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

SAUL ANDRADE, individually, and on behalf
of other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

MACH 1 GLOBAL SERVICES, INC., an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

SAUL ANDRADE, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

vs.

MACH 1 GLOBAL SERVICES, INC., an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: RG20069104
[consolidated with RG21108078]

Honorable Evelio Grillo
Department 21

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Saul Andrade); Declaration
of Settlement Administrator (Yami Burns);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Reservation ID: 399878076048
Date: October 27, 2023
Time: 9:00 a.m.
Department: 21

PAGA Complaint Filed: July 28, 2020
Class Complaint Filed: June 25, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 27, 2023, at 9:00 a.m., in Department 21 of
2 the above-entitled Court, located at Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland,
3 California 94612, Plaintiff Saul Andrade (“Plaintiff”) will and hereby does move for an order
4 granting final approval of:

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

- 8 • A Net Settlement Amount of approximately **\$181,519.08** will be fully distributed to the
9 Class Members who did not submit a timely and valid Request for Exclusion
10 (“Settlement Class Members”);
- 11 • **No Notice of Notices of Objection** were submitted to the settlement administrator,
12 Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement
13 Administrator”);
- 14 • **Four (4) Requests for Exclusion** were submitted to the Settlement Administrator;

15 2. Payment in the amount of **\$120,000.00** to Lawyers for Justice, PC (“Class
16 Counsel”), representing one-third (1/3) of the Gross Settlement Amount, for attorneys’ fees, which
17 is reasonable and justified on a percentage-basis;

18 3. Payment in the amount of **\$10,480.92** to Class Counsel for reimbursement of
19 litigation costs and expenses;

20 4. Payment in the amount of **\$7,000.00** to the Settlement Administrator, Phoenix Class
21 Action Administration Solutions, for Settlement Administration Costs;

22 5. Payment in the amount of **\$5,000.00** to Plaintiff Saul Andrade, as a Class
23 Representative Service Award, for his 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 \$36,000.00, of which seventy-five
26 percent (75%), or **\$27,000.00**, will be paid to the California Labor and Workforce Development
27 Agency (“LWDA Payment”) and twenty-five percent (25%), or **\$9,000.00**, will be distributed to
28 members of the PAGA Aggrieved Employee Group (“PAGA Settlement Fund”).

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 Aiwazian), Class Representative (Saul Andrade), and
6 Settlement Administrator (Yami Burns) in support thereof; the pleadings and other records on file
7 with the Court in this matter; and such evidence and oral argument as may be presented at the
8 hearing on this Motion.

9
10 Dated: October 3, 2023

LAWYERS for JUSTICE, PC

11
12 By:



13 Annabel Blanchard
14 Attorneys for Plaintiff and the Class
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TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	2
III.	SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION.	4
IV.	THE SETTLEMENT ADMINISTRATION PROCESS.....	7
V.	THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.....	8
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.....	10
B.	The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.	13
C.	The Settlement Is Fair, Reasonable, and Adequate.....	14
D.	The Class Was Represented by Competent Counsel.	15
E.	There Are No Notices of Objection to the Class Settlement.	16
VI.	THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.	16
A.	Legal Standard for Attorneys’ Fees in a Class Action Settlement.	16
B.	A Fee Award of a Percentage of the Entire Fund Is Appropriate.....	18
C.	The Attorneys’ Fees Award Requested by Class Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.	21
	1. Time & Labor.	21
	2. The Skill Required to Perform Legal Services Properly.	23
	3. The Value of the Settlement for the Class Members.	23
	4. Whether the Fee Is Fixed or Contingent.	24
	5. The Amount Involved and the Results Achieved.	25
	6. The Reputation and Ability of the Attorneys.	26

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2
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**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.**
..... 26

1. The Number of Hours Spent on the Litigation was Reasonable. 27

**VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND
REASONABLE AND SHOULD BE APPROVED..... 30**

**VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND
REASONABLE AND SHOULD BE APPROVED..... 30**

**IX. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS FAIR
AND REASONABLE, AND SHOULD BE APPROVED. 31**

X. CONCLUSION 32

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	9, 16
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195 .	18
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472.....	18, 20
<i>Cates v. Chiang</i> (2013) 213 Cal.App.4th 791.....	25
<i>Cellphone Termination Fee Cases</i> (2009) 180 Cal.App.4th 1110.....	17
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	9, 18
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78.....	30
<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545.....	17
<i>Crampton v. Takegoshi</i> (1993) 17 Cal.App.4th 308.....	18
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	9, 16, 17
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126.....	18
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127	
F.Supp.2d 418	15
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494.....	18
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	17, 27, 28, 29
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480.....	17, 19, 26
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	17, 20
<i>Paul, Johnson, Alston & Hunt v. Graelty</i> (1989) 886 F.2d 268	18
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	18
<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4th 495	30
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800.....	18
<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	18

1	<i>Vizcaino v. Microsoft</i> (9th Cir. 2002) 290 F.3d 1043	19
2	<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4th 440	27
3	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	9, 10, 16, 20, 21, 30
4	<i>Winslow v. Harold G. Ferguson Corp.</i> (1944) 25 Cal.2d 274.....	20
5	Statutes	
6	Cal. Lab. Code § 2698.....	1
7	Other Authorities	
8	A. Conte, <i>Attorney Fee Awards</i> (2d Ed., 1993).....	19
9	<u>California Practice Guide</u> , <i>Civil Procedure Before Trial</i> , Chapter 14.....	17
10	Conte & Newberg, <i>Newberg on Class Actions</i> (4th Ed., 2002) § 11.47	15, 25
11	Conte & Newberg, <i>Newberg on Class Actions</i> (4th Ed., 2002) § 14.03.....	18
12	<i>Court Awarded Attorney Fees, Report of the Third Circuit Task Force</i> (October 8, 1985)	108
13	F.R.D. 237.....	25
14	R. Pearle, <i>California Attorney Fee Awards</i> (CEB, 1993) § 7A.....	18
15		
16		
17		
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Saul Andrade (“Plaintiff”) seeks final approval of: (1) the Gross Settlement Amount of \$360,000.00; (2) attorneys’ fees in the amount of \$120,000.00, which is one-third (1/3) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$10,480.92 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$7,000.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”); (4) Class Representative Service Award in the amount of \$5,000.00 to Plaintiff Saul Andrade; and (5) allocation of \$36,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Allocation”).

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 matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during mediation conducted by Suzanne H. Segal, and ongoing settlement negotiations. This matter has required 354.50 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents one-third (1/3) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.

Plaintiff moves for final approval of the Class Representative Service Award in the amount of \$5,000.00, to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class, PAGA Aggrieved Employee Group, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the

¹ First Amended Class and Representative Action Settlement Agreement and Release of Claims, § 1.6. “Class Period” refers to the period from July 28, 2016 through the date of the Preliminary Approval Order (March 23, 2023). *See id.*, § 1.43.

1 amount of \$7,000.00 for Settlement Administration Costs. Plaintiff also moves for final approval
2 of the allocation of \$36,000.00 for the PAGA Allocation, of which \$27,000.00 will be paid to the
3 California Labor and Workforce Development Agency (“LWDA”) for its portion of the PAGA
4 Penalties (“LWDA Payment”), and \$9,000.00 will be distributed to all current and former hourly-
5 paid or non-exempt employees who worked for Defendant within the State of California at any
6 time during the PAGA Period (“PAGA Aggrieved Employee Group”).

7 The requests for Attorneys’ Fees and Costs, Class Representative Service Award,
8 Settlement Administration Costs, and allocation for the PAGA Allocation were fully disclosed in
9 the Notice of Class Action Settlement (“Class Notice”) that was mailed to the Class Members.
10 Most importantly, as of the date of this Motion, *not a single Class Member has objected to any*
11 *aspect of the Settlement, including the requested Attorneys’ Fees and Costs, Class Representative*
12 *Service Award, Settlement Administration Costs, or allocation for PAGA Allocation.*

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

19 In order to efficiently present the Court with adequate information to determine whether to
20 grant final approval of the Settlement and award Attorneys’ Fees and Costs, Class Representative
21 Service Award, Settlement Administration Costs, and PAGA Allocation, Plaintiff also moves for
22 an order permitting the filing of this single consolidated memorandum, although it exceeds the
23 page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several
24 separate motions.

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

26 Defendant is an international transportation and supply chain logistics provider. Plaintiff
27 Saul Andrade is a former employee of Defendant.
28

1 On May 21, 2020, Plaintiff provided written notice to the LWDA giving notice of his intent
2 to pursue civil penalties under the California Private Attorneys General Act, California Labor Code
3 § 2698, Et. Seq. (“PAGA”), on behalf of himself and the State of California.

4 On July 28, 2020, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys
5 General Act, California Labor Code § 2698, Et Seq. in the Alameda County Superior Court
6 (“Court”), against Defendant thereby commencing the representative PAGA action entitled *Saul*
7 *Andrade v. Mach 1 Global Services, Inc.*, Alameda County Case No. RG20069104 (“*Andrade*
8 *PAGA Action*”).

9 On September 16, 2020, Defendant filed an Answer in the *Andrade* PAGA Action.

10 On June 25, 2021, Plaintiff filed a Class Action Complaint for Damages in the Alameda
11 County Superior Court, Case No. RG21108078 (“*Andrade* Class Action”).

12 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
13 engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and the
14 PAGA Aggrieved Employee Group of, *inter alia*, failing to pay minimum and overtime wages,
15 failing to provide compliant meal and rest periods and associated premium pay, failing to timely
16 pay wages and associated waiting time penalties, failing to maintain accurate payroll records,
17 failing to provide compliant wage statements, and failing to reimburse necessary business-related
18 expenses, and thereby engaged in unfair business practices under the California Business and
19 Professions Code and conduct that gives rise to civil penalties recoverable under PAGA. Plaintiff
20 contends that he, Class Members, and the PAGA Aggrieved Employee Group, are entitled to, *inter*
21 *alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and
22 attorneys’ fees.

23 On September 23, 2021, Defendant filed an Answer in the *Andrade* Class Action.

24 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
25 associated with any of the allegations in the Action, and further denies that the cases are
26 appropriate for class or representative treatment for any purpose other than for settlement purposes
27 only.

On April 11, 2022 the Court ordered the *Andrade* PAGA Action and the *Andrade* Class Action consolidated, with the *Andrade* PAGA Action as the lead case. The consolidated case is referred to herein as the “Action.”

The Parties have actively litigated the matter since the Action commenced on July 28, 2020. The Parties conducted significant formal and informal discovery, and exchanged a large volume of information, documents, and data throughout the course of the litigation and in connection with mediation and settlement negotiations. On August 27, 2021, the Parties participated in a formal, full-day mediation conducted by Suzanne H. Segal, a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On December 29, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On February 28, 2023, a hearing was held on Plaintiff’s Motion for Preliminary Approval, during which the Court raised certain points of inquiry. On March 16, 2023, Plaintiff filed a Supplemental Declaration of Annabel Blanchard in Support of the Motion for Preliminary Approval. On March 21, 2023, Plaintiff filed a Revised Proposed Order for Preliminary Approval. On March 23, 2023, the Court entered an Order Granting Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Attorneys’ Fees and Costs, Class Representative Service Award, Settlement Administration Costs, and allocation for PAGA Allocation.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$360,000.00 by making a one-time deposit of the Gross Settlement Amount within fifteen (15) calendar days of the Effective Date.² Subject to approval by the Court, the Net

² Settlement Agreement, § 5.6.

Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$120,000.00 and reimbursement of litigation costs and expenses in the amount of \$10,480.92, to Class Counsel; (2) Class Representative Service Award in the amount of \$5,000.00 to Plaintiff Saul Andrade; (3) Settlement Administration Costs in the amount of \$7,000.00 to Phoenix; and (4) PAGA Allocation in the amount of \$36,000.00, of which seventy-five percent (75%) (\$27,000.00) will be paid to the LWDA ("LWDA Payment"), and twenty-five percent (25%) (\$9,000.00) will be distributed to the members of the PAGA Employee Group ("PAGA Settlement Fund").³ The Net Settlement Amount, which is estimated to be \$181,519.08⁴, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.

The Settlement Administrator will calculate each Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment"), by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount.⁵ After final approval has been granted to the Settlement, the Settlement Administrator will calculate final Individual Settlement Payments based on the Settlement Class Members' aggregate and individual Eligible Workweeks and will distribute Individual Settlement Payments only to Settlement Class Members.⁶

The Settlement Administrator will calculate each member of the PAGA Aggrieved Employee Group's *pro rata* share of the PAGA Settlement Fund ("PAGA Settlement Payment"), by dividing the number of Eligible Workweeks in the PAGA Period attributed to the member of the PAGA Aggrieved Employee Group by all Eligible Workweeks in the PAGA Period attributed

³ Settlement Agreement, §§ 5.1, 5.2, 5.3 and 5.4.

⁴ This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Yami Burns Regarding Notice and Settlement Administration ("Phoenix Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$24,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$10,480.92 for reimbursement of litigation costs and expenses, and the difference of \$13,519.08 will remain part of the Net Settlement Amount.

⁵ Settlement Agreement, § 5.5.1.

⁶ Ibid.

1 to all members of the PAGA Aggrieved Employee Group, multiplied by the PAGA Settlement
2 Fund.⁷

3 Class Members had sixty (60) calendar days after the initial mailing of the Class Notice to
4 Class Members to opt out of the Class Settlement, object to the Class Settlement, and/or dispute
5 the number of Eligible Workweeks to which they were credited (“Response Deadline”).⁸ The
6 Response Deadline was July 14, 2023.⁹ ***As of the date of this Motion, the Settlement***
7 ***Administrator has received four (4) written request for exclusion from the Class Settlement***
8 ***(“Requests for Exclusion”) and no written objections to the Class Settlement (“Notices of***
9 ***Objection”) from Class Members.***¹⁰ The Class Members who requested exclusion were: Bryce
10 Dixon, Robert Sasser, Marcelino Castro and Raymundo Romero.¹¹

11 Each Individual Settlement Payment will be allocated as follows: twenty percent (20%) as
12 wages, which will be reported on IRS Form W-2; and the remaining eighty percent (80%) as
13 penalties, interest, and non-wage damages to be reported on IRS Form 1099 (if applicable).¹² The
14 Settlement Administrator will make required tax withholdings from each Individual Settlement
15 Payment on the portion designated as wages and will remit the withholding to the appropriate
16 taxing authorities.¹³ The Parties agree that the PAGA Settlement Payment distributed to each
17 member of the PAGA Aggrieved Employee Group will be allocated as one hundred percent
18 (100%) penalties, will be paid without reduction for taxes and withholdings, and will be reported
19 on an IRS Form 1099, if necessary. Defendant will pay the employer’s share of payroll taxes and
20 contributions with respect to the wage portion of Individual Settlement Payments in addition to
21 the Gross Settlement Amount.¹⁴

22 Individual Settlement Payment and PAGA Settlement Payment checks shall be valid and
23 negotiable for a period of one hundred and eighty (180) calendar days from the date of issuance,
24

25 ⁷ Settlement Agreement, § 5.4.3.

26 ⁸ *Id.*, § 1.9.

27 ⁹ Phoenix Decl., ¶¶ 8, 9 & 10.

28 ¹⁰ *Id.*, ¶¶ 8 and 9.

¹¹ Phoenix Decl. ¶ 8

¹² Settlement Agreement, § 5.5.3.

¹³ *Ibid.*

¹⁴ *Id.*, § 1.17.

1 and thereafter, the checks shall be cancelled.¹⁵ The funds associated with Individual Settlement
2 Payments and/or PAGA Settlement Payments that have not been cashed or deposited within the
3 180-day period shall be transmitted to Legal Aid at Work.¹⁶ Settlement Class Members whose
4 Individual Settlement Payment checks are cancelled shall, nevertheless, be bound to the Class
5 Settlement. Members of the PAGA Aggrieved Employee Group whose PAGA Settlement
6 Payments are cancelled shall, nevertheless, be bound to the PAGA Settlement.

7 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

8 The Court-appointed Settlement Administrator, Phoenix Settlement Administrators, has
9 taken all necessary steps to effectuate the notice and settlement administration process, as set forth
10 in the Court's May 23, 2023, Preliminary Approval Order.

11 On April 21, 2023, Phoenix received a data filed from Defense Counsel that contained full
12 names, employee ID numbers, last known addresses and telephone numbers, number of Eligible
13 Workweeks during the Class Period and PAGA Period, and Social Security numbers, of all Class
14 Members ("Class Data").¹⁷ The Class Data contained information for one hundred twelve (112)
15 individuals identified as Class Members, and eighty-eight (88) individuals identified as members
16 of the PAGA Employee Group.¹⁸ Phoenix processed the names and addresses through the National
17 Change of Address Database ("NCOA") and updated the Class Data with any updated addresses
18 located.¹⁹

19 On May 15, 2023, Phoenix mailed the Class Notice via U.S. first class mail to all one
20 hundred and twelve (112) Class Members in the Class Data.²⁰

21 As of the date of this Motion, six (6) Class Notices were returned as undeliverable without
22 forwarding addresses.²¹ Phoenix performed a skip-trace search on the six (6) Class Notices that
23 were returned without forwarding addresses, located an updated address for six (6) Class Members,
24

25 ¹⁵ Settlement Agreement, § 5.5.2.

26 ¹⁶ Ibid.

27 ¹⁷ Phoenix Decl., ¶ 3.

28 ¹⁸ *Id.*, ¶¶ 11 and 14

¹⁹ *Id.*, ¶ 4.

²⁰ *Id.*, ¶ 5.

²¹ *Id.*, ¶ 6.

1 and promptly re-mailed the Class Notice to the updated addresses.²² Zero (0) Class Notices were
2 returned to Phoenix as undeliverable a second time.²³ Ultimately, zero (0) Class Notices remain
3 undeliverable.²⁴

4 As of the date of this Motion, the Settlement Administrator has not received any Notices
5 of Objection.²⁵ As of the date of this Motion, the Settlement Administrator has received only four
6 (4) Requests for Exclusion from Class Member.²⁶

7 To date, there are one hundred and two (108) Class Members who did not submit a timely
8 and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁷
9 Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$181,519.08
10 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁸
11 The *highest* Individual Settlement Payment is currently estimated to be \$5,456.89 and the *average*
12 Individual Settlement Payment is currently estimated to be \$1,555.56.²⁹ The *highest* PAGA
13 Settlement Payment is currently estimated to be \$240.18 and the *average* PAGA Settlement
14 Payment is currently estimated to be \$102.27.³⁰

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

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

20 the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
21 further litigation, the risk of maintaining class action status through trial, the
22 amount offered in settlement, the extent of discovery completed and the stage of

23 ²² Phoenix Decl., ¶ 6

24 ²³ *Id.*, ¶ 7.

25 ²⁴ *Ibid.*

26 ²⁵ *Id.*, ¶ 9.

27 ²⁶ *Id.*, ¶ 8.

28 ²⁷ *Id.*, ¶ 11.

²⁸ *Id.*, ¶ 12; see also, n.1 and n.4, *supra*.

²⁹ *Id.*, ¶¶ 12 and 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 \$24,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$13,519.08, will be part of the Net Settlement Amount). See n.4, *supra*.

³⁰ *Id.*, ¶ 20.

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

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

3 The parties actively litigated the cases since the Action commenced on July 28, 2020. Both
4 sides used the pre-mediation time period to investigate the veracity, strength, and scope of the
5 claims, and prepare the matter for class certification and trial prior to reaching the Settlement.³¹

6 The parties conducted significant formal and informal discovery and investigation into the
7 facts of the cases, and also formally and informally exchanged a large volume of information,
8 documents, and data throughout the course of the litigation and in connection with mediation and
9 settlement negotiations.³² The volume of data and documents that Class Counsel reviewed and
10 analyzed included but was not limited to: Plaintiff's and other Class Member's employment
11 records, Class Members' time and pay data, company policy acknowledgements (including but
12 not limited to acknowledgements of Privacy Practices, Code of Business Conduct, Mach 1
13 Company Computer and Internet Policy, Drivers Manual Receipt, Receipt of Equipment,
14 Permission to Obtain Driving Record, Company Policy and Procedures on Driver and Vehicle
15 Tickets, Fuel Grade Agreement, Portable 2 Way Radios/Cellular Phones, Mach 1 Handheld
16 Communication Devices, Driver's Manual Receipt, Driver Certification for Other Compensated
17 Work, Code of Safe Practices, Mach 1 Receipt of Equipment, and Employee Release
18 Authorization), internal memoranda, job descriptions, new hire orientation checklists, and
19 operations and employment policies, practices, and procedures documents (including but not
20 limited to United States Personnel Policy Handbook, Driver's Pick Up and Delivery Handbook,
21 Driver Safety Award Program, CSA Factsheets, Driver Daily Production, Accident Information
22 Guide, Driver Break Period Off-Duty, Driver Certification for Other Compensated Work, Driver
23 Data Sheet for Casuals, New Hires, & Temporary Employees, Drivers Daily Pick Up and Delivery
24 Log, Inspection Checklist, Weekly Vehicle Odometer, Tire Pressure, and Tire Depth Report, and
25 New Employee HR Form, Drug and Alcohol Policy, Policy re hours of service, rest break, meal
26 break, timed records, etc., Policy re Commercial Vehicle Inspections, Accident check list, Policy

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28 ³¹ Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6.

³² *Id.*, ¶ 6.

re Handheld Communication Devices while operating a commercial motor vehicle, Company Policy and Procedures on Driver and Vehicle Tickets, Seat Belt Policy, Hourly Employee Lunch Break Policy, and Payroll Distribution Policy), among other information, documents, and data.³³ Class Counsel researched applicable law, developed liability, damages, and valuation models in preparation for mediation and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and production of information, documents, and data in the course of litigation and in connection with mediation and settlement negotiations.³⁴ Class Counsel had the opportunity to interview and obtain information from Plaintiff and other Class Members.³⁵ Class Counsel propounded multiple sets of formal written discovery requests on Defendant and noticed the depositions of Defendant's Person Most Knowledgeable designees. Class Counsel also drafted pleadings and Plaintiff's Mediation Brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁶

After conducting significant formal and informal discovery and investigation into the facts of the cases, the Parties participated in a formal, full-day mediation conducted by Suzanne H. Segal, a well-regarded mediator experienced in mediating complex labor and employment matters.³⁷ In the course of mediation and settlement negotiations, the Parties exchanged class information, documents, and data, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the Parties of proceeding with class certification, representative adjudication, and trial, the law relating to certification, off-the-clock theory, meal and rest periods, preemption, exemption, regular rate, reporting time pay, representative PAGA claims, and wage-and-hour law and enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³⁸ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial

³³ Aiwasian Decl., ¶ 6.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Aiwasian Decl., ¶ 6.

³⁷ Id., ¶ 8.

³⁸ Ibid.

position.³⁹ Arriving at a settlement that was acceptable to the Parties was not easy.⁴⁰ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification. Plaintiff and Class Counsel believed that the motion for class certification would be granted and that they would prevail at trial.⁴¹ After conducting significant formal and informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the cases were well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the Parties that would attend further litigation.⁴²

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals. Class Counsel had the opportunity to interview, and obtain information from Plaintiff and other Class Members.⁴³ Class Counsel also reviewed and analyzed a large volume of information, documents, and data obtained from Defendant, Plaintiff, and other sources, and performed significant research into the applicable law, which is constantly evolving as it relates to certification, off-the-clock theory, meal and rest periods, regular rate, preemption, exemption, reporting time pay, representative PAGA claims, wage-and-hour law and enforcement, Plaintiff's claims, and Defendant's defenses, as well as facts discovered.⁴⁴ The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁵ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.⁴⁶

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³⁹ Aiwazian Decl., ¶ 6.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Id., ¶¶ 6 & 8.

⁴⁶ Id., ¶¶ 15-17.

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

The Settlement, which provides for a Gross Settlement Amount of \$360,000.00, represents a fair, adequate, and reasonable resolution of the Action, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁷ 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.⁴⁸ Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members and members of the PAGA Aggrieved Employee Group after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the cases, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the litigation where they would

⁴⁷ Aiwazian Decl., ¶¶ 8 & 20.

⁴⁸ *Id.*, ¶¶ 5-8.

1 have to conduct a significant amount of discovery, including and not limited to, depositions of
2 Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses,
3 such as managers, supervisors, and other current and former employees throughout the State of
4 California. Discovery would have certainly arisen, which would have cost the parties additional
5 time and money. In contrast, the Settlement provides real and significant benefits for the Class
6 here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with
7 only the possibility of recovery.

8 It would be grossly inefficient for such a large class of current and former employees to
9 bring individual actions to recover from Defendant for the alleged violations of wage-and-hour
10 laws. Moreover, the potential individual recovery that could be obtained by a Class Member would
11 not be significant enough to provide him or her with the incentive to sue. By granting final approval
12 of the Settlement, the Court can approve a resolution that provides a certain and substantial
13 recovery for Class Members, the State of California, and member of the PAGA Aggrieved
14 Employee Group.

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

16 The Settlement, which provides for a Gross Settlement Amount of \$360,000.00, represents
17 a fair, reasonable, and adequate resolution of the cases. The Settlement was calculated using
18 information and data uncovered through extensive case investigation, formal and informal
19 discovery, and the exchange of information in the context of preparing for mediation and
20 conducting ongoing settlement negotiations. The Settlement takes into account the potential risks
21 and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the
22 facts in the case, the Gross Settlement Amount represents a considerable recovery.

23 Even after deducting attorneys' fees in the amount of \$120,000.00, litigation costs and
24 expenses in the amount of \$10,480.92, a Class Representative Service Award in the amount of
25 \$5,000.00, Settlement Administration Costs in the amount of \$7,000.00, and a PAGA Allocation
26 in the amount of \$36,000.00 from the Gross Settlement Amount of \$360,000.00, the Net
27 Settlement Amount is currently estimated to be \$181,519.08.⁴⁹ Under the Settlement Agreement,

28 ⁴⁹ Phoenix Decl., ¶ 12; see also, n.4, *supra*.

the Gross Settlement Amount will be fully paid out, 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 Eligible Workweeks credited to him or her. To date, there are one hundred and eight (108) Settlement Class Members, representing 96.43% of the Class Members.⁵⁰ The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$5,456.89 and the average Individual Settlement Payment is currently estimated to be \$1,555.56.⁵¹ The highest PAGA Settlement Payment to a member of the PAGA Aggrieved Employee Group is currently estimated to be \$240.18 and the average PAGA Settlement Payment is currently estimated to be \$102.27.⁵² These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and the PAGA Aggrieved Employee Group.⁵³ 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.⁵⁴ Lawyers for Justice, PC has been appointed class counsel in numerous

⁵⁰ Phoenix Decl., ¶ 11.

⁵¹ *Id.*, ¶ 13.

⁵² *Id.*, ¶ 14.

⁵³ Aiwazian Decl., ¶ 20.

⁵⁴ *Id.*, ¶¶ 15-17.

complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁵⁵ Both Parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the cases and in the context of a private, consensual settlement agreement.

E. There Are No Notices of Objection to the Class Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Class Settlement.*⁵⁶ Specifically, no objections have been made as to the Gross Settlement Amount or requested Attorneys' Fees and Costs, Class Representative Service Award, Settlement Administration Costs, or the allocation for PAGA Allocation. 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, 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

⁵⁵ Aiwasian Decl., ¶¶ 15-17.

⁵⁶ Phoenix Decl., ¶ 9.

1 calculate attorneys' fees as a reasonable percentage of the settlement. Weil and Brown, California
2 Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert*
3 *Half Int'l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-
4 of-the-benefit approach is preferred in class and representative actions because "it better
5 approximates the workings of the marketplace than the lodestar approach." *Lealao, supra*, 82
6 Cal.App.4th at 49.

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

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

24 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
25 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
26 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
27 (awarding attorneys' fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
28 *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, 34.⁵⁷ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent, supra*, 557 F.2d at 769.

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

The propriety of calculating and awarding attorneys' fees as a percentage of a monetary settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-

⁵⁷ 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 check and use other means to evaluate the reasonableness of a requested percentage fee[.]” and
2 “[t]he percentage [...] method survives in California.” *Id.* (internal quotes omitted).

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

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

18 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
19 Amount of \$360,000.00 on a non-reversionary basis. The requested attorneys’ fees are thirty-three
20 percent (33%) of the total value of the monetary settlement. In light of Class Counsel’s successful
21 prosecution and resolution of the cases, the requested attorneys’ fees are appropriate and
22 reasonable.

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

1 and should be approved on a percentage basis.

2 The percentage method is consistent with, and is intended to mirror, the practice in the
3 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
4 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful
5 evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to
6 the class is to review the consideration agreed to be paid by the named plaintiff. If the named
7 plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the
8 members of the class, who will enjoy the benefits of the settlement without incurring the risks of
9 bringing the claim, to pay less than the named plaintiff. In this Action, Plaintiff has agreed to a
10 contingency fee of at least one-third (1/3) of the recovery.⁵⁸

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

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

26 Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, the
27 PAGA Aggrieved Employee Group, and the State of California, and the results achieved justify
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⁵⁸ Aiwasian Decl., ¶ 9.

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 cases; (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 cases; (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 \$120,000.00 (which is 1/3 of the Gross 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 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 matter 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 actions.⁵⁹

⁵⁹ Aiwasian Decl., ¶¶ 15-17.

As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively participated in litigation of the Action.⁶⁰ Prior to commencing the lawsuit, 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.⁶¹ During the litigation of the action, Class Counsel had the opportunity to interview Plaintiff and other Class Members; reviewed and analyzed a large volume of documents and data produced by Defendant and obtained through other sources; and prepared damages, penalties, and valuation calculations.⁶² Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, discovery, and production of information, documents, and data, among other things; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁶³

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as "EXHIBIT A" to the accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff, the Class, and the State of California.⁶⁴ The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent 354.50 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff and the Class.⁶⁵ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating these cases, the requested attorneys' fees are fair, adequate, and reasonable.

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⁶⁰ Aiwarzian Decl., Exh. A.

⁶¹ *Id.*, ¶ 6 & Exh. A.

⁶² *Id.*, ¶ 6.

⁶³ *Ibid.*

⁶⁴ Aiwarzian Decl., Exh. A.

⁶⁵ *Id.*, ¶ 11.

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

2 The skill required to properly litigate the case is evident not only in the results achieved,
3 but in the steps necessary to reach those results. Defendant retained well-respected counsel to
4 represent its defenses. More specifically, Defendant and its counsel felt very strongly about
5 Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiff and
6 Class Counsel believed that the motion for class certification would be granted and that they would
7 prevail at trial.

8 Class Counsel undertook significant investigation, analysis, and research prior to filing the
9 cases, during the litigation, and prior to mediation. Class Counsel took steps to prepare the Action
10 for class certification and representative adjudication and had every intention of taking the case to
11 trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite
12 all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwezian,
13 Class Counsel used its extensive experience in the handling of class actions and complex wage-
14 and-hour litigation actions in order to obtain the Settlement with maximum efficiency.⁶⁶

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

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

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

28 ⁶⁶ Aiwezian Decl., ¶¶ 15-17.

Members, the State of California, and the PAGA Aggrieved Employee Group while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

As a result of this litigation and of settlement negotiations, Defendant agreed to pay a Gross Settlement Amount of \$360,000.00 to settle the Action. After deducting the attorneys' fees (\$120,000.00), litigation costs and expenses (\$10,480.92), Class Representative Service Award (\$5,000.00), Settlement Administration Costs (\$7,000.00), and PAGA Allocation (\$36,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$181,519.08.⁶⁷ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$5,456.89 and the average Individual Settlement Payment is currently estimated to be \$1,555.56.⁶⁸ The highest PAGA Settlement Payment is currently estimated to be \$240.18 and the average PAGA Settlement Payment is currently estimated to be \$102.27.⁶⁹ The Settlement offers significant monetary relief to the Settlement Class Members, the State of California, and the PAGA Aggrieved Employee Group.

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 cases without knowing whether any recovery would be obtained. Class Counsel has invested 354.50 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and the PAGA Aggrieved Employee Group.⁷⁰ Class Counsel has also incurred litigation costs and expenses in the amount of \$10,480.92.⁷¹

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷² Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷³ The skill and

⁶⁷ Phoenix Decl., ¶ 12; see also, n.4, *supra*.

⁶⁸ *Id.*, ¶ 13.

⁶⁹ *Id.*, ¶ 14.

⁷⁰ Aiwasian Decl., ¶ 11, Exh. A

⁷¹ See Part VII, *infra*.

⁷² Aiwasian Decl., ¶ 18.

⁷³ Aiwasian Decl., ¶¶ 15-17.

determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

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

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.⁷⁴

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

Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$360,000.00.⁷⁵ The Gross

⁷⁴ Phoenix Decl., ¶ 9.

⁷⁵ Aiwasian Decl., ¶¶ 5-8.

Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$5,456.89 and the average Individual Settlement Payment is currently estimated to be \$1,555.56.⁷⁶ The highest PAGA Settlement Payment is currently estimated to be \$240.18 and the average PAGA Settlement Payment is currently estimated to be \$102.27.⁷⁷

6. The Reputation and Ability of the Attorneys.

Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys' knowledge, skills, and experience in bringing these cases to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁷⁸

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.

⁷⁶ Phoenix Decl., ¶ 13.

⁷⁷ *Id.*, ¶ 14.

⁷⁸ Aiwasian Decl., ¶¶ 15-17.

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

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

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

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

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed

on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁷⁹ The chart demonstrates that Class Counsel has spent a total of 354.50 hours litigating the cases and finalizing the Settlement.⁸⁰ In light of the facts and circumstances of the cases, as well as the results that Class Counsel has achieved in these cases, Class Counsel has spent a reasonable number of hours on this Action. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

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

Class Counsel has been actively involved in these cases, prior to 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 its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$360,000.00.

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 \$700 per hour for services provided by Class Counsel.⁸¹ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$700 for legal service performed, by courts of this state.⁸² While the circumstances of every case is unique, the fact remains that the

⁷⁹ See Aiwarzian Decl., Exh. A.

⁸⁰ Aiwarzian Decl., ¶ 11.

⁸¹ Aiwarzian Decl., ¶ 12.

⁸² For example, final approval of the class action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees

work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

Applying the rate of \$700 per hour to 354.50 hours would place a reasonable value of \$248,150.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$120,000.0, which is one-third (1/3) of the total recovery, as provided for by the Settlement Agreement.

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

involved compensation at the rate of \$936.47 per hour; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved compensation at the rate of \$919.57 per hour; 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 compensation at the rate of \$766.05 per hour; 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 compensation at the rate of \$764.82 per hour; 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 compensation at the rate of \$855.96 per hour; 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 compensation at the rate of \$831.38 per hour; 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 compensation at the rate of \$780.77 per hour; 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 compensation at the rate of \$845.64 per hour. Aiwazian Decl., ¶ 12.

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 \$120,000.00 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 \$24,000.00. As set forth in the Declaration of Edwin Aiwarzian, Class Counsel has incurred a total of \$10,480.92 in litigation costs and expenses.⁸³ This amount was reasonable and necessary in the prosecution of the cases and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.⁸⁴ The cost savings of \$13,519.08 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸⁵ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$10,480.92 to Class Counsel.

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

As set forth in the accompanying Declaration of Yami Burns of Phoenix Settlement Administrators, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$7,000.00.⁸⁶ The costs incurred and to be incurred include, but are not limited to, expenses for translating, printing, copying, formatting, postage, envelopes, computer searches to locate addresses, calculation of payments to Settlement Class Members and members of the PAGA Aggrieved Employee Group, calculation of applicable payroll withholdings and

⁸³ Aiwarzian Decl., ¶ 19.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Phoenix Decl., ¶ 16.

1 payroll taxes, preparation and filing of appropriate IRS Forms, any costs associated with the
2 process for any uncashed settlement checks, and any other expenses the Settlement Administrator
3 incurs to complete the settlement process according to the terms of this Agreement.⁸⁷

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

6 **IX. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS FAIR**
7 **AND REASONABLE, AND SHOULD BE APPROVED.**

8 The Settlement provides for a Class Representative Service Award in the amount of
9 \$5,000.00 to Plaintiff Saul Andrade to compensate Plaintiff for the time and effort that he expended
10 on behalf of the Class. The requested Class Representative Service Award is both common and
11 reasonable and should be awarded.

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

19 The requested Class Representative Service Award is fair and appropriate because Plaintiff
20 spent a substantial amount of time and effort producing relevant documents and past employment
21 records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁸⁸
22 Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave,
23 information to support the pursuit of class and PAGA claims.⁸⁹ Plaintiff spend time speaking with
24 Class Counsel about his claims, describing his work experiences with Defendant, and gathering
25 and reviewing documents. These services merit the requested Class Representative Service Award
26 to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members

27 ⁸⁷ Phoenix Decl., ¶¶ 2 and 16.

28 ⁸⁸ Aiwasian Decl., ¶ 19; Declaration of Saul Andrade (“Andrade Decl.”), ¶¶ 3-5.

⁸⁹ Aiwasian Decl., ¶ 19; Andrade Decl., ¶¶ 3-5.

1 to date.

2 The requested Class Representative Service Award was fully disclosed in the Class Notice
3 that was mailed to the Class Members. No objections were made with regards to the requested
4 Class Representative Service Award. Accordingly, it is appropriate and just for Plaintiff Saul
5 Andrade to receive \$5,000.00 as a reasonable Class Representative Service Award, for his services
6 on behalf of the Class, the PAGA Aggrieved Employee Group, and the State of California, in
7 addition to his Individual Settlement Payment and PAGA Settlement Payment.

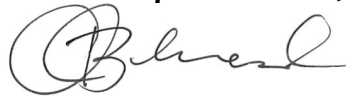
8 **X. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval
10 of the Settlement, and award Attorneys' Fees and Costs, the Class Representative Service Award,
11 Settlement Administration Costs, and allocation for the PAGA Allocation, in their entirety, as
12 sought herein; and permit the filing of a memorandum that exceeds the page limit.

13
14 Dated: October 3, 2023

LAWYERS for JUSTICE, PC

15
16 By:



Annabel Blanchard
Attorneys for Plaintiff and the Class