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

SUNNY CHAVEZ, 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.

ALL SAINT'S SUBACUTE, LLC, an
unknown business entity; PROVIDENCE
ALL SAINTS SUBACUTE &
REHABILITATION CENTER, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No. RG21110029

Honorable Michael Markman
Department 23

CLASS ACTION

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

Date: December 5, 2024
Time: 10:00 a.m.
Department: 23

Complaint Filed: August 19, 2021
FAC Filed: April 22, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 5, 2024, at 10:00 a.m., in Department 23 of
2 the above-entitled Court, located at 1221 Oak St., Oakland, CA 94612, Plaintiff Sunny Chavez
3 (“Plaintiff” or “Class Representative”) will and hereby does move for an order granting final
4 approval of:

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

- 8 • A Net Settlement Amount of approximately **\$667,987.93** will be fully distributed to all
9 members of the Class Members who do not submit a timely and valid Request for
10 Exclusion (“Settlement Class Members”), and **no Objections or Requests for**
11 **Exclusion** were submitted to the settlement administrator, Simpluris, Inc. (“Simpluris”
12 or “Settlement Administrator”);

13 2. Payment in the amount of **\$437,500.00** to Lawyers for Justice, PC (“Class
14 Counsel”), representing 35% of the Total Settlement Amount, for the Attorneys’ Fees, which is
15 reasonable and justified on a percentage-basis;

16 3. Payment in an amount of **\$13,512.07** to Class Counsel for reimbursement of actual
17 costs and expenses associated with Class Counsel’s litigation and settlement in the Action;

18 4. Payment in the amount of **\$6,000.00** to the Settlement Administrator for Settlement
19 Administration Costs;

20 5. Payment in an amount up to **\$10,000.00** to Plaintiff Sunny Chavez as an
21 Enhancement Payment, for her time and effort in representing the Class; and

22 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
23 California Labor Code section 2698, *et seq.*, in the amount of **\$115,000.00** (“PAGA Penalties”),
24 of which 75%, or **\$86,250.00**, will be paid to the California Labor and Workforce Development
25 Agency (“LWDA”) (“LWDA Payment”) and 25%, or **\$28,750.00**, will be distributed to PAGA
26 Members on a *pro rata* basis, based on their pay periods worked during the PAGA Period (“PAGA
27 Member Amount”).
28

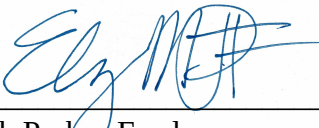
1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of
2 Court, which require approval by the Court of a class action settlement and permit the Court to
3 extend the page limit for memoranda.

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declarations of Class Counsel (Elizabeth Parker-Fawley), Class Representative (Sunny Chavez)
6 and Settlement Administrator (Lisa Pavlik of Simpluris, Inc.) in support thereof; the pleadings and
7 other records on file with the Court in this matter; and such evidence and oral argument as may be
8 presented at the hearing on this Motion.

9
10 Dated: November 8, 2024

LAWYERS for JUSTICE, PC

11
12 By:



Elizabeth Parker-Fawley
Ryan Slinger
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Sunny Chavez (“Class Representative” or “Plaintiff”) seeks final approval of: (1) the Total Settlement Amount of \$1,250,000.00;¹ (2) attorneys’ fees and costs of up to 35% of the Total Settlement Amount (i.e., up to \$437,500.00),² and reimbursement of actual costs and expenses associated with Class Counsel’s litigation and settlement of the Action, in an amount of \$13,512.07 (together, referred to as the “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount estimated not to exceed \$6,000.00 to Simpluris, Inc. (“Simpluris” or “Settlement Administrator”); (4) Enhancement Payment in an amount up to \$10,000.00 to Plaintiff Sunny Chavez; and (5) allocation of \$115,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiff seeks relief on behalf of the following Class: All current and former hourly-paid or non-exempt employees of Defendant in California employed between August 19, 2017 through November 16, 2023 (“Class” or “Class Members”).³

Plaintiff moves for final approval of Attorneys’ Fees and Costs. This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during the formal mediation conducted by the Honorable Jeffrey K. Winikow (Ret.). This matter has required 387.20 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees and costs, which represents 35% of the Total Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to 50% of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.⁴

Plaintiff moves for final approval of the Enhancement Payment in an amount up to \$10,000.00, to compensate Plaintiff for the time and effort that she expended spearheading the

¹ Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶ 6(nn)

² *Id.*, ¶ 10.

³ *Id.*, ¶ 6(f) “Class Release Period” means the period from August 19, 2017 through November 16, 2023. *See id.*, ¶ 6(f)

⁴ Applying a modest multiplier of 1.33, the total enhanced lodestar fees are \$437,729.60, and Class Counsel seeks an attorneys’ fees award of \$437,500.00 (equal to 35% of the Total Settlement Amount).

lawsuit on behalf of the Class, PAGA Members, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount not to exceed \$6,000.00 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of \$115,000.00 for the PAGA Penalties, of which 75%, i.e., \$86,250.00, will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA Penalties (i.e., the LWDA Payment), and the remaining 25%, i.e., \$28,750.00, will be distributed to the PAGA Members⁵ (i.e., the PAGA Member Amount).

The requests for Attorneys’ Fees and Costs, Enhancement Payment, Settlement Administration Costs, and PAGA Penalties were fully disclosed in the Court Approved Notice of Class Action Settlement (“Class Notice”) that was mailed to the Class Members. As of the date of this Motion, *not a single Class Member has objected to any aspect of the Class Settlement, including the requested Attorneys’ Fees and Costs, Enhancement Payment, Settlement Administration Costs or PAGA Penalties.*

The Settlement Agreement 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 Agreement, and award Attorneys’ Fees and Costs, Enhancement Payment, Settlement Administration Costs, and PAGA Penalties 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 Agreement and award Attorneys’ Fees and Costs, Enhancement Payment, Settlement Administration Costs, and PAGA Penalties, Plaintiff 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.

///

⁵ “PAGA Member(s)” means all current and former hourly-paid or non-exempt employees of Defendants in California employed at any time during the PAGA Release Period. ¶ 6(y)
“PAGA Period” means the period from August 19, 2020 through November 16, 2023. ¶ 6(aa)

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant All Saintsidence Opco, LLC dba All Saints Subacute & Transitional Care (formerly known as Providence All Saints Subacute & Rehabilitation Center) (“Defendant”) offers sub-acute and skilled nursing care for patients suffering from traumatic brain injury, spinal cord injury, and other medical complexities. Plaintiff Sunny Chavez is a former employee of Defendant.

On August 19, 2021, Plaintiff filed a Class Action Complaint for Damages in the Superior Court of California for the County of Alameda (“Court”), thereby commencing the above-captioned lawsuit (“Action”) against Defendant.

On October 19, 2023, Plaintiff provided written by certified mail to the to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code that were violated (“LWDA Notice”).

On April 22, 2024, Plaintiff filed a First Amended Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”), which adds a claim for civil penalties pursuant to the Private Attorneys General Act (“PAGA”) for the aforementioned California Labor Code Violations.

The Operative Complaint alleges eleven causes of action against Defendant for Violations of the California Labor Code for failure to properly pay minimum and overtime wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during and after employment and pay associated waiting-time penalties, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses, for violations of California Business and Professions Code Section 17200 et seq. based on the aforementioned California Labor Code violations, and for civil penalties pursuant to the Private Attorneys General Act (“PAGA”) for the aforementioned California Labor Code Violations, on behalf of all current and former hourly-paid or non-exempt employees of Defendant in California employed between August 19, 2017 through final judgment. Defendant denies all material allegations set forth in the Action and has asserted numerous affirmative defenses.

Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Action and Released Claims.

The Parties have actively litigated the Action since it commenced on August 19, 2021. On June 5, 2023, the Parties participated in a formal, full-day mediation conducted by Honorable Jeffrey K. Winikow (Ret.) (the “Mediator”), a respected mediator of complex wage and hour actions. With the aid of the mediator's evaluation, the Parties ultimately reached the Agreement described herein to resolve the Action in its entirety.

On April 22, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents (“Motion for Preliminary Approval”). On June 4, 2024, the Court issued a tentative ruling continuing the hearing on Plaintiff’s Motion for Preliminary Approval of the Class Action Settlement to July 25, 2024 in order to allow for additional supplemental briefing. On July 24, 2024, the Court issued a tentative ruling granting Preliminary Approval, which the parties submitted on. The Court issued a final minute order granting Preliminary Approval on July 30, 2024.

Plaintiff now moves for final approval of Attorneys’ Fees and Costs, Enhancement Payment, Settlement Administration Costs, and PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to make a deposit of the Total Settlement Amount of \$1,250,000.00 in two equal installments.⁶ The first installment shall be paid 30 days after Final Approval of the Settlement (“First Installment”) and the second installment shall be paid 90 days after Final Approval of the settlement (“Second Installment”).⁷ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Enhancement Payment in the amount up to \$10,000.00 to Plaintiff; (2) Settlement Administration Costs in the amount up to \$6,000.00 to Simpluris, Inc.; (3) PAGA Penalties in the amount of up to \$115,000.00;⁸ and (4) Attorneys’

⁶ Settlement Agreement, ¶¶ 6(m) “Effective Date” means the date the Final Approval Order and Judgement is filed, or, solely in the event that there are any objections to the Class Settlement, the later of (a) the last day on which any appeal might be filed with respect to the Final Approval Order and Judgement, or (b) the date of successful resolution of any appeal(s) with respect to Final Approval Order and Judgement—including expiration of any time to seek reconsideration of further review. *Id.*

⁷ *Id.* ¶ 9(b).

⁸ *Id.*, ¶ 6(x)

1 Fees and Costs, consisting of attorneys' fees in the amount up to \$437,500.00 and costs in the
2 amount of \$13,512.07.⁹ The Net Settlement Amount, which is estimated to be \$667,987.93 will be
3 distributed in accordance with the Settlement Agreement and there is no reversion to Defendant.

4 The Settlement Administrator will determine each Settlement Class Member's *pro rata*
5 share of the Net Settlement Amount ("Individual Settlement Share"), according to the following
6 methodology: after Final Approval the Settlement Administrator will divide the final Net
7 Settlement Amount by the total number of Workweeks of all Settlement Class Members to yield
8 the "Final Workweek Value," and multiply each Settlement Class Member's individual
9 Workweeks by the Workweeks by the Final Workweek Value to yield his or her Individual
10 Settlement Share.¹⁰

11 The Settlement Administrator will determine each PAGA Members's *pro rata* share of
12 25% the PAGA Penalties ("Individual PAGA Payment"), according to the following methodology:
13 the Settlement Administrator will divide the PAGA Member Amount by the total number of
14 PAGA Pay Periods of all PAGA Members during the PAGA Period to yield the "PAGA Pay
15 Periods Value" and multiply each PAGA Member's individual Pay Periods during the PAGA
16 Period by the PAGA Pay Period Value to yield his or her estimated Individual PAGA Payment
17 that he or she may be eligible to receive under the PAGA Settlement.¹¹

18 Class Members had 45 calendar days from the initial mailing of the Class Notice
19 ("Response Deadline") to submit a Request for Exclusion, Notice of Objection, and/or dispute of
20 the Workweeks credited to them.¹² ***As of the date of this Motion, the Settlement Administrator***
21 ***has not received any Objection or Requests for Exclusion from Class Members.***¹³

22 Each Individual Settlement Share will be allocated as follows: 10% wages and 90% as
23 penalties, interest, and non-wage damages. The portion allocated to wages will be reported on an
24 IRS Form W-2 and the portion allocated to penalties, interest, and non-wage damages will be
25

26
27 ⁹ *Id.*, ¶ 10

¹⁰ Settlement Agreement, ¶ 14(b).

¹¹ *Id.*, ¶ 15.

¹² *Id.*, ¶ 6(jj).

¹³ Declaration of Lisa Pavlik ("Simpluris Decl."), ¶¶ 12-14.

1 reported on an IRS Form-1099 by the Settlement Administrator.¹⁴ The Settlement Administrator
2 will withhold (and remit to the appropriate taxing authorities) the employee's share of taxes and
3 withholdings with respect to the wages portion of the Individual Settlement Shares, and issue
4 checks to Settlement Class Members for their Individual Settlement Payment. The Settlement
5 Administrator shall also remit the Employer Taxes to the appropriate taxing authorities. Each
6 Individual PAGA Payment will be allocated as 100% penalties and will be reported on an IRS
7 Form-1099 (if applicable) by the Settlement Administrator.¹⁵

8 Individual Settlement Payment and Individual PAGA Payment checks will be negotiable
9 for 180 calendar days from the date the checks are issued, and thereafter, shall be canceled.¹⁶ The
10 funds remaining and associated with such cancelled checks will be paid to Legal Aid at Work,
11 after the Court enters an order approving the Parties' stipulation to amend the judgement, which
12 Parties shall prepare and file in accordance with California. Code of Civil Procedure section 384.5,
13 *et seq.*¹⁷

14 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

15 The Court-appointed Administrator, Simpluris, Inc., has taken all necessary steps to
16 effectuate the notice and settlement administration process, as set forth in the Court's Preliminary
17 Approval Order.

18 On August 26, 2024, Defendant's counsel provided Simpluris the Class Data and List
19 containing each Class Member's and PAGA Group Members' last-known full name, mailing
20 address, telephone number, Social Security Number, workweeks and pay periods (if applicable)
21 worked as an hourly paid or non-exempt employee employed by Defendant in California during
22 the Class Release Period and PAGA Release Period, and such other information as is necessary
23 for the Settlement Administrator to calculate Workweeks during the Class Release Period and pay
24 periods during the PAGA Period ("Class Data and List").¹⁸ The Class Data and List contained
25 data for 816 individuals who worked a total of 59,357.28 workweeks of whom 475 were PAGA

26 ¹⁴ Settlement Agreement, ¶ 25.

27 ¹⁵ Ibid.

¹⁶ *Id.*, ¶ 20.

28 ¹⁷ Ibid.

¹⁸ Simpluris Decl., ¶ 5.

Members.¹⁹ The mailing addresses contained in the Class Data and List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service.²⁰ The NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Class Notice.²¹

To date, there are 816 Class Members who did not submit a timely and valid Request for Exclusion (“Settlement Class Members”), and who will be paid their portion of the Net Settlement Amount.²² Pursuant to the terms of the Settlement Agreement, the Net Settlement Amount of approximately \$667,987.93 will be distributed to Settlement Class Members in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment is currently estimated to be \$3,631.51 and the average Individual Settlement Payment is currently estimated to be \$810.66.²³ The highest Individual PAGA Payment is currently estimated to be \$181.18 and the average Individual PAGA Payment is currently estimated to be \$60.53.²⁴

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

¹⁹ *Id.*, ¶¶ 6 & 8.

²⁰ *Id.*, ¶ 7.

²¹ *Ibid.*

²² *Id.*, ¶¶ 12 & 15.

²³ Simpluris Decl., ¶ 17. The actual average and highest Individual Settlement Payment will be larger than the amounts stated in the Simpluris Declaration because the Net Settlement Amount is larger due to Class Counsel’s request for reimbursement of litigation costs and expenses in an amount that is less than \$20,000 (the difference between the amount sought and the amount authorized under the Settlement, \$6,487.93, will be part of the Net Settlement Amount). See n.8, *supra*.

²⁴ *Id.*, ¶ 19.

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 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*, 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*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the cases 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 Formal and Informal Discovery.

The Parties actively litigated the case since the Action commenced on August 19, 2021. Class Counsel conducted significant investigation, formal and informal discovery into the facts of the cases, to assess the veracity, strength, and scope of the claims, and was preparing for class certification and trial prior to reaching the Settlement Agreement.²⁵

²⁵ Declaration of Elizabeth Parker-Fawley (“Parker-Fawley Decl.”), ¶ 6.

1 The Parties exchanged a large volume of information, documents, and data throughout the
2 course of the litigation and in connection with the mediation and settlement negotiations.²⁶ The
3 volume of information, documents, and data that Class Counsel reviewed and analyzed included
4 and was not limited to: Plaintiff's employment records, time and pay records of Class Members,
5 Defendant's Employee Handbook, arbitration agreements, shift schedules, company policy
6 acknowledgements, and forms, procedures, and policies, among other information and documents.
7 Additionally, Plaintiff interviewed many other former employees of Defendant.²⁷

8 Class Counsel had the opportunity to interview and obtain information from Plaintiff and
9 percipient witnesses, and reviewed and analyzed a large volume of information, data, and
10 documents obtained from Plaintiff, Defendant, and other sources. On December 8, 2022, Plaintiff
11 served Special Interrogatories (Sets One and Set Two), Form Interrogatories—General (Set One)
12 and Request for Production of Documents (Set One). Additionally, Plaintiff noticed the
13 depositions of Defendant's persons most knowledgeable. On August 16, 2023, Defendant sent
14 responses to Special Interrogatories (Set One and Set Two), Form Interrogatories—General (Set
15 One) and Request for Document Production (Set One). Plaintiff reviewed Defendant's substantive
16 responses and objections thereto. Defendant substantively responded to the majority of
17 interrogatories and requests for production, providing information regarding, *inter alia*, Plaintiff's
18 employment; Defendant's wage and hour policies, practices, and procedures; and Defendant's
19 organizational structure. The large volume of information, documents, and data that Class Counsel
20 reviewed and analyzed included and was not limited to: Plaintiff's employment records, sampling
21 of Class Member's time and pay records of the Class Members, Defendant's Employee Handbook,
22 Plaintiff's time and pay data, Plaintiff's earning statements, internal memoranda, job descriptions,
23 company policy acknowledgements, operations and employment practices, forms, policies,
24 arbitration agreements, shift schedules, company policy acknowledgements, and forms,
25 procedures, and policies, among other information and documents.
26
27

28 ²⁶ *Id.* ¶ 9.

²⁷ *Id.* ¶ 7.

1 Class Counsel considered information obtained through investigations and from Plaintiff,
2 Defendant, and other sources, and developed liability, damages, violation, and penalties valuations
3 and models in the course of litigation and in connection with mediation and settlement
4 negotiations. Counsel for Parties also met and conferred on numerous occasions, e.g., to discuss
5 issues relating to the pleadings, case management, discovery, and the production of information,
6 documents, and data in the course of litigation and in connection with mediation and settlement
7 negotiations, and settlement.²⁸ Class Counsel also researched, drafted, reviewed, and revised the
8 pleadings, motion-related paper, the mediation briefs, and settlement documents; in preparation
9 for and attending court proceedings, mediation, and settlement negotiations, among other tasks.²⁹
10 Counsel for the Parties also invested time researching and investigating the applicable law, which
11 is often evolving as it relates to class certification, manageability, representative PAGA claims,
12 off-the-clock theory, meal and rest periods, regular rate, arbitration agreements, wage-and-hour
13 law and enforcement, Plaintiff's claims and damages, and Defendant's defenses thereto, as well as
14 facts discovered.³⁰

15 After conducting formal and informal discovery and investigation of the facts and law
16 during the prosecution of the case, counsel for the Parties engaged in extensive settlement
17 negotiations to try to resolve the case. These efforts included participating in a formal mediation
18 session conducted by Jeffery K. Winikow (Ret.), a well-regarded mediator experienced in handling
19 complex labor and employment matters.³¹ In the course of mediation and settlement discussions,
20 the Parties exchanged information, documents, and data, and discussed various aspects of the case,
21 including and not limited to, the risks and delays of further litigation, the risks and expenses to the
22 Parties of proceeding with class certification and trial, the law relating to class certification,
23 manageability off-the-clock theory, regular rate, meal and rest periods, representative PAGA
24 claims, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed,
25 and the possibility of appeals, among other things.³² During all settlement discussions, the Parties

26 ²⁸ *Id.* ¶ 8.

27 ²⁹ *Ibid.*

28 ³⁰ *Id.* ¶ 9.

³¹ *Id.*, ¶ 10.

³² *Ibid.*

1 conducted their negotiations at arm's length in an adversarial position.³³ Arriving at a settlement
2 that was acceptable to the Parties was not easy. Defendant and its counsel felt strongly about
3 Defendant's ability to avoid class certification and representative adjudication and prevail on the
4 merits, while Plaintiff and Class Counsel believed that they would be able to obtain class
5 certification and prevail at trial.³⁴ With the aid of the mediator's evaluation, the Parties ultimately
6 agreed that the cases were well-suited for settlement given the legal issues relating to Plaintiff's
7 principal claims, as well as the costs and risks to the Parties that would attend further litigation.³⁵

8 The Settlement Agreement takes into account the strengths and weaknesses of each side's
9 position and the uncertainty of how the cases might have concluded at certification, trial, and/or
10 appeals. Class Counsel analyzed a large volume of information, documents, and data obtained
11 from Defendant, Plaintiff, and other sources, and invested time researching and investigation the
12 applicable law, which is often evolving as it relates to class certification, off-the-clock theory, meal
13 and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiff's claims, and
14 Defendant's defenses thereto, as well as facts discovered.³⁶ The Settlement Agreement was based
15 on this large volume of facts, evidence, and investigation.³⁷ Additionally, Class Counsel have
16 extensive experience in handling complex wage-and-hour actions, including significant experience
17 in employment class action litigation.³⁸

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

20 The Settlement Agreement, which provides for a Total Settlement Amount of
21 \$1,250,000.00, represents a fair, adequate, and reasonable resolution of the cases, given the risks
22 inherent in litigating class and representative claims through certification proceedings, trial, and/or
23 appeals.³⁹ The Agreement was calculated using information and data uncovered through extensive
24 case investigation, formal and informal discovery, and the exchange of information in the context

25 _____
26 ³³ Ibid.

27 ³⁴ Ibid.

28 ³⁵ Ibid.

³⁶ Ibid.

³⁷ *Id.*, ¶¶ 6-10.

³⁸ *Id.*, ¶¶ 15-19.

³⁹ *Id.*, ¶¶ 10-11.

of mediation and settlement negotiations.⁴⁰ Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members and PAGA Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, 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 formal 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. In contrast, the Settlement Agreement 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 class of 816 current and former employees to bring individual actions to recover from Defendant for the alleged violations of wage-and-hour laws.

⁴⁰ *Id.*, ¶¶ 6-10.

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 Agreement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

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

The Settlement Agreement represents a fair, reasonable, and adequate resolution of the cases. The Agreement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations. The Agreement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Total Settlement Amount represents a considerable recovery.

Even after deducting Attorneys' Fees and Costs in the amount up to \$437,500.00, reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action in the amount of \$13,512.07, Enhancement Payment in the amount up to \$10,000.00, Settlement Administration Costs in the amount up to \$6,000.00, and PAGA Penalties of \$115,000.00 from the Total Settlement Amount of \$1,250,000.00, the Net Settlement Amount is currently estimated to be \$667,987.93.⁴¹ Under the Settlement Agreement, the Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. Each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her during the PAGA Pay Period, and each PAGA Member will be paid a *pro rata* share of the PAGA Member Amount, based on the number of PAGA Pay Periods during the PAGA Period credited to him or her.⁴² To date, there are 816 Settlement Class Members, representing one hundred percent (100%) of the Class Members.⁴³ The highest Individual Settlement Payment is currently estimated to be \$3,631.51 and the average

⁴¹ Simpluris Decl., ¶ 16.

⁴² Settlement Agreement, ¶ 15.

⁴³ Simpluris Decl., ¶ 15.

Individual Settlement Payment is currently estimated to be \$810.66.⁴⁴ The highest Individual PAGA Payment is currently estimated to be \$181.18 and the average Individual PAGA Payment is currently estimated to be \$60.53.⁴⁵ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Agreement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and PAGA Members.⁴⁶ 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 Agreement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation. 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.⁴⁷ Both parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendant and the benefits of the Settlement Agreement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

⁴⁴ *Id.*, ¶ 17.

⁴⁵ Simpluris Decl., ¶ 19.

⁴⁶ Parker-Fawley Decl., ¶ 22.

⁴⁷ *Id.*, ¶ 15.

The Settlement Agreement has been well received by the Class – ***not a single Class Member objected to the Class Settlement.***⁴⁸ Specifically, no objections have been made as to the Total Settlement Amount or requested Attorneys’ Fees and Costs, Enhancement Payment, Settlement Administration Costs, or PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class’ support for a settlement and strongly favors final approval. *Wershba*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement Agreement in its entirety. *Dunk* 48 Cal.App.4th at 1802.

VI. THE ATTORNEYS’ FEES AND COSTS REQUESTED ARE 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*, 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*, 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

⁴⁸ Simpluris Decl., ¶ 13.

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*, 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*, 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* (2005) 126 Cal.App.4th 1253, 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*, 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, 34.⁴⁹ 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* 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). In *Lealao*, the Court of Appeal 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*, 82 Cal.App.4th at 51; see also *Boeing*, 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"). In *Wershba v. Apple Computer, Inc.*, (2001) 91 Cal.App.4th 224, in determining reasonable attorneys' fees, the Court of Appeal valued a settlement based on the total value of the settlement made available to class members by the efforts of counsel, decided in favor of granting fees as a percentage of the total value of the settlement, and rejected an objection that the fees be awarded based on the exact amount claimed by class members. *Id.* at 247.

When the case was originally filed, not only was a recovery inescapably contingent, but the prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial economic loss if the results were not successful. This substantial risk is the reason that

⁴⁹ 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.

the courts approve the use of the percentage method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (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 \$1,250,000.00 on a non-reversionary basis. The requested attorneys' fees are 35% of the total value of the monetary settlement.

Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, PAGA Members, and the State of California, and the results achieved justify an attorneys' fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

C. The Attorneys' Fees Requested Is Reasonable Based on the Factors Considered in Determination of Fee Awards.

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

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The Attorneys' Fees in the amount of \$437,500.00 (which is 35% of the Total Settlement Amount) is commensurate with the time, effort, and expense dedicated to the cases, the contingent nature of Class Counsel's fee and the risks taken in commencing the cases, the skill and determination

required, the results that Class Counsel have achieved, and the value of the settlement that Class Counsel have obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. As outlined in the Declaration of Elizabeth Parker-Fawley, Class Counsel has fully and actively participated in the litigation of the Action. Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation cases.⁵⁰

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Elizabeth Parker-Fawley, sets forth in detail the hours that Lawyers for Justice, PC has spent performing tasks on behalf of Plaintiff and the Class.⁵¹ The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent 387.20 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, the PAGA Members, and the State of California.⁵² These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the cases is evident not only in the results achieved, but in the steps necessary to reach those results. Defendant retained well-respected counsel to

⁵⁰ Parker-Fawley Decl., ¶¶ 15-19.

⁵¹ *Id.*, Exh. A.

⁵² *Id.*, ¶ 13.

1 represent its defenses. More specifically, Defendant and their counsel felt very strongly about
2 Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiff and
3 Class Counsel believed that they would have obtained class certification and prevailed at trial.

4 Class Counsel undertook significant investigation, analysis, and research prior to filing this
5 case, during the litigation, and prior to the mediations. Class Counsel took steps to prepare the
6 matter for class certification and representative adjudication and had every intention of taking the
7 case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement.
8 Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of
9 Elizabeth Parker-Fawley, Class Counsel used its extensive experience in the handling of class
10 actions and complex wage-and-hour litigation matters in order to obtain the Agreement with
11 maximum efficiency.⁵³

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

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

19 The Settlement Agreement at this stage is preferred over continued litigation because such
20 resolutions save time and money that would otherwise go to litigation. The risks and expenses of
21 further litigation outweighed any benefit that might have been gained otherwise. The Settlement
22 Agreement provides an immediate recovery, as opposed to an uncertain result in the future after
23 prolonged litigation involving expert discovery, trial preparation, class certification proceedings,
24 and appellate review of those proceedings. The Settlement Agreement offers significant monetary
25 relief to the Settlement Class Members, the State of California, and PAGA Members.

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

27 In determining the reasonableness of a fee award in a class action settlement, whether or

28 ⁵³ Parker-Fawley Decl., ¶¶ 15-19.

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).

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 387.20 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and PAGA Members.⁵⁴ Class Counsel has also incurred litigation costs and expenses in the amount of \$13,512.07.⁵⁵

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁵⁶ Considering the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

5. The Amount Involved and the Results Achieved.

The court in *Camden* noted that, “a key element of the common fund case is that fees are [...] taken from the fund [...] and a common fund is itself the measure of success ... [and] represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768, fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8, 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)). The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement Agreement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.⁵⁷

6. The Reputation and Ability of the Attorneys.

⁵⁴ Parker-Fawley Decl., ¶ 31, Exh. A.

⁵⁵ *Id.*, ¶ 20, Exh. B.

⁵⁶ *Ibid.*

⁵⁷ Parker-Fawley Decl., ¶ 3.

Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys' knowledge, skills, and experience in bringing this matter 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.⁵⁸

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*, 1 Cal.5th at 505 (explaining that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” of the settlement amount and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal.5th at 505.

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

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

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

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendant

⁵⁸ Parker-Fawley Decl., ¶¶ 15-19.

1 raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and
2 analyzing data not only from Defendant but also from the Class Members. The handling of the
3 cases involved a great amount of effort, and also required and involved the exercise of a high level
4 of skill, which Class Counsel has as a result of its extensive experience in employment class actions
5 and complex wage-and-hour litigation. Long and difficult battles would have followed as the cases
6 moved toward certification and trial, including taking and defending depositions of Defendant's
7 Person Most Knowledgeable designees, percipient witnesses, and experts, propounding additional
8 discovery requests and conducting additional document production, and engaging in extensive
9 motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense
10 preparation in an attempt to resolve the entire matter through mediations.

11 Class Counsel had to bring together a large volume of information, documents and data
12 that were obtained from Defendant, Plaintiff, and through other sources. Class Counsel conducted
13 extensive review and analysis of the information, documents and data to strategize the action and
14 to prepare for mediation and engage in settlement discussions.

15 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Elizabeth Parker-
16 Fawley is a task and time chart that sets forth in detail the numerous tasks that Class Counsel
17 performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁵⁹
18 The chart demonstrates that Class Counsel has spent a total of 387.20 hours litigating the cases
19 and finalizing the Settlement Agreement.⁶⁰ In light of the facts and circumstances of the cases, as
20 well as the results that Class Counsel has achieved in these cases, Class Counsel has spent a
21 reasonable number of hours on this matter. In addition, Class Counsel will continue to perform
22 work on this matter through the date of final approval and in connection with the implementation
23 of the Settlement.

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

26 Both California and federal courts recognize that attorneys should be compensated for
27 providing representation on a contingency basis and for taking on the risks associated with said

28 ⁵⁹ Parker-Fawley Decl., Exh. A.

⁶⁰ *Id.*, ¶ 13, Exh. A.

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

Class Counsel has been actively involved in this matter, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in these cases 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 \$1,250,000.00.

As set forth in the Declaration of Elizabeth Parker-Fawley, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of at least \$850 per hour for services provided by Class Counsel.⁶¹ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$850 per hour for legal service performed, by courts throughout this state.⁶² While the circumstances of every case are 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 Matter, 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 here. 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

⁶¹ *Id.*, ¶ 14.

⁶² *Ibid.*

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. *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*, 20 Cal.3d at 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*, 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*, 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

1 of skill, which Class Counsel have as a result of extensive experience in employment class actions
2 and wage-and-hour litigation. Class Counsel have been actively involved in the prosecution of this
3 matter, prior to its commencement and Class Counsel's work has continued all the way up to the
4 present. Class Counsel's dedication to the representation of the Class Members has precluded other
5 employment.

6 Most importantly, all services were performed by Class Counsel on a contingent basis.
7 Both California and federal courts recognize that attorneys should be compensated for taking on
8 such contingent risks and provided with financial incentives to enforce important rights and
9 protections like those at issue in the matter at hand. *See, e.g., Vizcaino*, 290 F.3d at 1051; *Ketchum*,
10 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of their efforts and the
11 skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel are entitled to
12 a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class
13 Counsel were successful in achieving substantial results in the form of a settlement of
14 \$1,250,000.00. Also, Class Counsel's efforts throughout the matter demonstrate dedication to the
15 interests of the Class Members.

16 Settlement Class Counsel's application for attorneys' fees in light of the facts and
17 circumstances surrounding the matter is well within the range of reasonableness. While handling
18 this matter, Settlement Class Counsel devoted the hours in legal time detailed in the task and time
19 chart, which is attached to the Declaration of Elizabeth Parker-Fawley. As the chart indicates,
20 Settlement Class Counsel worked 387.20 hours in the pursuit of this matter. Applying a reasonable
21 rate of \$850 per hour would place a base lodestar value of \$329,120.00. Applying a modest
22 multiplier of 1.33, the total enhanced lodestar fees are \$437,729.60. Settlement Class Counsel
23 seeks an attorneys' fee award of \$437,500.00 (equal to 35% of the Total Settlement Amount).
24 Courts routinely enhance lodestar amounts based on multipliers that "range from 2 to 4 or even
25 higher." *Wershba*, 91 Cal.App.4th at 255; see also, e.g., *Chavez v. Netflix*, 162 Cal.App.4th at 66
26 (approving multiplier of 2.5); *Vizcaino*, 290 F.3d at 1051 (approving multiplier of 3.65); *Wal-Mart*
27 *Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving multiplier of 3.5); *Craft*
28

v. *County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and referring to other cases with cross-check multipliers ranging from 4.5 to 19.6).

Therefore, application of a modest multiplier of 1.33 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$437,500.00 to Class Counsel.

VII. LITIGATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement Agreement provides for reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, in an amount not to exceed \$20,000.00. As set forth in the Declaration of Elizabeth Parker-Fawley, Class Counsel seeks reimbursement of costs and expenses in an amount of \$13,512.07, subject to court approval.⁶³ This amount was reasonable and necessary in the prosecution of the cases and to obtain the Agreement.⁶⁴ The cost savings of \$6,487.93, will be part of the Net Settlement Amount, which will be distributed to Settlement Class Members in accordance with the Agreement.⁶⁵ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$13,512.07 to Class Counsel.

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

1. 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 \$6,000.00.⁶⁶ The costs incurred and to be incurred include, but are not limited to, (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiff, Class Counsel, Settlement Class Members, and PAGA Members; (d) printing and mailing the Class Notice to Class Members; (e) receiving and validating Requests for Exclusion, Objections, and disputes to Workweeks submitted by Class Members and PAGA Members; (f) calculating

⁶³ Parker-Fawley Decl., ¶¶ 20, Exh. B.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Simpluris Decl., ¶ 10.

1 the Employer Taxes and providing appropriate forms and calculations to Defendant; (g) mailing
2 Individual Settlement Payment checks to Settlement Class Members and Individual PAGA
3 Payment checks to PAGA Members, (h) providing counsel with weekly reports; and (i) other
4 tasks as the Parties mutually agree or the Court orders Simpluris to perform.⁶⁷

5 Accordingly, the Court should grant final approval of payment to Simpluris, a necessary
6 third-party administrator, for its handling of the notice and settlement process, in the amount up to
7 \$6,000.00.

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

10 The Settlement Agreement provides for Enhancement Payment in the amount up to
11 \$10,000.00 to Plaintiff to compensate Plaintiff for the time and effort that she expended on behalf
12 of the Class. The requested Enhancement Payment is common and reasonable and should be
13 awarded. In determining whether to make service payments, courts consider the following factors:
14 (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the
15 notoriety and personal difficulties encountered by the class representatives; (3) the amount of time
16 and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal
17 benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken*
18 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation
19 award to a single class representative).

20 The requested Enhancement Award is fair and appropriate because Plaintiff spent a
21 substantial amount of time and effort producing relevant documents and past employment records,
22 as well as providing the facts and evidence to support the prosecution of the claims.⁶⁸ Plaintiff was
23 available whenever Class Counsel needed her and actively tried to obtain, and gave, information
24 to support the pursuit of the cases.⁶⁹

25 Accordingly, it is appropriate and just for Plaintiff to receive up to \$10,000.00 as a
26 reasonable Enhancement Payment in addition to her Individual Settlement Payment and Individual

27 ⁶⁷ *Id.*, ¶ 3.

28 ⁶⁸ Parker-Fawley Decl., ¶ 21; Declaration of Sunny Chavez ("Chavez Decl.") ¶¶ 3-5.

⁶⁹ Parker-Fawley Decl., ¶ 21; Chavez Decl., ¶¶ 3-5;

PAGA Payment.

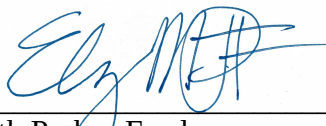
X. CONCLUSION

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

Dated: November 8, 2024

LAWYERS for JUSTICE, PC

By: _____


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Ryan Slinger
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