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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

ANTHONY MASINAS, individually,
and on behalf of other members of the
general public similarly situated; JUAN
PARTIDA, 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;

Plaintiffs,

vs.

FLEETPRIDE, INC., an Alabama
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2018-0015792

Honorable Jayne Lee
Department 10C

CLASS ACTION

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

[Declarations of Class Counsel (Edwin Aiwazian,
Kevin T. Barnes, and Raphael A. Katri);
Declarations of Class Representatives (Anthony
Masinas and Juan Partida); Declaration of
Settlement Administrator (Kevin Lee); and
[Proposed] Final Approval Order and Judgment
filed concurrently herewith]

Date: January 5, 2022
Time: 9:00 a.m.
Department: 10C

Complaint Filed: December 18, 2018
FAC Filed: August 3, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on January 5, 2022, at 9:00 a.m., in Department 10C of
2 the above-entitled Court, located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiffs
3 Anthony Masinas and Juan Partida (“Plaintiffs”) will and hereby do move for an order granting
4 final approval of:

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

- 8 • A Net Settlement Amount of approximately **\$1,462,694.01** will be fully distributed to
9 the Class Members who did not submit a valid and timely Request for Exclusion
10 (“Settlement Class Member”);
- 11 • **No Notices of Objection** were submitted to the settlement administrator, Phoenix
12 Class Action Administration Solutions (“Settlement Administrator”);
- 13 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$875,000.00** to Lawyers for Justice, PC, Law Offices of
15 Kevin T. Barnes, and Law Offices of Raphael A. Katri (together, “Class Counsel”), representing
16 thirty-five percent (35%) of the Total Settlement Amount, for attorneys’ fees, which is
17 reasonable and justified on a percentage-basis and also based on a lodestar cross-check with a
18 multiplier of 1.28;

19 3. Payment in the total amount of **\$31,305.99** to Class Counsel for reimbursement of
20 litigation costs and expenses;

21 4. Payment in the amount of **\$11,000.00** to the Settlement Administrator, Phoenix
22 Class Action Administration Solutions (“Phoenix”), for Settlement Administration Costs;

23 5. Payments in the amount of **\$10,000.00** each to Plaintiffs Anthony Masinas and
24 Juan Partida, as Enhancement Payments, for their time and effort in representing the Class; and

25 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
26 California Labor Code section 2698, *et seq.*, in the amount of **\$100,000.00**, of which seventy-five
27 percent (75%), or \$75,000.00, will be paid to the California Labor and Workforce Development
28 Agency and twenty-five percent (25%), or \$25,000.00, will be distributed to Aggrieved Employees.

1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules
2 of 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 (Edwin Aiwarzian, Kevin T. Barnes, and Raphael A. Katri), Class
6 Representatives (Anthony Masinas and Juan Partida), and Settlement Administrator (Kevin Lee
7 of Phoenix Class Action Administration Solutions) in support thereof; the pleadings and other
8 records on file with the Court in this matter; and such evidence and oral argument as may be
9 presented at the hearing on this Motion.

10 Dated: December 10, 2021

LAWYERS for JUSTICE, PC

11
12 By:



Edwin Aiwarzian

Attorneys for Plaintiff Anthony Masinas and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Anthony Masinas and Juan Partida (“Plaintiffs”) seek final approval of: (1) the Total Settlement Amount of \$2,500,000.00; (2) attorneys’ fees in the amount of \$875,000.00, which is thirty-five percent (35%) of the Total Settlement Amount, and reimbursement of litigation costs and expenses in the combined amount of \$35,000.00 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and Law Offices of Raphael A. Katri (together, “Class Counsel”); (3) Settlement Administration Costs in the amount of \$11,000.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”); (4) Enhancement Payments in the amount of \$10,000.00 each to Plaintiffs Anthony Masinas and Juan Partida, for a combined amount of \$20,000; and (5) allocation of \$100,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Amount”).

Plaintiffs seek relief on behalf of the following Class:

All current and former hourly non-exempt individuals who are or were employed by Defendant at any time from December 18, 2014 through February 17, 2021 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by David A. Rotman, Esq., and extensive settlement negotiations. This matter has required a total of 886.10 hours of attorney time between multiple law firms serving as Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (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 fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.²

///

¹ Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), ¶ 8.e. The time period from December 18, 2014 through February 17, 2021 is defined as “Class Period.” *See id.*, ¶ 8.h.

² Applying a modest multiplier of 1.28, the total enhanced lodestar fees are \$877,330.56, and Class Counsel seek an attorneys’ fees award of \$875,000.00 (equal to 35% of the Total Settlement Amount).

1 Plaintiffs move for final approval of the Enhancement Payments in the amount of
2 \$10,000.00 to each of them, to compensate Plaintiffs for the time and effort that they expended
3 spearheading the lawsuits on behalf of the Class. Plaintiffs also move for final approval of the
4 payment to the Settlement Administrator in the amount of \$11,000.00 for the Settlement
5 Administration Costs. Plaintiffs also move for final approval of the allocation of \$100,000.00
6 for the PAGA Amount, of which \$75,000.00 will be paid to the California Labor Workforce and
7 Development Agency (“LWDA”) for its portion of the PAGA Amount (“LWDA Payment”), and
8 \$25,000.00 will be distributed to all current and former hourly non-exempt individuals who are
9 or were employed by Defendant at any time from February 13, 2019 through February 17, 2021
10 (“Aggrieved Employees”).³

11 The requests for Attorneys’ Fees and Costs, Enhancement Payments, Settlement
12 Administration Costs, and the PAGA Amount were fully disclosed in the Notice of Class Action
13 Settlement (“Notice”) that was mailed to the Class Members. Most importantly, as of the date of
14 this Motion, *not a single Class Member has objected to any aspect of the Settlement, including*
15 *the requested Attorneys’ Fees and Costs, Enhancement Payments, Settlement Administration*
16 *Costs, or the PAGA Amount.*

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

23 In order to efficiently present the Court with adequate information to determine whether
24 to grant final approval of the Settlement and award Attorneys’ Fees and Costs, Enhancement
25 Payments, Settlement Administration Costs, and PAGA Amount, Plaintiffs also move for an
26 order permitting the filing of this single consolidated memorandum, although it exceeds the page
27

28 ³ Settlement Agreement., ¶¶ 8.a & 15. The time period from February 13, 2019 through February 17, 2021 is referred to as the “PAGA Period.” *Id.*, ¶ 8.x.

limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Fleetpride, Inc. (“Defendant”) specializes in selling parts and providing services for heavy-duty trucks and trailers, and operates over 275 locations nationwide. Plaintiff Anthony Masinas and Proposed Plaintiff Juan Partida are former employees of Defendant.

On December 18, 2018, Plaintiff Anthony Masinas filed a Class Action Complaint for Damages (“Original Complaint”) against Defendant in the San Joaquin County Superior Court (“Court”), thereby commencing the above-captioned action entitled *Anthony Masinas v. Fleetpride, Inc.*, Case No. STK-CV-UOE-2018-0015792 (the “Masinas Action”). The Masinas Action alleged causes of action for violation of California Labor Code and California Business & Professions Code §§ 17200, *et seq.* on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time since December 18, 2014 for failure to pay overtime wages, failure to provide meal periods and premium payments in lieu thereof, failure to provide rest periods and premium payments in lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business expenses. On February 27, 2019, Defendant filed an Answer to Plaintiff’s Complaint.

On February 13, 2020, Juan Partida provided written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code that Defendant violated. On April 20, 2020, Juan Partida filed a Complaint in the Los Angeles County Superior Court thereby commencing the action entitled *Juan Partida v. Fleetpride, Inc.*, Case No. 20STCV15187 (the “Partida Action”), alleging causes of action for violation of California Labor Code, California Business & Professions Code §§ 17200, *et seq.*, and applicable Wage Order on behalf of all California citizens employed by Defendant as hourly-paid non-exempt employees at any time since December 18, 2014 for failure to pay all wages (including overtime, straight-time, and minimum wages), failure to

1 provide meal periods and premium payments in lieu thereof, failure to provide rest periods and
2 premium payments in lieu thereof, failure to timely pay wages upon termination, and failure to
3 provide compliant wage statements.

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

15 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
16 associated with any of the allegations in the *Masinas* Action and the *Partida* Action (which are
17 collectively referred to as the "Actions"), and further denies that either of the Actions is
18 appropriate for class treatment or representative adjudication for any purpose other than for
19 settlement purposes only.

20 The Parties have actively litigated this matter since the *Masinas* Action was commenced
21 on December 18, 2018. Plaintiffs propounded extensive formal discovery requests in various
22 forms onto Defendant. The Parties have conducted significant formal and informal discovery
23 and investigation into the claims. The Parties engaged in extensive discussions about the
24 strengths and weaknesses of Plaintiffs' claims and Defendant's defenses thereto, to try to resolve
25 the Actions. On November 19, 2020, the Parties participated in a formal, full-day mediation
26 conducted by mediator David A. Rotman, Esq., a well-regarded mediator experienced in
27 mediating complex labor and employment matters. Ultimately, after continued settlement
28

negotiations and with the assistance of the mediator's evaluations, the Parties reached the proposed settlement described herein to resolve the Actions in their entirety.

On July 13, 2021, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On August 3, 2021, the Court entered an Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Notice, and the proposed administration procedures and associated deadlines, and also deeming the First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* ("Operative Complaint") filed as of that date.

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

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Total Settlement Amount of \$2,500,000.00 on a non-reversionary basis.⁴ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$875,000.00 and reimbursement of litigation costs and expenses in the amount of \$35,000.00, to Class Counsel; (2) Enhancement Payments in the amount of \$10,000.00 each to Plaintiffs Anthony Masinas and Juan Partida, for a combined amount of \$20,000.00; (3) Settlement Administration Costs in the amount of \$11,000.00 to Phoenix; and (4) PAGA Amount in the amount of \$100,000.00.⁵ The Net Settlement Amount, which is estimated to be \$1,462,694.01, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁶

⁴ Settlement Agreement; ¶ 18.kk.

⁵ *Id.*, ¶¶ 12-14, 16.a.

⁶ This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Kevin Lee with Respect to Settlement Notice 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 \$35,000.00, which is allocated under the Settlement. However, Class Counsel seek the total amount of only \$31,305.99 for reimbursement of litigation costs and expenses, and the difference of \$3,694.01 will remain part of the Net Settlement Amount.

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement, based on the Class Members' Workweeks and as follows:

- a. The Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Member to yield the "Workweek Value";⁷ and
- b. The Settlement Administrator will then multiply each Settlement Class Member's individual Workweeks by the Workweek Value to yield his or her Individual Settlement Share.⁸

The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employee's share of the from the 25% portion of the PAGA Amount that is allocated to Aggrieved Employees ("Individual PAGA Payment"), in accordance with the Settlement Agreement, based on each Aggrieved Employee's number of pay periods that he or she was issued a wage statement by Defendant during the PAGA Period ("Pay Periods")⁹ and as follows:

- c. The Settlement Administrator will divide the 25% portion of the PAGA Amount attributed to Aggrieved Employees, i.e., \$25,000.00, by the total number of Pay Periods worked by all Aggrieved Employees resulting in the "Pay Period Value";¹⁰ and
- d. The Settlement Administrator will then multiply the Pay Period Value by the number of Pay Periods of each individual Aggrieved Employee to yield his or her Individual PAGA Payment.¹¹

Class Members had forty-five (45) calendar days after the initial mailing of the Notice to Class Members to dispute the number of Workweeks credited to each of them, opt out of the Class Settlement, and/or object to the Class Settlement ("Response Deadline").¹² The Response Deadline was November 1, 2021.¹³ The Settlement Administrator has not received any letters indicating a request to be excluded from the Class Settlement ("Requests for Exclusion") or written objections to the Class Settlement ("Notices of Objection") from Class Members.¹⁴

⁷ Settlement Agreement., ¶ 16.a.

⁸ Ibid.

⁹ *Id.*, ¶ 8.aa.

¹⁰ *Id.*, ¶ 16.b.

¹¹ Ibid.

¹² *Id.*, ¶ 8.gg.

¹³ Phoenix Decl., ¶ 8, Exh. A.

¹⁴ *Id.*, ¶¶ 8 & 9.

Aggrieved Employees could not opt out of have the opportunity to opt out of, or object to, the
PAGA Settlement.¹⁵

Each Settlement Class Member's Individual Settlement Share will be allocated as
follows: one-third (1/3) wages (the "wage portion"), which will be reported on an IRS Form W-
2; and two-thirds (2/3) penalties and interest, which will be reported on an IRS Form 1099.¹⁶
Settlement Class Members will be issued payment of their Individual Settlement Share subject to
reduction for the employee's share of taxes and withholdings with respect to the wage portion of
each Individual Settlement Share (the net payment is referred to as an "Individual Settlement
Payment").¹⁷ Any payment for an Individual PAGA Payment will be allocated as penalties,
will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if
necessary.¹⁸ Defendant will pay the employer's share of taxes and contributions on the wages
portion of Individual Settlement Shares separately and in addition to the Total Settlement
Amount.¹⁹

Individual Settlement Payment and Individual PAGA Payment check will be valid and
negotiable for one hundred and eighty (180) calendar days from the date the checks are issued,
and thereafter, shall be cancelled.²⁰ All funds associated with such cancelled checks will be
transmitted to the State Controller's Office, Unclaimed Property Division in the name of the
absent Aggrieved Employee or Settlement Class Members.²¹

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to
effectuate the notice and settlement administration process, as set forth in the Court's August 3,
2021 Preliminary Approval Order.

On September 3, 2021, Phoenix received a mailing list from Defendant's counsel that
contained each Class Member's full name, last known mailing address, Social Security

¹⁵ "PAGA Settlement" is defined as the settlement and resolution of the Released PAGA Claims. *See* Settlement Agreement, ¶ 8.y.

¹⁶ Settlement Agreement, ¶ 27.

¹⁷ *Id.*, ¶¶ 8.r & 27.

¹⁸ *Id.*, ¶ 27.

¹⁹ *Ibid.*

²⁰ *Id.*, ¶ 21.

²¹ *Ibid.*

1 Number, dates worked for Defendant during the Class Period, and such other information as is
2 necessary for the Settlement Administrator to calculate Workweeks and Pay Periods (“Class
3 List”).²² The Class List contained information for 755 individuals identified as Class
4 Members.²³ Phoenix processed the names and addresses through the National Change of
5 Address Database (“NCOA”) and updated the Class List with any updated addresses located.²⁴

6 On September 17, 2021, Phoenix mailed the Notice via first class mail to 755 individuals
7 identified as Class Members in the Class List.²⁵

8 As of the date of this Motion, thirty-one (31) Notices were returned as undeliverable,
9 none with forwarding addresses.²⁶ Phoenix performed a skip-trace search on the thirty-one (31)
10 Notices that were returned to Phoenix without forwarding addresses, located an updated address
11 for twenty-eight (28) Class Members, and promptly re-mailed the Notice to the updated
12 addresses.²⁷ Ultimately, three (3) Notices remain undeliverable because an updated address was
13 not located through skip-tracing.²⁸

14 As of the date of this Motion, the Settlement Administrator has not received any Notices
15 of Objection, Requests for Exclusion, or dispute regarding Workweeks from Class Members.²⁹

16 To date, there are 755 Class Members who did not submit a timely and valid Request for
17 Exclusion, and are therefore, deemed to be Settlement Class Members, representing 100% of the
18 Class.³⁰ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately
19 \$1,462,694.01 will be distributed to Settlement Class Members in accordance with the terms of
20 the Settlement.³¹ The highest Individual Settlement Share is currently estimated to be \$6,908.29
21 and the average Individual Settlement Share is currently estimated to be \$1,932.45.³²

22 ²² Phoenix Decl., ¶ 3.

23 ²³ Ibid.

24 ²⁴ *Id.*, ¶ 4.

25 ²⁵ *Id.*, ¶ 5.

26 ²⁶ *Id.*, ¶ 6.

27 ²⁷ Ibid.

28 ²⁸ *Id.*, ¶ 7.

²⁹ *Id.*, ¶¶ 8 & 9.

³⁰ *Id.*, ¶ 11.

³¹ *Id.*, ¶ 12; see also, n.6, *supra*.

³² Phoenix Decl., ¶ 13. The actual average and highest Individual Settlement Shares 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 a total amount that is less than \$35,000.00 (the difference between

There are also 635 Aggrieved Employees who will receive their share of the 25% portion of the PAGA Amount.³³ Pursuant to the terms of the Settlement, the \$25,000.00 portion of the PAGA Amount will be distributed to Aggrieved Employees in accordance with the terms of the Settlement.³⁴ The average Individual PAGA Payment is currently estimated to be \$19.69.³⁵

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 amount sought and the amount authorized under the Settlement, i.e., \$3,694.01, will be part of the Net Settlement Amount). See n.6, *supra*.

³³ Phoenix Decl., ¶ 14.

³⁴ *Ibid.*

³⁵ *Ibid.*

The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the cases since the *Masinas* Action was commenced on December 18, 2018. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for class certification, representative adjudication, and trial.³⁶ The parties conducted significant formal and informal discovery and investigation into the facts of the cases, and also informally exchanged information and data in preparation for mediation.³⁷ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant’s responses and supplemental responses thereto, and worked with Plaintiffs to provide objections and responses to multiple sets of discovery requests that were propounded by Defendant.³⁸ Class Counsel noticed the depositions of Defendant’s Person Most Knowledgeable designees regarding organizational structure and job duties and prepared for and defended the deposition of Plaintiff Anthony Masinas.³⁹ Class Counsel also interviewed and obtained information from Plaintiffs and Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed thousands of pages of documents and data produced by Defendant and obtained through other sources.⁴⁰ The documents and data reviewed and analyzed by Class Counsel

³⁶ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Aiwazian Decl., ¶ 6.

⁴⁰ *Ibid.*

1 included, and were not limited to, employment records of Plaintiffs and other Class Members, a
2 detailed sampling of Class Members' time and pay data, company policy acknowledgements
3 (including, but not limited to, regarding Defendant's California Meal/Rest Break Policy and exit
4 process), internal memoranda, job descriptions, operations and employment practices (including,
5 but not limited to, Defendant's Employee Handbook and Team Member Handbook, as well as a
6 California Handbook Supplement), procedures (including, but not limited to, Defendant's
7 Distribution Center Guidelines), and policies (including, but not limited to, Defendant's policies
8 regarding Meal and Rest Periods, Recording of Hours, Pay Practices, Overtime, Call-
9 Back/Report In Pay, Payday, and Expense Reimbursement), among other documents and data.⁴¹
10 Class Counsel researched applicable law, developed damages/valuation models in preparation
11 for mediation, and met and conferred with Defendant's counsel on numerous occasions, e.g., to
12 discuss issues relating to the pleadings, case management, discovery, and production of
13 documents and data prior to mediation.⁴²

14 After conducting significant formal and informal discovery and investigation into the
15 facts of the cases, the parties participated in a formal, full-day mediation conducted by David A.
16 Rotman, Esq., a well-regarded mediator experienced in mediating complex labor and
17 employment matters.⁴³ Prior to and during mediation and settlement discussions, the parties
18 exchanged information and data, and discussed various aspects of the cases, including and not
19 limited to, the risks and delays of further litigation, the risks and expenses to the parties of
20 proceeding with class certification, representative adjudication, and trial, the law relating to off-
21 the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour
22 enforcement, the evidence produced and analyzed, and the possibility of appeals, among other
23 things.⁴⁴ During all settlement discussions, the parties conducted their negotiations at arm's
24 length in an adversarial position.⁴⁵ Arriving at a settlement that was acceptable to the parties was
25 not easy.⁴⁶ Defendant and its counsel felt very strongly about Defendant's ability to prevail on

26 ⁴¹ *Ibid.*

27 ⁴² *Ibid.*

28 ⁴³ Aiwazian Decl., ¶ 8.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

1 the merits and to obtain a denial of class certification, while Plaintiffs and Class Counsel
2 believed that class certification would be obtained and Plaintiffs would prevail at trial.⁴⁷ After
3 conducting significant formal and informal discovery and investigations, extensive settlement
4 negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matter was
5 well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as
6 the costs and risks to the parties that would attend further litigation.⁴⁸

7 The Settlement takes into account the strengths and weaknesses of each side's position
8 and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals.
9 Class Counsel interviewed, and obtained information from Plaintiffs and other Class Members.⁴⁹
10 Class Counsel also reviewed and analyzed thousands of pages of documents produced by
11 Defendant and obtained through other sources, and performed significant research into the law
12 concerning certification, off-the-clock theory, meal and rest periods, representative PAGA
13 claims, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses, as well as
14 facts discovered.⁵⁰ The Settlement was based on this large volume of facts, evidence, and
15 investigation.⁵¹ Additionally, Class Counsel have extensive experience in handling complex
16 wage-and-hour matters, including significant experience in employment class action litigation.⁵²

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

19 The Settlement, which provides for a Total Settlement Amount of \$2,500,000.00,
20 represents a fair, adequate, and reasonable resolution of the matter, given the risks inherent in
21 litigating class and representative claims through certification proceedings, trial, and/or
22 appeals.⁵³ The Settlement was calculated using information and data uncovered through
23 extensive case investigation, formal and informal discovery, and the exchange of information in
24

25 ⁴⁷ *Ibid.*

26 ⁴⁸ *Ibid.*

27 ⁴⁹ Aiwazian Decl., ¶ 6.

28 ⁵⁰ *Ibid.*

⁵¹ *Id.*, ¶¶ 6 & 8.

⁵² Aiwazian Decl., ¶¶ 15-18; Declaration of Kevin T. Barnes ("Barnes Decl."), ¶¶ 2-7; Declaration of Raphael A. Katri ("Katri Decl."), ¶¶ 2-4.

⁵³ Aiwazian Decl., ¶¶ 8 & 21.

1 the context of mediation.⁵⁴ Had the Actions not settled, Defendant would have vigorously
2 challenged class certification, manageability of representative adjudication, and liability.
3 Defendant contended that individualized questions of fact predominate over any common issues,
4 and these issues would pose challenges to certification and representative adjudication.
5 Defendant would have likely argued again at trial, if any, that Plaintiffs' claims were not
6 appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also
7 faced the risk of the Court certifying a class and allowing a jury to decide Plaintiffs' claims on a
8 class-wide or representative basis. Additionally, preparation for trial would have been expensive
9 for all parties.

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

27 ///

28 _____
⁵⁴ Aiwazian Decl., ¶¶ 5-8.

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

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

8 The Settlement, which provides for a Total Settlement Amount of \$2,500,000.00,
9 represents a fair, reasonable, and adequate resolution of the cases. The Settlement was
10 calculated using information and data uncovered through extensive case investigation, formal
11 and informal discovery, and the exchange of information in the context of mediation. The
12 Settlement takes into account the potential risks and rewards inherent in any case and, in
13 particular, in this matter. Moreover, considering all of the facts in the cases, the Total Settlement
14 Amount represents a considerable recovery.

15 Even after deducting attorneys' fees in the amount of \$875,000.00, litigation costs and
16 expenses in the amount of \$35,000.00, Enhancement Payments in the combined amount of
17 \$10,000.00, Settlement Administration Costs in the amount of \$11,000.00, and PAGA Amount
18 in the amount of \$100,000.00 from the Total Settlement Amount of \$2,500,000.00, the Net
19 Settlement Amount is currently estimated to be \$1,462,694.01.⁵⁵ Under the Settlement
20 Agreement, the Total Settlement Amount will be fully paid out without any reversion to
21 Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*,
22 each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount,
23 based on the number of Workweeks credited to him or her. To date, there are 755 Settlement
24 Class Members, representing 100% of the Class Members.⁵⁶ The highest Individual Settlement
25 Share to a Settlement Class Member is currently estimated to be \$6,908.29 and the average
26 Individual Settlement Share is currently estimated to be \$1,932.45.⁵⁷ These are significant

27
28 ⁵⁵ Phoenix Decl., ¶ 12; see n.6, *supra*.

⁵⁶ Phoenix Decl., ¶ 11.

⁵⁷ *Id.*, ¶ 13; see n.32, *supra*.

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

D. The Class Was Represented by Competent Counsel.

Class Counsel have extensive experience in employment class action law and complex wage-and-hour litigation.⁵⁹ The law firms of Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and Law Offices of Raphael A. Katri have been appointed class counsel in numerous complex wage-and-hour cases, and have recovered millions of dollars for individuals in California.⁶⁰ All parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendant and the benefits of the Settlement under the circumstances of the cases and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Class Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to or opted out of the Class Settlement.*⁶¹ Specifically, no objections have been made as to the Total Settlement Amount or requested Attorneys’ Fees and Costs, Enhancement Payments, Settlement Administration Costs, or the PAGA Amount. California courts have

⁵⁸ Aiwazian Decl., ¶ 21.

⁵⁹ Aiwazian Decl., ¶¶ 15-18; Barnes Decl., ¶¶ 2-7; Katri Decl., ¶¶ 2-4.

⁶⁰ Ibid.

⁶¹ Phoenix Decl., ¶¶ 8 & 9.

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

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

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

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

California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace

1 in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small
2 will “chill the private enforcement essential to the vindication of many legal rights and obstruct
3 the representative actions that often relieve the courts of the need to separately adjudicate
4 numerous claims.” *Lealao, supra*, 82 Cal.App.4th at 53.

5 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
6 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
7 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126
8 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long
9 as the method chosen is applied consistently using percentage figures and/or rates that accurately
10 reflect the marketplace. In cases where class members present claims against a settlement
11 amount and the settlement agreement provides that the defendant agrees to paying the attorneys a
12 percentage of the same, use of that percentage method is appropriate. *Lealao, supra*, 82
13 Cal.App.4th at 32.

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

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

25 California and federal courts have long recognized that an appropriate method for
26 determining the award of attorneys’ fees is based on a percentage of the total value of benefits
27 made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van*
28 *Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886

1 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v.*
2 *Priest* (1977) 20 Cal.3d 25, 34.⁶² The purpose of this equitable doctrine is to spread litigation
3 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
4 entire burden alone. See *Vincent, supra*, 557 F.2d at 769.

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

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

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

27
28 ⁶² The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo*
(1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

8 Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement
9 Amount of \$2,500,000.00 on a non-reversionary basis. The requested attorneys’ fees are thirty-
10 five percent (35%) of the total value of the monetary settlement. In light of Class Counsel’s
11 successful prosecution and resolution of the cases, the requested attorneys’ fees are appropriate
12 and reasonable.

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

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

28 ///

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

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 have obtained a substantial recovery on behalf of Plaintiffs 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 Plaintiffs and their counsel, and the fee-split arrangement entered into by 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 \$875,000.00 (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.

Multiple law firms combined their 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. Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation matters.⁶³

As outlined in the Declarations of Edwin Aiwasian, Kevin T. Barnes, and Raphael A. Katri, Class Counsel have fully and actively participated in litigation of the cases.⁶⁴ Prior to commencing the lawsuits, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁶⁵ During the litigation of the Actions, Class Counsel interviewed Plaintiffs and other Class Members; propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto; worked with Plaintiffs to provide objections and responses to multiple sets of discovery requests that were propounded by Defendant; noticed the depositions of Defendant's Person Most Knowledgeable witnesses; prepared for and defending the depositions of Plaintiff Anthony

⁶³ Aiwasian Decl., ¶¶ 15-18; Barnes Decl., ¶¶ 2-7; Katri Decl., ¶¶ 2-4.

⁶⁴ Aiwasian Decl., Exh. 1; Barnes Decl., Exh. 2; Katri Decl., Exh. 1.

⁶⁵ Aiwasian Decl., ¶ 6 & Exh. 1.

Masinas; reviewed and analyzed thousands of pages of pages of documents and data produced by Defendant and obtained through other sources; and prepared damages/valuation calculations.⁶⁶ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, case management, discovery, and production of documents and data, among other things; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁶⁷

Class Counsel have devoted a considerable number of hours to this matter over the course of the litigation process. The timesheets, which are attached as exhibits to the accompanying declarations of Edwin Aiwasian, Kevin T. Barnes, and Raphael A. Katri, set forth in detail the hours that Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and Law Offices of Raphael A. Katri have spent performing tasks on behalf of Plaintiffs and the Class.⁶⁸ The timesheets are thorough and comprehensive, and were prepared so that the Court can peruse them without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the charts, which set forth the history of the work performed by Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and Law Offices of Raphael A. Katri, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Collectively, Class Counsel have spent 886.10 hours, with 724.50 hours spent by Lawyers for Justice, PC, 128.30 hours spent by the Law Offices Of Kevin T. Barnes, and 33.30 hours spent by the Law Offices Of Raphael A. Katri, performing tasks and to obtain a significant recovery on behalf of Plaintiffs and the Class.⁶⁹ 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 the cases, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the cases is evident not only in the results achieved, but in the steps necessary to reach the same. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about

⁶⁶ Aiwasian Decl., ¶ 6.

⁶⁷ Aiwasian Decl., ¶ 6.

⁶⁸ Aiwasian Decl., Exh. 1; Barnes Decl., Exh. 2; Katri Decl., Exh.1.

⁶⁹ Aiwasian Decl., ¶ 11; Barnes Decl., ¶ 15; Katri Decl., ¶ 6.

Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiffs and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing the cases, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the matter 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 Declarations of Edwin Aiwasian, Kevin T. Barnes, and Raphael A. Katri, Class Counsel used their extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁷⁰

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

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

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

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⁷⁰ Aiwasian Decl., ¶¶ 15-18; Barnes Decl., ¶¶ 2-7; Katri Decl., ¶¶ 2-4.

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Total Settlement Amount of \$2,500,000.00 to settle the matter. After deducting the attorneys' fees (\$875,000.00), litigation costs and expenses (combined, \$31,305.99), Enhancement Payments (combined, \$20,000.00), Settlement Administration Costs (\$11,000.00), and PAGA Amount (\$100,000.00) from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$1,462,694.01.⁷¹ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be \$6,908.29 and the average Individual Settlement Share is currently estimated to be \$1,932.45.⁷² The Settlement offers significant monetary relief to the Settlement Class Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into contingency fee agreements with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the cases without knowing whether any recovery would be obtained. Class Counsel have collectively invested 886.10 hours of time to obtain relief on behalf of Plaintiffs and the Class.⁷³ Class Counsel have also collectively incurred litigation costs and expenses in the amount of \$31,305.99.⁷⁴

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

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⁷¹ Phoenix Decl., ¶ 12; see n.6, *supra*.

⁷² *Id.*, ¶ 13; see n.32, *supra*.

⁷³ Aiwasian Decl., ¶ 11, Exh. 1; Barnes Decl., Exh. 2; Katri Decl., Exh. 1.

⁷⁴ See Part VII, *infra*.

⁷⁵ Aiwasian Decl., ¶ 19.

⁷⁶ See *id.*, ¶¶ 15-18; Barnes Decl., ¶¶ 2-7; Katri Decl., ¶¶ 2-4.

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

3 A contingent fee must be higher than a fee for the same legal services paid as they
4 are performed. The contingent fee compensates the lawyer not only for the legal
5 services he renders but for the loan of those services. A lawyer who both bears the
6 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.

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

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

13 The results achieved, in light of the difficulties inherent in similar cases and the specific
14 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
15 from the Class Members—no Class Members objected to or opted out of the Class Settlement.⁷⁷

16 The court in *Camden* noted that, “a key element of the common fund case is that fees are
17 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
18 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
19 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
20 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

21 Here, the results achieved and obtained on behalf of Plaintiffs and the Class are
22 reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts
23 have resulted in a settlement that provides for a Total Settlement Amount of \$2,500,000.00.⁷⁸
24 The Total Settlement Amount will be fully paid out, in accordance with the terms of the
25 Settlement Agreement. The highest Individual Settlement Share to a Settlement Class Member

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28 ⁷⁷ Phoenix Decl., ¶¶ 8 & 9.

⁷⁸ Aiwazian Decl., ¶¶ 5-8.

is currently estimated to be \$6,908.29 and the average Individual Settlement Share is currently estimated to be \$1,932.45.⁷⁹

6. The Reputation and Ability of the Attorneys.

Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and Law Offices of Raphael A. Katri are recognized class action law firms that employed their attorneys' knowledge, skills, and experience in bringing the cases to a successful conclusion. Class Counsel have years of complex and class action litigation experience, have recovered millions of dollars on behalf of thousands of individuals in California, and have successfully handled numerous significant wage-and-hour class action and complex cases.⁸⁰

D. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Have 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 matter. *Id.* at 1133.

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⁷⁹ *Id.*, ¶ 13; see n.32, *supra*.

⁸⁰ Aiwazian Decl., ¶¶ 15-18; Barnes Decl., ¶¶ 2-7; Katri Decl., ¶¶ 2-4.

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

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

5 As discussed above, the cases were highly contested and required a significant amount of
6 time and labor. Defendant made it clear very early on that it disputed all of the allegations of the
7 cases and disputed that the matter was appropriate for class or representative treatment.
8 Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved
9 gathering and analyzing data not only from Defendant but also from the Class Members. The
10 handling of the cases involved a great amount of effort, and also required and involved the
11 exercise of a high level of skill, which Class Counsel have as a result of their extensive
12 experience in employment class actions and complex wage-and-hour litigation. Long and
13 difficult battles would have followed as the cases moved toward certification and trial, including
14 taking and defending depositions of Defendant’s Person Most Knowledgeable designees,
15 percipient witnesses, and experts, propounding additional discovery requests and conducting
16 additional document production, and engaging in extensive motion practice. As Class Counsel
17 geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve
18 the entire matter through mediation.

19 Class Counsel had to bring together a large volume of data and documents that were
20 produced by Defendant and obtained from Plaintiffs and Class Members and through other
21 sources. Class Counsel conducted extensive review and analysis of these documents and data to
22 strategize the Actions and to prepare for and attend mediation and engage in settlement
23 discussions.

24 As discussed above in Part VI.C.1, *infra*, attached to the Declarations of Edwin
25 Aiwazian, Kevin T. Barnes, and Raphael A. Katri are task and time charts that set forth in detail
26 the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class, and the
27 time required for completing those tasks.⁸¹ The charts demonstrate that Lawyers for Justice, PC,
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⁸¹ See Aiwazian Decl., Exh. 1; Barnes Decl., Exh. 2; Katri Decl., Exh. 1.

Law Offices of Kevin T. Barnes, and Law Offices of Raphael A. Katri have spent a total of 886.10 hours litigating the cases and finalizing the Settlement.⁸² In light of the facts and circumstances of the matter, as well as the results that Class Counsel have achieved on behalf of Plaintiffs and the Class Members, Class Counsel have spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

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

Class Counsel have 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 this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$2,500,000.00.

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 in this matter.

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⁸² Aiwasian Decl., ¶ 11; Barnes Decl., ¶ 15; Katri Decl., ¶ 6.

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

In determining whether or not to enhance the lodestar, California courts take into account multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See, *Cates* at 822-23. 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 1135-36; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. “The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate.” *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the

case, to obtain the lodestar figure. *Ketchum*, *supra*, 24 Cal.4th at 1131-32. 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 1132-33 (quotation marks and citation omitted).

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

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of their efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel are entitled to a risk multiplier. The results obtained by way of Class Counsel’s efforts are significant here. Class Counsel were successful in achieving substantial results in the form of a settlement of \$2,500,000.00. Also, Class Counsel’s efforts throughout the matter demonstrate dedication to the interests of the Class Members.

Class Counsel’s application for attorneys’ fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time summarized above and detailed in the timesheets and task and time charts, which are attached as exhibits to the Declarations of Edwin Aiwazian,

Kevin T. Barnes, and Raphael A. Katri.⁸³ As the charts indicate, the law firms have collectively worked **886.10 hours** in the pursuit of this matter. The attorney task and time charts present the entire picture. Applying a reasonable blended rate of \$775 per hour to the 724.50 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$561,487.50 on Lawyers for Justice, PC's services.⁸⁴ The 128.30 hours of work performed by the Law Offices of Kevin T. Barnes place a base lodestar value of \$100,617.00 on the Law Offices of Kevin T. Barnes' services.⁸⁵ Applying a reasonable blended rate of \$700 per hour to 33.30 hours of work performed by the Law Offices of Raphael A. Katri would place a base lodestar value of \$23,310.00 on the Law Offices of Raphael A. Katri's services.⁸⁶ Collectively, the total lodestar value for Class Counsel's work is \$685,414.50, and applying a modest **multiplier of 1.28**, the total enhanced lodestar fees are **\$877,330.56**. Class Counsel seek an attorneys' fee award of \$875,000.00 (equal to 35% of the Total Settlement Amount based on the Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

Therefore, application of a modest multiplier of 1.28 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. Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of \$875,000.00 to Class Counsel.

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⁸³ Aiwasian Decl., Exh. 1; Barnes Decl., Exh. 2; Katri Decl., Exh. 1.

⁸⁴ Aiwasian Decl., ¶ 12; Barnes Decl., ¶ 15; Katri Decl., ¶ 6.

⁸⁵ Barnes Decl., ¶ 15.

⁸⁶ Katri Decl., ¶ 6.

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 \$35,000.00. As set forth in the Declarations of Edwin Aiwarzian, Kevin T. Barnes, and Raphael A. Katri, Class Counsel have collectively incurred a total of \$31,305.99 in litigation costs and expenses.⁸⁷ This amount was reasonable and necessary in the prosecution of the cases and to obtain the Settlement.⁸⁸ The cost savings of \$3,694.01 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸⁹ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$31,305.99 to Class Counsel, of which \$27,279.84 will be paid to Lawyers for Justice, PC, \$3,196.95 to the Law Offices of Kevin T. Barnes, and \$829.20 to the Law Offices of Raphael A. Katri.

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 \$11,000.00.⁹⁰ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Notice to the Class Members in both English and Spanish; performing skip-trace searches on Notices returned as undeliverable; re-mailing the Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Notices of Objection, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and preparing the associated tax forms; and transmitting payments, among other things.⁹¹

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 \$11,000.00.

⁸⁷ Aiwarzian Decl., ¶ 19 & Exh. 2; Barnes Decl., ¶ 14 & Exh. 1; Katri Decl., ¶ 7 & Exh. 2.

⁸⁸ Aiwarzian Decl., ¶ 19.

⁸⁹ *Ibid.*

⁹⁰ Phoenix Decl., ¶ 16.

⁹¹ *Id.*, ¶ 2.

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

The Settlement provides for Enhancement Payments in the amount of \$10,000.00 each to Plaintiffs Anthony Masinas and Juan Partida to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Enhancement Payments are both common and reasonable and should be awarded.

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

The requested Enhancement Payments are fair and appropriate because Plaintiffs spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁹² Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that would benefit the Class.⁹³ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.⁹⁴

The requested Enhancement Payments were fully disclosed in the Notice that was mailed to the Class Members and no objections were made with regards to the requested Enhancement Payments. Accordingly, it is appropriate and just for Plaintiffs Anthony Masinas and Juan Partida to each receive \$10,000.00 as reasonable Enhancement Payments, in addition to their Individual Settlement Payments and Individual PAGA Payments (if applicable), for their services on behalf of the Class.

⁹² Aiwazian Decl., ¶ 20; Declaration of Anthony Masinas (“Masinas Decl.”), ¶¶ 3-5; Declaration of Juan Partida (“Partida Decl.”), ¶ 9.

⁹³ Aiwazian Decl., ¶ 20; Masinas Decl., ¶¶ 3-5; Partida Decl., ¶ 9.

⁹⁴ Aiwazian Decl., ¶ 20; Masinas Decl., ¶¶ 2-6; Partida Decl., ¶ 9.

X. CONCLUSION

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

Dated: December 10, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian

Attorneys for Plaintiff Anthony Masinas and the Class