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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

CHIDIMMA IGBOAKAEZE, individually,
and on behalf of other members of the general
public similarly situated, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

VERA BRADLEY SALES, LLC, an unknown
business entity; VERA BRADLEY DESIGNS,
INC., an unknown business entity; and DOES
1 through 100, inclusive,

Defendants.

Case No.: 20STCV04294

Honorable Yvette M. Palazuelos
Department SSC-9

CLASS ACTION

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

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

Date: July 18, 2023
Time: 10:00 a.m.
Department: SSC-9

Complaint Filed: February 3, 2020
FAC Filed: July 15, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 18, 2023, at 10:00 a.m., in Department 9 of the
2 above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff
3 Chidimma Igboakaeze (“Plaintiff”) will and hereby does move for an order granting final approval
4 of:

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

- 8 • A Net Settlement Amount of approximately **\$100,541.77** will be fully distributed to the
9 Class Members who did not submit a timely and valid Request for Exclusion
10 (“Settlement Class Member”);
- 11 • **No Objections** were submitted to the settlement administrator, Phoenix Settlement
12 Administrators (“Settlement Administrator”);
- 13 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$87,500.00** to Lawyers for Justice, PC (“Class Counsel”),
15 representing thirty-five percent (35%) of the Total Settlement Amount, for attorneys’ fees, which
16 is reasonable and justified on a percentage-basis and also based on a lodestar cross-check;

17 3. Payment in the amount of **\$11,958.23** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$5,000.00** to the Settlement Administrator, Phoenix
20 Settlement Administrators (“Phoenix”), for Settlement Administration Costs;

21 5. Payment in the amount of **\$7,500.00** to Plaintiff Chidimma Igboakaeze, as
22 Enhancement Payment, for her time and effort in representing the Class; and

23 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
24 California Labor Code section 2698, *et seq.*, in the amount of \$37,500.00, of which seventy-five
25 percent (75%), or **\$28,125.00**, will be paid to the California Labor and Workforce Development
26 Agency (“LWDA Payment”) and twenty-five percent (25%), or **\$9,375.00**, will be distributed to
27 PAGA Members.
28

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

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declarations of Class Counsel (Edwin Aiwasian), Class Representative (Chidimma Igboakaeze),
6 and Settlement Administrator (Taylor Mitzner of Phoenix Settlement Administrators) in support
7 thereof; the pleadings and other records on file with the Court in this matter; and such evidence
8 and oral argument as may be presented at the hearing on this Motion.

9
10 Dated: June 21, 2023

LAWYERS for JUSTICE, PC

11
12 By:



Yasmin Hosseini
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Chidimma Igboakaeze (“Plaintiff” or “Class Representative”) seeks final approval of: (1) the Total Settlement Amount of \$250,000.00; (2) attorneys’ fees in the amount of \$87,500.00, which is thirty-five percent (35%) of the Total Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$11,958.23 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$5,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Chidimma Igboakaeze; and (5) allocation of \$37,500.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalty Amount”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees of Defendants in California employed between February 3, 2016 through July 22, 2021 (“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 Jeffrey A. Ross, Esq., and settlement negotiations. This matter has required 423.80 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the 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.

Plaintiff moves for final approval of the Enhancement Payment in the amount of \$7,500.00, to compensate Plaintiff for the time and effort that she expended spearheading this lawsuit on behalf of the Class, PAGA Members, and the State of California. Plaintiff also moves for final

¹ Second Amended Stipulation of Class Action and PAGA Settlement (“Settlement”, “Agreement”, or “Settlement Agreement”), ¶ 6.d.

1 approval of the payment to the Settlement Administrator in the amount of \$5,000.00 for Settlement
2 Administration Costs. Plaintiff also moves for final approval of the allocation of \$37,500.00 for
3 the PAGA Penalty Amount, of which \$28,125.00 will be paid to the California Labor Workforce
4 and Development Agency (“LWDA”) for its portion of the PAGA Penalty Amount (“LWDA
5 Payment”), and \$9,375.00 will be distributed to all current and former hourly-paid or non-exempt
6 employees of Defendants in California employed between May 6, 2019 through July 22, 2021
7 (“PAGA Members”) on a *pro rata* basis for their portion of the PAGA Penalty Amount.

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

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

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

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

27 Defendants Vera Bradley Sales, LLC and Vera Bradley Designs, Inc. (together,
28 “Defendants”) are an American luggage and handbag company headquartered in Fort Wayne,

1 Indiana and operate one location within California in the city of Torrance. Plaintiff Chidimma
2 Igboakaeze is a former employee of Defendants.

3 On February 3, 2020, Plaintiff filed a Class Action Complaint for Damages in the Superior
4 Court of California for the County of Los Angeles (“Court”), Case No. 20STCV04294, in the
5 above captioned lawsuit (the “Action”).

6 On May 6, 2020, Plaintiff provided written notice to the LWDA and Defendant (“LWDA
7 Letter”), giving notice of her intent to pursue civil penalties under the California Private Attorneys
8 General Act, California Labor Code § 2698, Et Seq. (“PAGA”), on behalf of herself and the State
9 of California.

10 On July 14, 2020, Plaintiff propounded multiple sets of discovery including Request for
11 Production of Documents, (Set One); Special Interrogatories, (Sets One & Two); and Form
12 Interrogatories, (Set One), on Defendants. On July 14, 2020, Plaintiff also noticed the deposition
13 of Defendants’ Persons Most Knowledgeable regarding job duties and organizational structure of
14 Defendants.

15 On July 15, 2020, Plaintiff filed a First Amended Class Action Complaint for Damages &
16 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
17 (“Operative Complaint”).

18 Plaintiff’s core allegation is that Defendants have violated the California Labor Code by
19 engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA
20 Members of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide
21 compliant meal and rest periods and associated premium pay, failing to timely pay wages during
22 employment and upon termination of employment, failing to provide compliant wage statements,
23 failing to maintain requisite payroll records, and failing to reimburse necessary business expenses,
24 and thereby engaged in unfair business practices in violation of California Business and
25 Professions Code section 17200, *et seq.*, which conduct gives rise to civil penalties pursuant to
26 PAGA. Plaintiff contends that she, the Class Members, and PAGA Members are entitled to, *inter*
27 *alia*, unpaid wages, penalties (including and not limited to penalties pursuant to PAGA), and
28 attorneys’ fees.

On August 12, 2020, Defendants filed an Answer to Plaintiff's First Amended Class Action Complaint, and thereafter, on September 8, 2020, Defendants filed an Amended Answer to Plaintiff's First Amended Class Action Complaint.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further deny that the Action is appropriate for class or representative treatment for any purpose other than for settlement purposes only.

The parties have actively litigated the Action since it commenced on February 3, 2020. The parties conducted 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 April 22, 2021, the Parties participated in a formal, full-day mediation conducted by Jeffrey A. Ross, Esq., 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 March 28, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On January 24, 2023, the Court entered an Order Granting 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, Enhancement Payment, Settlement Administration Costs, and allocation for the PAGA Penalty Amount.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants have agreed to pay a Total Settlement Amount of \$250,000.00 by making a one-time deposit of the Total Settlement Amount within thirty (30) calendar days of the Effective Date.² 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

² Settlement Agreement, ¶ 9.

1 \$87,500.00 and reimbursement of litigation costs and expenses in the amount of \$11,958.23, to
2 Class Counsel; (2) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Chidimma
3 Igboakaeze; (3) Settlement Administration Costs in the amount of \$5,000.00 to Phoenix; and (4)
4 PAGA Penalty Amount in the amount of \$37,500.00.³ The Net Settlement Amount, which is
5 estimated to be \$100,541.77, will be distributed *pro rata* in accordance with the Settlement
6 Agreement, and there is no reversion to Defendants.⁴

7 The Settlement Administrator will calculate each Class Member's *pro rata* share of the Net
8 Settlement Amount ("Individual Settlement Share"), by dividing the final Net Settlement Amount
9 by the Workweeks of all Settlement Class Members during the Release Period to yield the "Class
10 Workweek Value," and multiply each Settlement Class Member's individual Workweeks during
11 the Release Period by the Class Workweek Value to yield his or her Individual Settlement Share.⁵

12 The Settlement Administrator will calculate each PAGA Member's Individual PAGA
13 Payment by dividing the 25% portion of the PAGA Penalty Amount attributed to PAGA Members,
14 i.e., \$9,375.00, by the total number of Workweeks worked by all PAGA Members during the
15 PAGA Period ("Total PAGA Workweeks") resulting in the PAGA Workweek Value and then
16 multiplying the PAGA Workweek Value by the number of PAGA Workweeks worked by each
17 individual PAGA Member during the PAGA Period.⁶

18 Class Members had sixty (60) calendar days after the initial mailing of the Class Notice to
19 Class Members to opt out of the Class Settlement, object to the Class Settlement, and/or dispute
20 the number of Workweeks credited to which they were credited ("Response Deadline").⁷ The
21 Response Deadline was May 1, 2023.⁸ ***As of the date of this Motion, the Settlement***
22 ***Administrator has not received any Requests for Exclusion from the Class Settlement***

23 _____
24 ³ Settlement Agreement, ¶¶ 10, 11, 12, and 13.

25 ⁴ This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Taylor Mitzner
26 with Respect to Notice and Settlement Administration ("Phoenix Settlement Administrators Declaration" or "Phoenix
27 Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and
28 expenses in the maximum amount of \$30,000.00, which is allocated under the Settlement. However, Class Counsel
seeks the amount of only \$11,958.23 for reimbursement of litigation costs and expenses, and the difference of
\$18,041.77 will remain part of the Net Settlement Amount.

⁵ Settlement Agreement, ¶ 14.b.

⁶ *Id.*, ¶ 5.

⁷ *Id.*, ¶ 6.gg.

⁸ Phoenix Decl., ¶¶ 7, 8, and 9.

1 (*“Requests for Exclusion”*) or *Notice of Objection to the Class Settlement (“Notice of*
2 *Objection”*) from Class Members.⁹

3 Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as
4 wages, which will be reported on an IRS Form W-2, eighty percent (80%) as penalties and interest,
5 which will be reported on an IRS Form 1099.¹⁰ Any payment for an Individual PAGA Payment
6 will be allocated as penalties, will not be subject to taxes or withholding, and will be reported on
7 an IRS Form-1099, if necessary.¹¹ Settlement Class Members will be issued payment of their
8 Individual Settlement Shares subject to reduction for the employee’s share of taxes and
9 withholdings with respect to the wage portion of each Individual Settlement Share (the net
10 payment is referred to as an “Individual Settlement Payment”).¹² Defendants will pay the
11 employer’s share of payroll taxes and contributions with respect to the wage portion of Individual
12 Settlement Shares in addition to the Total Settlement Amount.¹³

13 The Individual Settlement Payment checks issued to Settlement Class Members and
14 Individual PAGA Payment checks issued to PAGA Members will be valid and negotiable for one
15 hundred eighty (180) calendar days from the date of issuance, and thereafter, shall be canceled.¹⁴
16 All funds associated with such cancelled checks will be distributed by the Settlement
17 Administrator, in accordance with California Code of Civil Procedure section 384, to Los Angeles
18 Legal Aid Foundation.¹⁵ The parties have represented that they do not have any financial interest
19 in Los Angeles Legal Aid Foundation or otherwise have a relationship with Los Angeles Legal
20 Aid Foundation that could create a conflict of interest.¹⁶

21 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

22 The Court-appointed Settlement Administrator, Phoenix Settlement Administrators, has
23 taken all necessary steps to effectuate the notice and settlement administration process, as set forth
24

25 ⁹ Phoenix Decl., ¶¶ 7 and 8.

26 ¹⁰ Settlement Agreement, ¶ 25.

27 ¹¹ *Id.*

28 ¹² *Ibid.*

¹³ *Id.*, ¶ 25.

¹⁴ *Id.*, ¶ 19.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

1 in the Court's January 24, 2023 Preliminary Approval Order.

2 On February 14, 2023, Phoenix received a data file from Defendants' counsel that
3 contained each Class Member's full names, last known mailing addresses, , and dates worked for
4 Defendants during the Release Period and, if applicable, during the PAGA Period ("Class List").
5 The final mailing list contained one hundred sixty-two (162) individuals identified as Class
6 Members and thirty-three (33) individuals identified as PAGA Members.¹⁷ Phoenix processed the
7 names and addresses through the National Change of Address Database ("NCOA") and updated
8 the Class Data and List with any updated addresses located.¹⁸

9 On February 28, 2023, Phoenix mailed the Notice via U.S. first class mail, in English and
10 Spanish, to all one hundred sixty-two (162) Class Members and thirty-three (33) PAGA Members
11 on the Class List.¹⁹

12 As of the date of this Motion, fourteen (14) Class Notices were returned from the Post
13 Office as undeliverable without forwarding addresses.²⁰ Phoenix performed a skip-trace search on
14 the fourteen (14) Notices that were returned to Phoenix without forwarding addresses, and
15 promptly re-mailed to those Class Members via first class mail.²¹

16 As of the date of this Motion, the Settlement Administrator has not received any Notices
17 of Objection or Requests for Exclusion from Class Members.²²

18 To date, there are one hundred sixty-two (162) Class Members who did not submit a timely
19 and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members,
20 representing 100% of the Class.²³ Pursuant to the terms of the Settlement, the Net Settlement
21 Amount of approximately \$100,541.77 will be distributed to Settlement Class Members in
22 accordance with the terms of the Settlement.²⁴ The highest Individual Settlement Share is currently
23 estimated to be \$2,999.17 and the average Individual Settlement Share is currently estimated to be
24

25 ¹⁷ Phoenix Decl., ¶ 3.

26 ¹⁸ *Id.*, ¶ 4.

27 ¹⁹ *Id.*, ¶ 5.

28 ²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.*, ¶ 7 and 8.

²³ *Id.*, ¶ 10.

²⁴ *Id.*, ¶ 12; see also, n.1 and n.6, *supra*.

\$509.26.²⁵ The highest Individual PAGA Payment is currently estimated to be \$1,000.00 and the average Individual PAGA Payment is currently estimated to be \$284.09.²⁶

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

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

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

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

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

²⁵ Phoenix Decl., ¶ 13. The actual average and highest Individual Settlement Shares will be larger than the amounts stated in the Phoenix Settlement Administrators 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 \$30,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$18,041.77, will be part of the Net Settlement Amount). See n.5, *supra*.

²⁶ *Id.*, ¶ 14.

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 case since it was commenced on February 3, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial, prior to reaching the Settlement.²⁷

The parties conducted significant formal and informal discovery and investigation into the facts of the case, and also formally and informally exchanged a large volume of information, documents, and data throughout the course of the litigation and in connection with mediation and settlement negotiations.²⁸ The volume of data and documents that Class Counsel reviewed and analyzed included but was not limited to: Plaintiff’s employment records, a detailed sampling of Class Members’ time and pay data, several versions of Defendants’ Associate Handbooks, company policy acknowledgements, agreements (including but not limited to, California Meal Break Waiver Agreement), internal memoranda, job descriptions, Defendants’ operations and employment practices, policies (including but not limited to, Travel and Entertainment Policy, Non-Exempt Associate Electronic Communications Policy, and Appearance and Dress policy), and procedures (including but not limited to Defendants’ Attendance Incident Tab, Behavioral Rules of Conduct, and Quarterly Connections), among other information and documents.²⁹ Class Counsel researched applicable law, developed damages/valuation models in preparation for

²⁷ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

²⁸ *Id.*

²⁹ *Ibid.*

1 mediation and settlement negotiations, and met and conferred with Defendants' counsel on
2 numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery,
3 and the production of information, documents, and data in the course of litigation as well as in
4 connection with mediation and settlement negotiations.³⁰ Class Counsel interviewed and obtained
5 information from Plaintiff and Class Members.³¹ Class Counsel propounded multiple sets of
6 formal written discovery requests on Defendants and noticed the depositions of Defendants'
7 Person Most Knowledgeable designees regarding organizational structure and job duties. Counsel
8 for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the
9 pleadings, discovery, and the production of documents and data prior to the mediation.³² Class
10 Counsel also drafted pleadings and Plaintiff's mediation brief and prepared for and attended court
11 proceedings, settlement negotiations, and the mediation, among other tasks.³³

12 After conducting significant formal and informal discovery and investigation into the facts
13 of the case, the parties participated in a formal, full-day mediation conducted by Jeffrey A. Ross,
14 Esq., a well-regarded mediator experienced in mediating complex labor and employment
15 matters.³⁴ In the course of mediation and settlement negotiations, the parties exchanged class
16 information, and engaged in intensive discussions regarding their evaluations of the case and
17 various aspects of the case, including but not limited to, Defendants' financial condition, the risks
18 and delays of further litigation, the risks to the Parties of proceeding with class certification and/or
19 representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-
20 and-hour law and enforcement, rounding, regular rate of pay, on-premises breaks, *de minimus*
21 theory, wage statements claims, bag checks, and representative PAGA claims, as well as the
22 evidence produced and analyzed, and the possibility of appeals, among other things.³⁵ During all
23 settlement discussions, the parties conducted their negotiations at arm's length in an adversarial
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26 ³⁰ Aiwazian Decl., ¶ 6.

27 ³¹ Ibid.

28 ³² Ibid.

³³ Ibid.

³⁴ Aiwazian Decl., ¶ 8.

³⁵ Ibid.

position.³⁶ Arriving at a settlement that was acceptable to the parties was not easy.³⁷ Defendants and their counsel felt very strongly about Defendants' ability to prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class certification would be obtained and Plaintiff would prevail at trial.³⁸ 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 matter was 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.³⁹

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case 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.⁴⁰ Class Counsel also reviewed and analyzed a large volume of documents produced by Defendants and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses, as well as facts discovered.⁴¹ The Settlement was based on this large volume of facts, evidence, and investigation.⁴² Additionally, Class Counsel has extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.⁴³

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

The Settlement, which provides for a Total Settlement Amount of \$250,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁴ The Settlement

³⁶ Ibid.

³⁷ Ibid.

³⁸ Aiwazian Decl., ¶ 8.

³⁹ Ibid.

⁴⁰ *Id.*, ¶ 6.

⁴¹ *Id.*, ¶ 7.

⁴² Ibid.

⁴³ *Id.*, ¶¶ 16-19.

⁴⁴ *Id.*, ¶¶ 8 & 22.

was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation.⁴⁵ Had the action not settled, Defendants would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendants contended that individualized questions of fact would predominate over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendants 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, Defendants also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

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

⁴⁵ 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 Defendants for the alleged violations of wage-and-hour
3 laws. Moreover, the potential individual recovery that could be obtained by a Class Member would
4 not be significant enough to provide him or her with the incentive to sue. By granting final approval
5 of the Settlement, the Court can approve a resolution that provides a certain and substantial
6 recovery for Class Members, the State of California, and PAGA Members.

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

8 The Settlement, which provides for a Total Settlement Amount of \$250,000.00, represents
9 a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using
10 information and data uncovered through extensive case investigation, formal and informal
11 discovery, and the exchange of information in the context of mediation. The Settlement takes into
12 account the potential risks and rewards inherent in any case and, in particular, in this matter.
13 Moreover, considering all the facts in the case, the Total Settlement Amount represents a
14 considerable recovery.

15 Even after deducting attorneys' fees in the amount of \$87,500.00, litigation costs and
16 expenses in the amount of \$11,958.23, Enhancement Payment in the amount of \$7,500.00,
17 Settlement Administration Costs in the amount of \$5,000.00, and PAGA Penalty Amount in the
18 amount of \$37,500.00 from the Total Settlement Amount of \$250,000.00, the Net Settlement
19 Amount is currently estimated to be \$100,541.77.⁴⁶ Under the Settlement Agreement, the Total
20 Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As
21 discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the
22 Net Settlement Amount, based on the number of Workweeks credited to him or her. To date, there
23 are one hundred sixty-two (162) Settlement Class Members, representing 100% of the Class
24 Members.⁴⁷ The highest Individual Settlement Share to a Settlement Class Member is currently
25 estimated to be \$2,999.17 and the average Individual Settlement Share is currently estimated to be
26 \$509.26.⁴⁸ The highest Individual PAGA Payment to PAGA Members is currently estimated to

27 ⁴⁶ Phoenix Decl., ¶ 13; see n.6, *supra*.

28 ⁴⁷ *Id.*, ¶ 10.

⁴⁸ *Id.*, ¶ 13.

1 be \$1,000.00 and the average Individual PAGA Payment is currently estimated to be \$284.09.⁴⁹
2 These are significant individual recoveries, particularly in light of the risks of litigation.

3 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational
4 basis [to warrant approval], particularly if recommended by experienced and competent class
5 counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
6 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute
7 the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the
8 Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class
9 Members, the State of California, and PAGA Members.⁵⁰ Although the recommendations of Class
10 Counsel are not conclusive, the Court can properly take the recommendations into account,
11 particularly if Class Counsel appears to be competent, has experience with this type of litigation,
12 and significant discovery and investigation have been completed, as is the case here. Conte &
13 Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant
14 final approval of the Settlement.

15 **D. The Class Was Represented by Competent Counsel.**

16 Class Counsel has extensive experience in employment class action law and complex
17 wage-and-hour litigation.⁵¹ Lawyers for Justice, PC has been appointed class counsel in numerous
18 complex wage-and-hour cases, and has recovered millions of dollars for individuals in
19 California.⁵² Both parties’ counsel were capable of assessing the strengths and weaknesses of the
20 Class Members’ claims against Defendants and the benefits of the Settlement under the
21 circumstances of the case and in the context of a private, consensual settlement agreement.

22 **E. There Are No Objections to the Class Settlement.**

23 The Settlement has been well received by the Class – *not a single Class Member objected*
24 *to the Class Settlement.*⁵³ Specifically, no objections have been made as to the Total Settlement
25 Amount or requested Attorneys’ Fees and Costs, Enhancement Payment, Settlement

26 ⁴⁹ Phoenix Decl., ¶ 14.

27 ⁵⁰ Aiwasian Decl., ¶ 22.

28 ⁵¹ *Id.*, ¶¶ 16-19.

⁵² *Ibid.*

⁵³ Phoenix Decl., ¶¶ 8 and 9.

Administration Costs, or the allocation for PAGA Penalty Amount. California courts have consistently found that a small number of objectors indicates the class's 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 in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will “chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims.” *Lealao, supra*, 82 Cal.App.4th at 53.

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

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

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

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

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, 34.⁵⁴ The purpose of this equitable doctrine is to spread litigation costs
3 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
4 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 the
7 settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting
8 attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties
9 enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine.
10 See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317;
11 *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 cross-
17 check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and
18 "[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.

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

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

Under the terms of the Settlement Agreement, Defendants will pay a Total Settlement Amount of \$250,000.00 on a non-reversionary basis. The requested attorneys’ fees are thirty-five percent (35%) of the total value of the monetary settlement. In light of Class Counsel’s successful litigating and resolution of the case, the requested attorneys’ fees are appropriate and reasonable.

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

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

⁵⁵ Aiwazian Decl., ¶ 10.

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

1 experience, reputation and ability of the attorney; (10) the undesirability of the cases; (11) the
2 nature and length of the professional relationship with the client; and (12) awards in similar cases.
3 *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

4 Each and every one of these factors favors the attorneys' fees sought here; however, some
5 of the most relevant factors to this Court's fee determination will be addressed herein. The award
6 of attorneys' fees in the amount of \$87,500.00 (which is 35% of the Total Settlement Amount) is
7 commensurate with the time, effort, and expense dedicated to the case, the contingent nature of
8 Class Counsel's fee and the risks taken in commencing the case, the skill and determination
9 required, the results that Class Counsel has achieved, and the value of the settlement that Class
10 Counsel has obtained for the Class Members.

11 **1. Time & Labor.**

12 Class Counsel used its experience and skills, and dedicated the full extent of resources, to
13 litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as
14 demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling
15 of class actions and complex litigation actions.⁵⁶

16 As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively
17 participated in litigation of the Action.⁵⁷ Prior to commencing the lawsuit, Class Counsel had
18 conducted a significant amount of investigation into the factual and legal issues, Defendants'
19 business, and their operations and employment policies, practices, and procedures.⁵⁸ During the
20 litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; reviewed
21 and analyzed a large volume of pages of documents and data produced by Defendants and obtained
22 through other sources; and prepared damages/valuation calculations.⁵⁹ Class Counsel also met and
23 conferred with Defendants' counsel over the issues relating to pleadings, case management,
24 discovery, and production of information, documents, and data, among other things; engaged in
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27 ⁵⁶ Aiwasian Decl., ¶¶ 16-19.

⁵⁷ *Id.*, Exh. A.

⁵⁸ *Id.*, ¶ 6 & Exh. A.

⁵⁹ *Id.*, ¶ 6.

1 settlement negotiations with Defendants' counsel; and prepared for and attended court
2 proceedings, mediation, and settlement negotiations.⁶⁰

3 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
4 matter diligently and with maximum efficiency and has fully and actively participated in the
5 litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
6 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel
7 has spent performing tasks on behalf of Plaintiff and the Class.⁶¹ The Task and Time Chart is
8 thorough and comprehensive, and was prepared so that the Court can pursue it without having to
9 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
10 chart, which sets forth the history of the work performed by Class Counsel, commencing with the
11 pre-filing analysis and research, formal and informal discovery, continuing up to settlement and
12 final approval. Class Counsel has spent 423.80 hours performing tasks and to obtain a significant
13 recovery on behalf of Plaintiff and the Class.⁶² These hours were required to bring this matter to
14 its successful conclusion. In light of the value of time expended and the carrying of costs involved
15 in litigating the case, the requested attorneys' fees are fair, adequate, and reasonable.

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

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

22 Class Counsel undertook significant investigation, analysis, and research prior to filing the
23 case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter
24 for class certification and representative adjudication and had every intention of taking the case to
25 trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite
26 all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwarzian,

27 ⁶⁰ Ibid.

28 ⁶¹ *Id.*, Exh. A.

⁶² *Id.*, ¶ 12.

Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation actions in order to obtain the Settlement with maximum efficiency.⁶³

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

The Settlement represents an excellent resolution of the action, given the risks inherent in litigating the case through certification proceedings, trial, and/or appeals. Had the case not settled, Defendants would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendants, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the case 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, the State of California, and PAGA Members 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, Defendants agreed to pay a Total Settlement Amount of \$250,000.00 to settle the matter. After deducting the attorneys' fees (\$87,500.00), litigation costs and expenses (\$11,958.23), Enhancement Payment (\$7,500.00), Settlement Administration Costs (\$5,000.00), and PAGA Penalty Amount (\$37,500.00) from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$100,541.77.⁶⁴ 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 \$2,999.17 and the average Individual Settlement Share is currently estimated to be \$509.26.⁶⁵ The highest Individual PAGA Payment is currently estimated

⁶³ Aiwazian Decl., ¶¶ 16-19.

⁶⁴ Phoenix Decl., ¶ 12; see n.6, *supra*.

⁶⁵ *Id.*, ¶ 13.

to be \$1,000.00 and the average Individual PAGA Payment is currently estimated to be \$284.09.⁶⁶ The Settlement offers significant monetary relief to the Settlement Class Members, the State of California, and PAGA Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 423.80 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and PAGA Members.⁶⁷ Class Counsel has also incurred litigation costs and expenses in the amount of \$11,958.23.⁶⁸

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁹ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷⁰ The skill and 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

⁶⁶ Aiwasian Decl., ¶ 14.

⁶⁷ *Id.*, ¶ 11, Exh. A

⁶⁸ See Part VII, *infra*.

⁶⁹ *Id.*, ¶ 20.

⁷⁰ *Id.*, ¶¶ 16-19.

Counsel has devoted to litigating the case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses.

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.⁷¹

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 Total Settlement Amount of \$250,000.00.⁷² The Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be \$2,999.17 and the average Individual Settlement Share is currently estimated to be \$509.26.⁷³ The highest Individual PAGA Payment is currently estimated to be \$1,000.00 and the average Individual PAGA Payment is currently estimated to be \$284.09.⁷⁴

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 this case 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.⁷⁵

⁷¹ Phoenix Decl., ¶¶ 8 and 9.

⁷² Aiwasian Decl., ¶¶ 5-8.

⁷³ *Id.*, ¶ 13.

⁷⁴ *Id.*, ¶ 14.

⁷⁵ *Id.*, ¶¶ 16-19.

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

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

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

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

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

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

battles would have followed as the case moved toward certification and trial, including taking and defending depositions of percipient witnesses and experts, propounding 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 information, data, and documents that were produced by Defendants 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.⁷⁶ The chart demonstrates that Class Counsel has spent a total of 423.80 hours litigating the case and finalizing the Settlement.⁷⁷ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved in these cases, Class Counsel has 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

⁷⁶ See Aiwazian Decl., Exh. A.

⁷⁷ Aiwazian Decl., ¶ 12.

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

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

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$750 per hour for services provided by Class Counsel.⁷⁸ Lawyers for Justice, PC has been awarded attorneys’ fees, compensating the firm at the rate of at least \$750 for legal service performed, by courts of this state.⁷⁹ While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys’ fees.

Applying the rate of \$750 per hour to 423.80 hours would place a reasonable value of \$317,850.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys’ fees in the amount of \$87,500.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

⁷⁸ Aiwarzian Decl., ¶ 13.

⁷⁹ 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 involved an hourly rate of \$936.47; 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 an hourly rate of \$919.57; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys’ fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys’ fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys’ fees involved a higher hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys’ fees involved a higher hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney’s fees involved a higher hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys’ fees involved a higher hourly rate of \$845.64. Aiwarzian Decl., ¶ 12.

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

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys’ fees in the amount of \$87,500.00 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 \$30,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$11,958.23 in litigation costs and expenses.⁸⁰ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁸¹ The cost savings of \$18,041.77 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in

⁸⁰ Aiwazian Decl., ¶ 20.

⁸¹ *Ibid*.

accordance with the Settlement.⁸² Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$11,958.23 to Class Counsel.

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

As set forth in the accompanying Phoenix Settlement Administrator's Declaration, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$5,000.00.⁸³ The costs incurred and to be incurred include, but are not limited to, (i) preparing, translating, printing, and mailing the Notice of Class Notice Action Settlement ("Class Notice"); (ii) responding to inquiries from Class Members; (ii) calculating the number of weeks each Class Member worked during the period from February 3, 2016 to July 22, 2021 ("Release Period") and the number of workweeks that each PAGA Member worked during the time period from May 6, 2019 to July 22, 2021 ("PAGA Period"); (iv) determining the validity of letters indicating a request to be excluded from the Class Settlement ("Request for Exclusion"), written objections to the Class Settlement ("Notices of Objection"), and/or dispute regarding the number of Workweeks submitted by Class Members and/or PAGA Members; (v) calculating the Net Settlement Amount and the Individual Settlement Shares to Class Members; (vi) calculating and issuing the Individual Settlement Payments and distributing them to Settlement Class Members and Individual PAGA Payments to PAGA Members; (vii) issuing the payment to Class Counsel for Attorneys' Fees and Costs, the Enhancement Payment to Plaintiff, LWDA Payment to the LWDA, Settlement Administration Costs to itself, and the employer/employee payroll taxes to the appropriate taxing authorities; and (viii) such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or as the Court orders.⁸⁴

The total costs requested are less than the maximum amount allocated under the Settlement Agreement.⁸⁵ The cost savings of \$2,000.00 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement. Accordingly,

⁸² Aiwasian Decl., ¶ 20.

⁸³ Phoenix Decl., ¶ 16.

⁸⁴ *Id.*, ¶ 2.

⁸⁵ Settlement Agreement, ¶ 12.

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 \$5,000.00.

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

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

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and efforts spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative 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 Enhancement Payment is fair and appropriate because Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁸⁶ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain, and gave, information to support the pursuit of class and PAGA claims.⁸⁷ Accordingly, it is appropriate and just for Plaintiff Chidimma Igboakaeze to receive an Enhancement Payment for her services on behalf of the Class, PAGA Members, and the State of California, in addition to her individual settlement payments.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Attorneys' Fees and Costs, Enhancement Payment, Settlement

⁸⁶ Aiwasian Decl., ¶ 20; Declaration of Chidimma Igboakaeze ("Igboakaeze Decl."), ¶¶ 3-5.

⁸⁷ Aiwasian Decl., ¶ 20; Igboakaeze Decl., ¶¶ 3-5.

Administration Costs, and allocation for the PAGA Penalty Amount, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: June 21, 2023

LAWYERS for JUSTICE, PC

By:



Yasmin Hosseini
Attorneys for Plaintiff and the Class