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

CANDACE EVANS, 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.

BIG JOE HANDLING SYSTEMS INC., an
unknown business entity; BIG JOE
CALIFORNIA NORTH, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: RG20055273

Honorable Brad Seligman
Department 23

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Candace Evans); Declaration
of Settlement Administrator (Taylor
Mitzner); and [Proposed] Final Approval
Order and Judgment filed concurrently
herewith]

Reservation No.: A-20055273-001
Date: August 1, 2023
Time: 3:00 p.m.
Department: 23

Complaint Filed: February 20, 2020
FAC Filed: May 22, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 1, 2023 at 3:00 p.m., in Department 23 of the
2 above-entitled Court, located at 1221 Oak Street, Oakland, California 94612, Plaintiff Candace
3 Evans (“Plaintiff”) will and hereby does move for an order granting final approval of:

4 1. The Joint Stipulation of Class and Representative Action Settlement and
5 Amendment No. 1 to Joint Stipulation of Class and Representative Action Settlement (together,
6 “Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the Settlement is fair,
7 adequate, and reasonable because:

- 8 • A Net Settlement Amount of approximately **\$257,678.33** will be fully distributed to the
9 Class Members who did not submit valid and timely Requests for Exclusion
10 (“Settlement Class Member”);
11 • **No Objections** were submitted to the settlement administrator, Phoenix Settlement
12 Administrators (“Phoenix” or “Settlement Administrator”);
13 • **One (1) Request for Exclusion** was submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$182,232.82** to Lawyers *for* Justice, PC (“Class
15 Counsel”), representing thirty-five percent (35%) of the Maximum Settlement Amount, for
16 attorneys’ fees, which is reasonable and justified on a percentage-basis and also based on a lodestar
17 cross-check;

18 3. Payment in the amount of **\$10,754.05** to Class Counsel for reimbursement of
19 litigation costs and expenses;

20 4. Payment in the amount of **\$6,250.00** to the Settlement Administrator, for Settlement
21 Administration Costs;

22 5. Payment in the amount of **\$7,500.00** to Plaintiff Candace Evans, as an
23 Enhancement Payment, for her time and effort in representing the Class; and

24 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
25 California Labor Code section 2698, *et seq.*, in the amount of \$75,000.00, of which seventy-five
26 percent (75%), or **\$56,250.00**, will be paid to the California Labor and Workforce Development
27 Agency (“LWDA”) and twenty-five percent (25%), or **\$18,750.00**, will be part of the Net
28 Settlement Amount for distribution to the Settlement Class Members.

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 Declaration of Class Counsel (Edwin Aiwasian), Class Representative (Candace Evans), and
6 Settlement Administrator (Taylor Mitzner of Phoenix) in support thereof; the pleadings and other
7 records on file with the Court in this case; and such evidence and oral argument as may be
8 presented at the hearing on this Motion.

9 Dated: July 10, 2023

LAWYERS for JUSTICE, PC

10
11 By:



Selena Matavosian
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Candace Evans (“Plaintiff”) seeks final approval of: (1) the Maximum Settlement Amount of \$520,665.20; (2) attorneys’ fees in the amount of \$182,232.82, which is thirty-five percent (35%) of the Maximum Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$10,754.05 (together, “Class Counsel Award”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$6,250.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Candace Evans; and (5) allocation of \$75,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period (“Class” or “Class Members”).¹

This case involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data in the course of mediation and settlement negotiations. This case has required 477.40 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the Maximum 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 Enhancement Payment in the amount of \$7,500.00, to compensate Plaintiff for the time and effort that she expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$6,250.00 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of \$75,000.00 for the PAGA Payment, of which \$56,250.00 will be paid to the California Labor Workforce and Development Agency (“LWDA”)

¹ Amendment No. 1 to Joint Stipulation of Class and Representative Action Settlement (“Amendment No. 1”), § A.

1 for its portion of the PAGA Payment (“LWDA Payment”), and \$18,750.00 will be part of the Net
2 Settlement Amount that will be distributed to Class Members who did not submit a timely and
3 valid request to be excluded from the Settlement (“Settlement Class Members”).

4 The requests for Class Counsel Award, Enhancement Payment, Settlement Administration
5 Costs, and allocation for the PAGA Payment were fully disclosed in the Notice of Class Action
6 Settlement (“Notice Packet”) that was mailed to the Class Members. Most importantly, as of the
7 date of this Motion, *not a single Class Member has objected to any aspect of the Settlement,*
8 *including the requested Class Counsel Award, Enhancement Payment, Settlement Administration*
9 *Costs, or allocation for PAGA Payment.*

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

16 In order to efficiently present the Court with adequate information to determine whether to
17 grant final approval of the Settlement and award the Class Counsel Award, Enhancement Payment,
18 Settlement Administration Costs, and PAGA Payment, Plaintiff also moves for an order permitting
19 the filing of this single consolidated memorandum, although it exceeds the page limit established
20 by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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

22 Defendant Big Joe California North, Inc. d/b/a Big Joe Handling Systems (erroneously
23 sued as Big Joe Handling Systems, Inc.) (“Defendant”) has been in operation for over sixty (60)
24 years selling forklifts, pallet racks, and produce storage systems. Defendant offers the industry’s
25 most comprehensive line of lift trucks used in transportation, stacking, retrieving materials and
26 products in warehouses, distribution centers, manufacturing, and retail environments. Plaintiff
27 Candace Evans is a former employee of Defendant.

28 ///

1 On February 20, 2020, Plaintiff filed a Class Action Complaint for Damages in the
2 Alameda County Superior Court (“Court”), thereby commencing the above-captioned lawsuit
3 (“Action”).

4 On May 20, 2020, Plaintiff filed a First Amended Class Action Complaint for Damages &
5 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
6 (“Operative Complaint”).

7 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
8 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of,
9 *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and
10 rest periods and associated premium pay, failing to timely pay wages during employment and upon
11 termination of employment, failing to provide compliant wage statements, failing to maintain
12 requisite payroll records, and failing to reimburse necessary business expenses, and thereby
13 engaged in unfair business practices in violation of California Business and Professions Code
14 section 17200, *et seq.* and conduct that gives rise to penalties pursuant to the Private Attorneys
15 General Act of 2004 (California Labor Code sections 2698, *et seq.*) (“PAGA”). Plaintiff contends
16 that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and
17 not limited to, penalties pursuant to PAGA), and attorneys’ fees.

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

22 The parties have actively litigated the case since it was commenced February 20, 2020.
23 The parties conducted significant formal and informal discovery, and exchanged a large volume
24 of information, documents, and data. On March 10, 2021, the parties participated in a formal, full-
25 day mediation conducted by Jeffrey A. Ross, Esq. (“Mediator”), a well-regarded mediator
26 experienced in mediating complex labor and employment matters. Although the parties were not
27 able to reach an agreement at mediation, the Mediator continued to assist the parties in working
28 toward a resolution of the case. After conducting significant formal and informal discovery and

1 investigation into the facts of the case and with the aid of the Mediator's evaluation, the parties
2 ultimately reached the Settlement described herein to resolve the case in its entirety.

3 On April 18, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action
4 Settlement and supporting documents ("Motion for Preliminary Approval"). On May 9, 2022, the
5 Court issued a tentative ruling in which it raised multiple points of inquiry with regard to the
6 Motion for Preliminary Approval ("May 9, 2022 Tentative Ruling"). On May 10, 2022, a hearing
7 was held on the Motion for Preliminary Approval, during which the Court requested supplemental
8 papers which address the points of inquiry in the May 9, 2022 Tentative Ruling. On May 31, 2022,
9 Plaintiff filed supplemental papers in support of the Motion for Preliminary Approval. On June 6,
10 2022, the Court issued a tentative ruling ("June 6, 2022 Tentative Ruling") in which it raised
11 additional points of inquiry with regard to the Motion for Preliminary Approval. On June 7,
12 2022, a hearing was held on the Motion for Preliminary Approval, during which the Parties
13 presented oral argument on the issues raised in the June 6, 2022 Tentative Ruling, and the Court
14 deferred ruling on the Motion for Preliminary Approval, set a non-appearance case management
15 conference for June 24, 2022, and ordered the Parties to file a status report by June 24, 2022.
16 During the period from June 24, 2022, to approximately February 28, 2023, the Parties filed
17 several joint statements updating the Court as they engaged in additional formal and informal
18 discovery and exchange of information in order to address the Court's points of inquiry. On
19 March 28, 2023, the Parties executed Amendment No. 1 to Joint Stipulation of Class and
20 Representative Action Settlement ("Amendment No. 1"). Also on March 28, 2023, Plaintiff's
21 Counsel filed the Further Supplemental Declaration of Alexandra Rose In Support Of Plaintiff's
22 Motion For Preliminary Approval of Class Action Settlement, including Amendment No. 1 as
23 an exhibit. On March 30, 2023, the Court entered an Order Granting Plaintiff's Motion for
24 Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby
25 preliminarily approving the terms of the Settlement, the Notice Packet, and the proposed
26 administration procedures and associated deadlines.

27 Plaintiff now moves for final approval of the Settlement, Class Counsel Award,
28 Enhancement Payment, Settlement Administration Costs, and allocation for PAGA Payment.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Maximum Settlement Amount of \$520,665.20 on a non-reversionary basis.² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Class Counsel Award, consisting of attorneys' fees in the amount of \$182,232.82 and reimbursement of litigation costs and expenses in the amount of \$10,754.05, to Class Counsel; (2) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Candace Evans; (3) Settlement Administration Costs in the amount of \$6,250.00 to Phoenix; and (4) LWDA Payment in the amount of \$56,250.00.³ The Net Settlement Amount, which is estimated to be \$257,678.33, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁴

The Settlement Administrator will calculate the Individual Settlement Payment as follows after final approval of the Settlement for purposes of distributing payments under the Settlement: by combining the Non-Enhanced Workweeks⁵ and the Enhanced Workweeks⁶ for each Settlement Class Member, and dividing that sum by the total Non-Enhanced Workweeks and Enhanced Workweeks for all Settlement Class Members, then multiplying the result by the Net Settlement Amount.⁷

Class Members had forty-five (45) calendar days after the Settlement Administrator initially mailed the Notice Packet to Class Members to dispute the number of Workweeks credited

² Amendment No. 1, § J.

³ Joint Stipulation of Class and Representative Action Settlement ("Original Agreement"), § 13, 18, 21, and 28; see also, Amendment No. 1, § B.

⁴ This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Settlement Administrator Taylor Mitzner Regarding Notice and Administration ("Phoenix Declaration" or "Phoenix Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$25,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$10,754.05 for reimbursement of litigation costs and expenses, and the difference of \$14,245.95 will remain part of the Net Settlement Amount.

⁵ "Non-Enhanced Workweeks" are the number of Workweeks a Class Member worked in a non-exempt, non-driver position during the period January 1, 2020 to October 31, 2020, combined with the number of Workweeks a Class Member worked during the period from November 1, 2020 to June 10, 2021. Amendment No. 1, § C.7.

⁶ "Enhanced Workweeks" are the number of Workweeks a Class Member worked during the period February 20, 2016 through December 31, 2019, combined with the number of Workweeks worked by a Class Member in a non-exempt driver position during the period January 1, 2020 through October 31, 2020, then multiplied by 1.3. Amendment No. 1, § C.7.

⁷ Ibid.

1 to each of them, submit Requests for Exclusion, and/or submit Notices of Objection (“Response
2 Deadline”).⁸ The Response Deadline was May 30, 2023.⁹ The Settlement Administrator has
3 received one (1) timely written request to be excluded from the Settlement from Class Member
4 Karen Butler (“Requests for Exclusion”).¹⁰ The Settlement Administrator has not received any
5 timely written objections to the Settlement (“Notices of Objection”) from Class Members.¹¹

6 Individual Settlement Payments will be allocated as follows: two-third (2/3) of the
7 Individual Settlement Payment shall be allocated as interest, penalties, and other non-wage
8 damages, to be reported on an IRS Form 1099 by the Settlement Administrator.¹² The remaining
9 one-third (1/3) of the Individual Settlement Payments shall be allocated as wages, subject to
10 employee’s share of payroll taxes and withholding and to be reported on an IRS Form W-2 by the
11 Settlement Administrator.¹³ The employer’s share of payroll taxes and contributions with respect
12 to the wages portion of Individual Settlement Payments shall be paid by Defendant separately and
13 in addition to the Maximum Settlement Amount.¹⁴

14 Any Settlement Payment Checks issued by the Settlement Administrator to Settlement
15 Class Members shall be valid and negotiable for not less than one hundred eighty (180) calendar
16 days from the date of their issuance, and thereafter, shall be cancelled.¹⁵ All Individual Settlement
17 Payment Checks to Settlement Class Members that remain un-cashed after one hundred eighty
18 (180) calendar days of the mailing of Settlement Payment Checks by the Settlement Administrator
19 shall be paid out pursuant to California Code of Civil Procedure section 384 to the following *cy*
20 *pres* recipient: Legal Services of Northern California.¹⁶

21 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

22 The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to
23 effectuate the notice and settlement administration process, as set forth in the Court’s March 30,

24
25 ⁸ Original Agreement, § 26.

26 ⁹ Phoenix Decl., ¶¶ 8, 9, and 10.

27 ¹⁰ *Id.*, ¶ 8.

28 ¹¹ *Id.*, ¶ 9.

¹² Original Agreement, § C.25.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Id.*, § 22.

¹⁶ *Ibid.*

2023 Preliminary Approval Order.

On April 7, 2023, Phoenix received a mailing list from Defendant’s counsel that contained each Class Member’s full name, their last known home address, Social Security number, beginning and ending dates of employment, and number of Workweeks (“Class List and Data”).¹⁷ The Class List and Data contained information for one hundred thirty-seven (137) individuals identified as Class Members.¹⁸ Phoenix processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class List and Data with any updated addresses located.¹⁹

On April 14, 2023, Phoenix mailed the Notice Packet via U.S. first class mail to one hundred thirty-seven (137) individuals identified as Class Members in the Class List and Data.²⁰

As of the date of this Motion, six (6) Notice Packets were returned as undeliverable without forwarding addresses.²¹ Phoenix performed a skip-trace search on the six (6) Notice Packets that were returned to Phoenix without forwarding addresses, located an updated address for six (6) Class Members, and promptly re-mailed the Notice Packets to the updated addresses via U.S. first class mail.²² No (0) Notice Packets were returned to Phoenix as undeliverable a second time.²³

As of the date of this Motion, the Settlement Administrator has not received any Notices of Objection or Workweek disputes. Phoenix had received one (1) Request for Exclusion from Class Member Karen Butler.²⁴

To date, there are one hundred thirty-six (136) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, are deemed to be Settlement Class Members.²⁵ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$257,678.33 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁶ The highest Individual Settlement Payment is currently estimated to be \$4,251.36 and the average

¹⁷ Phoenix Decl., ¶ 3.

¹⁸ Ibid.

¹⁹ *Id.*, ¶ 4.

²⁰ *Id.*, ¶ 5.

²¹ *Id.*, ¶ 6.

²² Ibid.

²³ *Id.*, ¶ 7.

²⁴ *Id.*, ¶¶ 8, 9, and 10.

²⁵ *Id.*, ¶ 11.

²⁶ *Id.*, ¶ 12; see also, n.4, *supra*.

Individual Settlement Payment is currently estimated to be \$1,789.94.²⁷

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent

²⁷ Phoenix Decl., ¶ 13. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Phoenix 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 \$25,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$14,245.95, will be part of the Net Settlement Amount). See n.4, *supra*.

of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the case since it was commenced on February 20, 2020. Both sides investigated the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification, representative adjudication, and trial prior to reaching the settlement.²⁸ The parties conducted significant formal and informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation and throughout ongoing settlement negotiations.²⁹ Class Counsel propounded multiple sets of written discovery requests in various forms; reviewed Defendant's responses thereto; worked with Plaintiff to provide responses to discovery requests that were propounded on her by Defendants; and prepared and served numerous deposition notices.³⁰ Class Counsel also had the opportunity to interview and obtain information from Plaintiff and Class Members and reviewed and analyzed a large volume of information, documents, and data obtained from Plaintiff, Defendant, and other sources.³¹ The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiff's personnel and payroll records, a detailed sampling of Class Members' timekeeping and payroll data, Defendant's employment policies and procedures, company policy acknowledgements (including, but not limited to, Acknowledgment of Receipt of Basic Employment Policies, Meal and Rest Period Obligation Acknowledgement, and General Handbook Acknowledgment), internal memoranda, job descriptions, Defendant's operations and employment practices, forms, procedures, and policies (including, but not limited to, Defendant's Rest Breaks policy, Meal Periods policy, General Requirements for Rest Periods and Meal Breaks,

²⁸ Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

Timekeeping Procedures policy, Overtime policy, Employee Dress, Personal Appearance, and Protective Footwear policy, and Business Expense Reimbursement policy), among other information, documents, and data.³² Class Counsel researched applicable law, developed liability, damages, and penalties valuation models in connection with mediation and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, and the production of information, documents, and data in the course of litigation as well as mediation and settlement negotiations, among other tasks.³³ Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising pleadings and the mediation brief; drafting, reviewing, and responding to formal discovery; preparing and appearing for court proceedings; and preparing for and attending mediation and settlement negotiations.³⁴

After conducting significant formal and informal discovery and investigation into the facts of the case, a formal, full-day mediation was conducted by Jeffrey A. Ross, Esq., a well-regarded mediator experienced in mediating complex labor and employment cases.³⁵ In the course of mediation and settlement negotiations, the Parties exchanged information and documents, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims, Plaintiff's claims and allegations, wage-and-hour law and enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³⁶ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.³⁷ Arriving at a settlement that was acceptable to the parties was not easy.³⁸ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to avoid class certification and representative adjudication. Plaintiff and Class Counsel believed that they would be able to

³² Aiwazian Decl., ¶ 6.

³³ Ibid.

³⁴ Ibid.

³⁵ *Id.*, ¶ 8.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

1 obtain class certification and prevail at trial.³⁹ After conducting significant formal and informal
2 discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's
3 evaluation, the parties agreed that the case was well-suited for settlement given the legal issues
4 relating to Plaintiff's principal claims, as well as the costs and risks to the parties that would attend
5 further litigation.⁴⁰

6 The Settlement takes into account the strengths and weaknesses of each side's position and
7 the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class
8 Counsel had the opportunity to interview, and obtain information from Plaintiff and other Class
9 Members.⁴¹ Class Counsel also reviewed and analyzed a large volume of information, documents,
10 and data obtained from Defendant, Plaintiff, and other sources, and performed significant research
11 into applicable law, which is constantly evolving as it relates to certification, off-the-clock theory,
12 meal and rest periods, PAGA representative claims, wage-and-hour law and enforcement,
13 Plaintiff's claims, and Defendant's defenses, as well as facts discovered.⁴² The Settlement was
14 based on this large volume of facts, evidence, and investigation.⁴³ Additionally, Class Counsel has
15 extensive experience in handling complex wage-and-hour cases, including significant experience
16 in employment class action litigation.⁴⁴

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

19 The Settlement, which provides for a Maximum Settlement Amount of \$520,665.20,
20 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
21 litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁵
22 The Settlement was calculated using information and data uncovered through extensive case
23 investigation, formal and informal discovery, and the exchange of information in the context of
24 preparing for mediation and conducting ongoing settlement negotiations.⁴⁶ Had the action not

25 ³⁹ Aiwazian Decl., ¶ 8.

26 ⁴⁰ Ibid.

27 ⁴¹ *Id.*, ¶ 6.

28 ⁴² *Id.*, ¶¶ 6 and 7.

⁴³ *Id.*, ¶¶ 6 and 8.

⁴⁴ *Id.*, ¶¶ 15-18.

⁴⁵ *Id.*, ¶¶ 9 and 21.

⁴⁶ *Id.*, ¶¶ 5-8.

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

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

26 It would be grossly inefficient for such a large class of current and former employees to
27 bring individual actions to recover from Defendant for the alleged violations of wage-and-hour
28 laws. Moreover, the potential individual recovery that could be obtained by a Class Member would

not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members and the State of California.

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

The Settlement, which provides for a Maximum Settlement Amount of \$520,665.20, represents a fair, reasonable, and adequate resolution of the case. The Settlement 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 Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this case. Moreover, considering all of the facts in the case, the Maximum Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$182,232.82, litigation costs and expenses in the amount of \$10,754.05, an Enhancement Payment in the amount of \$7,500.00, Settlement Administration Costs in the amount of \$6,250.00, and the LWDA Payment in the amount of \$56,250.00 from the Maximum Settlement Amount of \$520,665.20, the Net Settlement Amount is currently estimated to be \$257,678.33.⁴⁷ Under the Settlement Agreement, the Maximum Settlement Amount will be fully paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each 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. To date, there are one hundred thirty-six (136) Settlement Class Members, representing 99.94% of the Class Members.⁴⁸ The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$4,251.36 and the average Individual Settlement Payment is currently estimated to be \$1,789.94.⁴⁹ 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

⁴⁷ Phoenix Decl., ¶ 12; see n.4, *supra*.

⁴⁸ *Id.*, ¶ 11.

⁴⁹ *Id.*, ¶ 13; see n.27, *supra*.

counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁵⁰ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁵¹ 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.⁵² Both parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendant and the benefits of the Settlement under the circumstances of the 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.*⁵³ Specifically, no objections have been made as to the Maximum Settlement Amount or requested Class Counsel Award, Enhancement Payment, Settlement Administration Costs, or the allocation for PAGA Payment. California courts have consistently found that a small number of objectors indicates the class’ support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

⁵⁰ Aiwasian Decl., ¶ 21.

⁵¹ *Id.*, ¶¶ 15-18.

⁵² *Ibid.*

⁵³ Phoenix Decl., ¶¶ 9.

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 CLASS COUNSEL AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

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

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

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

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

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

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

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁴ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent*, *supra*, 557 F.2d at 769.

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⁵⁴ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

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

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

23 When the case was originally filed, not only was it inescapably contingent, but the prospect
24 of a long, drawn-out battle with Defendant represented by experienced counsel, was almost a
25 certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial
26 economic loss if the results were not successful. This substantial risk is the reason that the courts
27 approve the use of the percentage method when a settlement is obtained by the efforts of class
28

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 Maximum Settlement Amount of \$520,665.20 on a non-reversionary basis. The requested attorneys' fees are \$182,232.82, which is thirty-five percent (35%) of the total value of the monetary settlement. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁵⁵

Furthermore, a percentage-fee award is not dependent on a determination of the actual amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is equitable that [the attorney's] compensation and expenses should come from the entire fund saved

⁵⁵ Aiwazian Decl., ¶ 9.

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

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

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

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

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the 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 award

of attorneys' fees in the amount of \$182,232.82 (which is 35% of the Maximum Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has 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 case to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation cases.⁵⁶

As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively participated in litigation of this case.⁵⁷ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and their operations and employment policies, practices, and procedures.⁵⁸ During the litigation of the action, Class Counsel had the opportunity to interview Plaintiff and other Class Members; propounded formal written discovery requests and reviewed Defendant's responses thereto; worked with Plaintiff to provide responses to discovery requests that were propounded by Defendant; reviewed and analyzed a large volume of documents and data obtained from Defendant, Plaintiff, and other sources; and prepared damages, penalties, and valuation calculations.⁵⁹ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, case management, discovery, and production of information, documents, and data in the course of litigation as well as mediation and settlement negotiations, prepared for and attended court proceedings, and prepared for and participated in the mediation and settlement negotiations, among other tasks.⁶⁰

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⁵⁶ Aiwarzian Decl., ¶¶ 15-18.

⁵⁷ *Id.*, Exh. A.

⁵⁸ *Id.*, ¶ 6 & Exh. A.

⁵⁹ *Id.*, ¶ 6.

⁶⁰ *Ibid.*

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this case 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 Edwin Aiwasian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff, the Class, and the State of California.⁶¹ 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. Attorneys at Lawyers for Justice, PC have spent 477.40 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff and the Class.⁶² These hours were required to bring this case 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 case is evident not only in the results achieved, but in the steps necessary to reach those results. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about Defendant’s ability to obtain a denial of class certification and to prevail on the merits. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to and during mediation and ongoing settlement negotiations. Class Counsel took steps to prepare the case for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwasian, Class Counsel used its extensive experience

⁶¹ Aiwasian Decl., Exh. A.

⁶² *Id.*, ¶ 11.

1 in the handling of class actions and complex wage-and-hour litigation cases in order to obtain the
2 Settlement with maximum efficiency.⁶³

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

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

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

18 As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay
19 a Maximum Settlement Amount of \$520,665.20 to settle the case. After deducting the attorneys'
20 fees (\$182,232.82), litigation costs and expenses (\$10,754.05), Enhancement Payment
21 (\$7,500.00), Settlement Administration Costs (\$6,250.00), and LWDA Payment (\$56,250.00)
22 from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount
23 is approximately \$257,678.33.⁶⁴ The Net Settlement Amount will be fully distributed in
24 accordance with the terms of the Settlement. The highest Individual Settlement Payment to a
25 Settlement Class Member is currently estimated to be \$4,251.36 and the average Individual
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28 ⁶³ Aiwazian Decl., ¶¶ 15-18.

⁶⁴ Phoenix Decl., ¶ 12; see n.4, *supra*.

Settlement Payment is currently estimated to be \$1,789.94.⁶⁵ The Settlement offers significant monetary relief to the Settlement Class Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 477.40 hours of time to obtain relief on behalf of Plaintiff, the Class, and the State of California.⁶⁶ Class Counsel has also incurred litigation costs and expenses in the amount of \$10,754.05.⁶⁷

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁸ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁶⁹ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel Award. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

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

⁶⁵ Phoenix Decl., ¶ 13; see n.27, *supra*.

⁶⁶ Aiwasian Decl., ¶ 11, Exh. A.

⁶⁷ See Part VII, *infra*.

⁶⁸ Aiwasian Decl., ¶ 19.

⁶⁹ 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.⁷⁰

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

10 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
11 in light of the risks inherent in further litigating this case. Class Counsel’s efforts have resulted in
12 a settlement that provides for a Maximum Settlement Amount of \$520,665.20.⁷¹ The Maximum
13 Settlement Amount will be fully paid out, in accordance with the terms of the Settlement
14 Agreement. The highest Individual Settlement Payment to a Settlement Class Member is currently
15 estimated to be \$4,251.36 and the average Individual Settlement Payment is currently estimated to
16 be \$1,789.94.⁷²

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

18 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
19 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
20 has years of complex and class action litigation experience, has recovered millions of dollars on
21 behalf of thousands of individuals in California, and has successfully handled numerous significant
22 wage-and-hour class action and complex cases.⁷³

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27 ⁷⁰ Phoenix Decl., ¶ 9.

28 ⁷¹ Aiwasian Decl., ¶¶ 5-8.

⁷² Phoenix Decl., ¶ 13; see n.27, *supra*.

⁷³ Aiwasian Decl., ¶¶ 15-18.

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

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

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the case. *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 they disputed all of the allegations of the case and disputed that the case was appropriate for class or representative treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the case

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

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

10 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
11 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
12 on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁷⁴ The chart
13 demonstrates that Class Counsel has spent a total of 477.40 hours litigating the case and finalizing
14 the Settlement.⁷⁵ In light of the facts and circumstances of the case, as well as the results that Class
15 Counsel has achieved on behalf of Plaintiff and the Class Members, Class Counsel has spent a
16 reasonable number of hours on this case. In addition, Class Counsel will continue to perform work
17 on this case through the date of final approval and in connection with the implementation of the
18 Settlement.

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

21 Both California and federal courts recognize that attorneys should be compensated for
22 providing representation on a contingency basis and for taking on the risks associated with said
23 representation, as well as being provided with financial incentives to enforce important rights and
24 protections like those at issue in this action. See *Ketchum, supra*, 24 Cal.4th at 1132-33. In
25 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
26 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
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28 ⁷⁴ See Aiwazian Decl., Exh. A.

⁷⁵ *Id.*, ¶ 11.

normal hourly rates for winning contingency cases.” See *id.*

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel’s dedication to providing representation in this case 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 \$520,665.20.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$650 per hour for services provided by Class Counsel.⁷⁶ Lawyers for Justice, PC has been awarded attorneys’ fees, compensating the firm at the blended rate of at least \$650 per hour for legal service performed, by courts of this state.⁷⁷ While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys’ fees.

Applying the blended hourly rate of \$650 per hour to 477.40 hours would place a reasonable value of \$310,310.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys’ fees in the amount of \$182,232.82, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

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⁷⁶ Aiwarzian Decl., ¶ 12.

⁷⁷ For example, final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys’ fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys’ fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (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 *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; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys’ fees involved a higher hourly rate of \$845.64. Aiwarzian Decl., ¶ 12.

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

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys’ fees in the amount of \$182,232.82 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$25,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks reimbursement of \$10,754.05 in litigation costs and expenses incurred in this case.⁷⁸ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.⁷⁹ The cost savings of

⁷⁸ Aiwazian Decl., ¶ 19.

⁷⁹ *Ibid*.

\$14,245.95 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸⁰ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$10,754.05 to Class Counsel.

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

As set forth in the accompanying Phoenix Declaration, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$6,250.00.⁸¹ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Notice Packet to the Class Members; performing skip-trace searches on Notice Packets returned as undeliverable; re-mailing the Notice Packets to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Notices of Objections, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and preparing the associated tax forms; and transmitting payments, among other things.⁸²

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party for handling of the notice and settlement process, in the amount of \$6,250.00.

IX. THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for an Enhancement Payment in the amount of \$7,500.00 to Plaintiff Candace Evans to compensate Plaintiff for the time and effort that she expended on behalf of the Class. The requested Enhancement Payment is both common and reasonable and should be awarded.

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal

⁸⁰ Aiwazian Decl., ¶ 19.

⁸¹ Phoenix Decl., ¶ 16.

⁸² *Id.*, ¶ 2.

benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative).

The requested Enhancement Payment is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations, including and not limited to, by way of working with Class Counsel to prepare responses to written discovery requests that were propounded on her by Defendant.⁸³ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain, and provide, information that would facilitate the investigation and pursuit of the class and PAGA claims.⁸⁴ Plaintiff spent numerous hours speaking with Class Counsel about her claims, describing her work experiences with Defendant, and gathering and reviewing documents.⁸⁵ These services merit the requested Enhancement Payment to Plaintiff, who has not received any compensation for her efforts on behalf of the Class Members to date.⁸⁶

The requested Enhancement Payment was fully disclosed in the Notice Packet that was mailed to the Class Members. No objections were made with regards to the requested Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Candace Evans to receive \$7,500.00 as a reasonable Enhancement Payment for her services on behalf of the Class, in addition to her Individual Settlement Payment.

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⁸³ Aiwasian Decl., ¶ 20; Declaration of Candace Evans (“Evans Decl.”), ¶¶ 3-5.

⁸⁴ Aiwasian Decl., ¶ 20; Evans Decl., ¶¶ 3-5.

⁸⁵ Aiwasian Decl., ¶ 20; Evans Decl., ¶¶ 2-6.

⁸⁶ Evans Decl., ¶ 9.

X. CONCLUSION

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

Dated: July 10, 2023

LAWYERS for JUSTICE, PC

By:



Selena Matavosian
Attorneys for Plaintiff and the Class