Id.*, ¶ 3.

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

8 The requested Service Award in the amount of \$8,000 to Plaintiff is fair and appropriate
9 because Plaintiff spent a substantial amount of time and effort producing relevant documents and
10 past employment records, as well as providing the facts and evidence necessary to attempt to
11 prove the allegations, including and not limited to, by way of preparing and appearing for a full-
12 day deposition and working with Class Counsel to provide initial disclosures and responses to
13 requests for production of documents that were propounded by Defendants.⁷⁹ Plaintiff was
14 available whenever Class Counsel needed him and actively tried to obtain, and gave, information
15 that would benefit the Class.⁸⁰ Plaintiff spent numerous hours speaking with Class Counsel
16 about his claims, describing his work experiences with Defendants, and gathering and reviewing
17 documents.⁸¹ These services merit the requested Service Award to Plaintiff, who has not
18 received any compensation for his efforts on behalf of the Class Members to date.⁸²

19 The requested Service Award was fully disclosed in the Class Notice that was mailed to
20 the Class Members. No objections have been made with regards to the requested Service Award.
21 Accordingly, it is appropriate and just for Plaintiff to receive \$8,000 as a reasonable Service
22 Award, in addition to his Class Member Payment, for his services on behalf of the Class.

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27 ⁷⁹ Aiwazian Decl., ¶ 20; Declaration of Quentin Costeiu ("Costeiu Decl."), ¶¶ 3-5.

28 ⁸⁰ Aiwazian Decl., ¶ 20; Costeiu Decl., ¶¶ 3-4.

⁸¹ Aiwazian Decl., ¶ 20; Costeiu Decl., ¶¶ 2-6.

⁸² Costeiu Decl., ¶ 9.

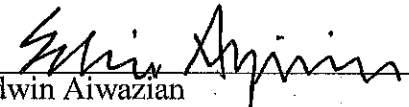
X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award attorneys' fees, reimbursement of litigation costs and expenses, Service Award, Settlement Administration Costs, and allocation for the PAGA Settlement Amount, in their entirety, as sought herein.

Dated: June 20, 2019

LAWYERS for JUSTICE, PC

By:


Edwin Aiwanian
Attorneys for Plaintiff and the Class