

Arby Aiwasian (SBN 269827)
Elizabeth Parker-Fawley (SBN 301592)
Ryan Slinger (SBN 351297)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021
Attorneys for Plaintiffs and the Class

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

CHRISTIAN WIRTH, BRANDON
TREIBER, GIANCARLO MONROY,
individually, and on behalf of other members
of the general public similarly situated and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act,

Plaintiffs,

vs.

MB2 RACEWAY, INC., a California
corporation; MB2 RACEWAY T.O., INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 20STCV22600

Honorable Elihu M. Berle
Department 6

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT, ATTORNEYS' FEES
AND COSTS, AND ENHANCEMENT
AWARDS; MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: January 6, 2025
Time: 9:00 a.m.
Department: 6

Complaint Filed: June 11, 2020
FAC Filed: January 13, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on January 6, 2025, at 9:00 a.m., in Department 6 of the
2 above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs
3 Christian Wirth, Brandon Treiber, and Giancarlo Monroy (“Plaintiffs” or “Class Representatives”)
4 will and hereby do move for an order granting final approval of:

5 1. The Class Action and PAGA Settlement (“Settlement,” “Agreement” or
6 “Settlement Agreement”) on the grounds that the Settlement Agreement is fair, adequate, and
7 reasonable because a Net Settlement Amount of approximately \$95,955.28 will be fully distributed
8 to all Class Members who do not submit a timely and valid Request for Exclusion (“Settlement
9 Class Members”), and **no Objections or Requests for Exclusion** have been submitted to the
10 Settlement Administrator, Phoenix Class Action Administration Solutions (“Phoenix” or
11 “Settlement Administrator”), as of the time of filing this Motion;

12 2. Payment in the amount of **\$87,500.00** to Lawyers for Justice, PC (“Class Counsel”),
13 representing 35% of the Total Settlement Amount, for the Attorneys’ Fees, which is reasonable
14 and justified on a percentage-basis;

15 3. Payment in the amount of **\$17,544.72** to Class Counsel for Attorneys’ Costs;

16 4. Payment in the amount of **\$9,000.00** to the Settlement Administrator for Settlement
17 Administration Costs;

18 5. Payment in the amount of **\$5,000.00** to each Plaintiff (for a total of \$15,000.00) as
19 Enhancement Awards, for their time and effort in representing the Class; and

20 6. Allocation of penalties under the Private Attorneys General Act of 2004, California
21 Labor Code section 2698, *et seq.*, in the amount of **\$25,000.00** (“PAGA Penalty Amount”), of
22 which 75%, or **\$18,750.00**, will be paid to the California Labor and Workforce Development
23 Agency (“LWDA”) (“LWDA Payment”) and 25%, or **\$6,250.00**, will be distributed to Aggrieved
24 Employees on a *pro rata* basis, based on their Workweeks during the PAGA Release Period
25 (“Aggrieved Employee Amount”).

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

1 This motion is based upon the following Memorandum of Points and Authorities; the
2 Declarations of Class Counsel (Elizabeth Parker-Fawley), Class Representatives (Christian Wirth,
3 Brandon Treiber, and Giancarlo Monroy) and Settlement Administrator (Taylor Mitzner of
4 Phoenix Class Action Administration Solutions) in support thereof; the pleadings and other records
5 on file with the Court in this matter; and such evidence and oral argument as may be presented at
6 the hearing on this Motion.

7
8 Dated: October 24, 2024

LAWYERS for JUSTICE, PC



9
10 By: _____
11 Elizabeth Parker-Fawley
12 *Attorneys for Plaintiffs*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Christian Wirth, Brandon Treiber, and Giancarlo Monroy (“Plaintiffs” or “Class Representatives”) seek final approval of: (1) the Total Settlement Amount of \$250,000.00¹; (2) attorneys’ fees in the amount of \$87,500.00 which is 35% of the Total Settlement Amount², and reimbursement of litigation costs and expenses in the amount of \$17,544.72 (together, referred to as the “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$9,000.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”); (4) Enhancement Awards in the amount of \$5,000.00 to each Plaintiff (for a total of \$15,000.00); and (5) allocation of \$25,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalty Amount”).

Plaintiffs seek relief on behalf of the following Class: All current and former hourly-paid or non-exempt employees of Defendants in California employed at either the Thousand Oaks or Sylmar locations during the Class Release Period (“Class” or “Class Members”).³

Plaintiffs move for final approval of Attorneys’ Fees and Costs. This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during the formal mediation, and settlement negotiations thereafter. This matter has required hundreds of hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents 35% of the Total Settlement Amount, is fully supported by the use of the percentage-fee method. The requested attorneys’ fees are also supported under the lodestar cross-check method.⁴

Plaintiffs move for final approval of the Enhancement Awards in the amount of \$5,000.00 each to Plaintiffs Christian Wirth, Brandon Treiber, and Giancarlo Monroy (for a total of

¹ Class Action and PAGA Settlement (“Settlement Agreement”), ¶ 7(u).

² *Id.*, ¶ 11.

³ *Id.*, ¶ 7(d). “Class Release Period” means the time period from June 11, 2016, through October 22, 2023. *See id.*, ¶ 7(f).

⁴ Applying a reasonable rate of \$850 to 407 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$345,950.00 on Class Counsel’s services, and Class Counsel seeks an attorneys’ fees award of \$87,500.00.

1 \$15,000.00), to compensate Plaintiffs for the time and effort that they expended spearheading the
2 lawsuit on behalf of the Class, Aggrieved Employees, and the State of California. Plaintiffs also
3 move for final approval of the payment to the Settlement Administrator in the amount of \$9,000.00
4 for Settlement Administration Costs. Plaintiffs also move for final approval of the allocation of
5 \$25,000.00 for the PAGA Penalty Amount, of which 75%, i.e., \$18,750.00, will be paid to the
6 California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA
7 Penalty Amount (“LWDA Payment”), and 25%, i.e., \$6,250.00, will be distributed to the
8 Aggrieved Employees⁵ (“Aggrieved Employee Amount”).

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

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

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

27 ⁵ “Aggrieved Employees” means all current and former hourly-paid or non-exempt employees of Defendants in
28 California employed during the PAGA Release Period. ¶ 7(y).
“PAGA Release Period” means the time period from April 2, 2019 through October 22, 2023. ¶ 7(aa).

Defendants own and operate indoor Go-Kart race tracks. Plaintiffs Christian Wirth, Brandon Treiber, and Giancarlo Monroy are former employees of Defendants.

On April 17, 2020, Plaintiff Wirth sent an additional, follow-up correspondence to the Labor and Workforce Development Agency and Defendants regarding the specific provisions of the California Labor Code and Industrial Welfare Commission Wage Orders that are alleged to have been violated by Defendants (“PAGA Notice Returned Resend Letter”).

On May 8, 2020, Plaintiff Treiber provided notice by electronic upload to the Labor & Workforce Development Agency and written notice by certified mail to Defendants of the specific provisions of the California Labor Code and Industrial Welfare Commission Wage Order that are alleged to have been violated by Defendants (“Treiber PAGA Notice”).

1 On January 13, 2021, Plaintiffs filed a First Amended Class Action Complaint for Damages
2 & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
3 in the Action. (the “Operative Complaint”).

4 On July 10, 2023, the Parties participated in a formal, full-day mediation conducted by
5 Henry Bongiovi, Esq., a well-regarded mediator experienced in mediating complex labor and
6 employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the
7 Settlement described herein to resolve the Action in its entirety.

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

18 On May 13, 2024, Plaintiffs filed a Motion for Preliminary Approval of Class Action and
19 PAGA Settlement and supporting documents (“Motion for Preliminary Approval”). On August
20 22, 2024, the Hearing on the Motion for Preliminary Approval occurred, and the Court issued a
21 minute order ordering Plaintiffs to submit a revised Proposed Order Granting Preliminary
22 Approval of Class Action and PAGA Settlement with the revised Class Notice by August 27, 2024.
23 On August 27, 2024, Plaintiffs submitted a Revised Proposed Order Granting Preliminary
24 Approval of Class Action and PAGA Settlement with the revised Class Notice. On August 28,
25 2024, the Court entered an Order Granting Preliminary Approval of Class Action and PAGA
26 Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of the
27 Settlement Agreement, the Class Notice, and the proposed administration procedures and
28 associated deadlines. Plaintiffs now move for final approval of the Settlement, including

Attorneys' Fees and Costs, Enhancement Awards, Settlement Administration Costs, and the PAGA Penalty Amount.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants agreed to make a deposit of \$125,000.00 into the qualified settlement account established by the Settlement Administrator within ten (10) calendar days after the Court granted Preliminary Approval ("First Installment") and a deposit of \$125,000.00 plus an amount sufficient for Employer's Taxes into the qualified settlement account established by the Settlement Administrator within ten (10) calendar days after the Court grants Final Approval ("Second Installment").⁶ 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 \$87,500.00 and reimbursement of litigation costs and expenses in the amount of \$17,544.72⁷, to Class Counsel; (2) Enhancement Awards in the amount of \$5,000.00 to each Plaintiff (for a total of \$15,000.00); (3) Settlement Administration Costs in the amount of \$9,000.00 to Phoenix; and (4) PAGA Penalty Amount of \$25,000.00.⁸ The Net Settlement Amount, which is estimated to be \$95,955.28, will be distributed in accordance with the Settlement Agreement and there is no reversion to Defendants.

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

The Settlement Administrator will determine each Aggrieved Employee's *pro rata* share of 25% of the PAGA Penalty Amount ("Individual PAGA Payment"), according to the following

⁶ Settlement Agreement, ¶¶ 10(b) & 10(c).

⁷ Parker-Fawley Decl., ¶ 18, Exh. B. This amount is lower than the \$35,000.00 allocated for litigation costs under the Settlement Agreement. The difference of \$17,455.28 will remain in the Net Settlement Amount.

⁸ Settlement Agreement, ¶¶ 11-14.

⁹ *Id.*, ¶ 15(b).

methodology: the Settlement Administrator will divide the Aggrieved Employee Amount by the total number of Workweeks of all Aggrieved Employees during the PAGA Release Period to yield the “PAGA Workweek Value,” and multiply each Aggrieved Employee’s individual Workweeks during the PAGA Release Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.¹⁰

Class Members have 45 calendar days from the initial mailing of the Class Notice (“Response Deadline”) to submit a Request for Exclusion, Objection, and/or Workweeks Dispute, making the Response Deadline November 14, 2024.¹¹ To date, the Settlement Administrator has not received any Objection, Workweeks Dispute, or Requests for Exclusion from Class Members.¹²

Each Individual Settlement Share will be allocated as follows: 20% as wages, which will be reported on an IRS Form W-2; and the remaining 80% as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹³ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of each Individual Settlement Share (the net payment is referred to as an “Individual Settlement Payment”).¹⁴ Defendants will pay the Employer Taxes in addition to the Total Settlement Amount.¹⁵ Each Individual PAGA Payment will be allocated as 100% penalties and will be reported on an IRS Form-1099 (if applicable) by the Settlement Administrator.¹⁶

Individual Settlement Payment and Individual PAGA Payment checks will be valid and negotiable for 180 calendar days from the date the checks are issued, and thereafter, shall be canceled.¹⁷ The funds remaining and associated with canceled checks will be distributed to the

¹⁰ Settlement Agreement, ¶ 16.

¹¹ *Id.*, ¶ 7(ii).

¹² Parker-Fawley Decl., ¶ 23, Exh. D.

¹³ Settlement Agreement, ¶ 26.

¹⁴ *Id.*, ¶¶ 7(r) & 26.

¹⁵ *Id.*, ¶¶ 7(m) & 26.

¹⁶ *Id.*, ¶ 26.

¹⁷ *Id.*, ¶ 21.

1 Controller of the State of California, Unclaimed Property Division, in accordance with California
2 Code of Civil Procedure section 384.¹⁸

3 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

4 The Court-appointed Administrator, Phoenix Class Action Administration Solutions, has
5 taken all necessary steps to effectuate the notice and settlement administration process, as set forth
6 in the Court's Preliminary Approval Order.

7 On September 16, 2024, Phoenix represented that it had received the Class List containing
8 Class Members' last known full name, mailing address, telephone number, Social Security
9 Number, and weeks worked as a non-exempt employee of Defendants in California employed at
10 either the Thousand Oaks or Sylmar locations during the Class Release Period ("Class List").¹⁹
11 The Administrator identified data for 274 individuals identified as Class Members who worked
12 13,123.14 Workweeks, of whom 219 were Aggrieved Employees who worked 10,008.29 PAGA
13 Workweeks.²⁰

14 On September 30, 2024, Phoenix mailed the Class Notice via U.S. First Class Mail to 272
15 individuals identified as Class Members in the Class List.²¹ The Administrator has not received
16 any Objections or Requests for Exclusion from Class Members to date.²²

17 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION**
18 **AND PAGA SETTLEMENT.**

19 The trial court has broad discretion to determine whether a class action settlement is fair
20 and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether the
21 settlement is fair and reasonable, courts consider relevant factors such as: the strength of plaintiffs'
22 case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining
23 class action status through trial, the amount offered in settlement, the extent of discovery
24 completed and the stage of the proceedings, the experience and views of counsel, the presence of
25 a governmental participant, and the reaction of the class members to the proposed settlement. *Dunk*
26 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the

27 ¹⁸ Settlement Agreement, ¶ 21.

¹⁹ Parker-Fawley Decl., ¶ 22, Exh. C.

²⁰ Ibid.

²¹ *Id.*, ¶ 23, Exh. D.

²² Ibid.

1 court is free to engage in a balancing and weighing of the factors depending on the circumstances
2 of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. “Due regard
3 should be given to what is otherwise a private consensual agreement between the parties.” *Dunk*,
4 48 Cal.App.4th at 1801.

5 The proponent of the settlement has the burden to show that it is fair and reasonable.
6 *Wershba*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists
7 where, as here: “(1) the settlement is reached through arm’s-length bargaining; (2) investigation
8 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
9 experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*, 48
10 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate
11 conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners*
12 *for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not
13 whether the settlement agreement is the best one that class members could have possibly obtained,
14 but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” *Chavez v. Netflix,*
15 *Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages
16 sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 251.
17 Even if the proposed settlement affords relief that is substantially narrower than it would be if the
18 cases were to be successfully litigated, that is no bar to a class settlement because the public interest
19 may indeed be served by a voluntary settlement in which each side gives ground in the interest of
20 avoiding prolonged litigation. *Id.*

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

23 The Parties actively litigated the case since the Action commenced on June 11, 2020. Class
24 Counsel conducted significant investigation and formal and informal discovery into the facts of
25 the case, to assess the veracity, strength, and scope of the claims, and was preparing for class
26 certification and trial prior to reaching the Settlement Agreement.²³

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²³ Parker-Fawley Decl., ¶ 6.

On July 1, 2021, and November 16, 2021, Class Counsel propounded multiple sets of written discovery requests on both Defendants (including, but not limited to Form Interrogatories—General (Set One), Special Interrogatories (Sets One, Two, and Three), Requests for Production of Documents (Sets One and Two), and noticed depositions of both Defendants’ person(s) most knowledgeable, along with accompanying requests for production of documents.²⁴ The Parties also exchanged a large volume of information, documents, and data in connection with the mediation and settlement negotiations, including, but not limited to: Plaintiffs’ employment records, a detailed sampling of Plaintiffs’ and other Class Members’ time and pay data, Employee Handbook, Employee Handbook Addendum, and company policy acknowledgments, forms, procedures and policies (including, but not limited to, Phone Monitoring Policy, Email, Internet and Computer Use Policy, Kart Safety Practice and Procedure, Negligence Policy, Track Conduct During Races & Meal Period Information), among other information and documents.²⁵ Class Counsel had the opportunity to interview and obtain information from Plaintiffs and percipient witnesses, and reviewed and analyzed a large volume of information, data, and documents obtained from Plaintiffs, Defendants, and other sources. Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with the mediations and settlement negotiations, and met and conferred with Defendants’ counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, and the production of information, documents, and data in the course of litigation and the mediation and settlement negotiations.²⁶ Class Counsel reviewed and analyzed information, documents, and data obtained from Plaintiffs, Defendants, and other sources.²⁷ Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related papers, mediation brief, and settlement-related papers; and preparing for and attending court proceedings, settlement negotiations, and the mediation, among other tasks.²⁸

²⁴ Parker-Fawley Decl, ¶ 6.

²⁵ Ibid.

²⁶ Ibid.

²⁷ *Id.*, ¶¶ 6 & 7.

²⁸ *Id.*, ¶ 6.

After conducting formal and informal discovery and investigation into the facts of the case, the Parties participated in a formal mediation session conducted by Henry Bongiovi, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.²⁹ In the course of the mediation and settlement negotiations, the Parties exchanged class information, documents, and data, and discussed all aspects of the cases, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and trial, the law relating to class certification, off-the-clock theory, meal and rest periods, joint employer liability, representative PAGA claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.³⁰ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.³¹ Arriving at a settlement that was acceptable to the Parties was not easy. Defendants and their counsel felt strongly about Defendants' ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.³² 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 case was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the Parties that would attend further litigation.³³

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

The Settlement accounts for the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.³⁴ The Agreement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information, data and documents in the context of mediation and settlement negotiations.³⁵ Had the action not settled, Defendants would have vigorously challenged

²⁹ Parker-Fawley Decl., ¶ 8.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ *Id.*, ¶¶ 8 & 20.

³⁵ *Id.*, ¶¶ 6-8.

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

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

24 It would be grossly inefficient for class of 274 current and former employees to bring
25 individual actions to recover from Defendants for the alleged violations of wage-and-hour laws.
26 Moreover, the potential individual recovery that could be obtained by a Class Member would not
27 be significant enough to provide him or her with the incentive to sue. By granting final approval
28

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

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

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

The Net Settlement Amount is currently estimated to be \$95,955.28.³⁶ Each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her during the Class Release Period, and each Aggrieved Employee will be paid a *pro rata* share of the Aggrieved Employee Amount, based on the number of Workweeks during the PAGA Release Period credited to him or her.³⁷

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Agreement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and Aggrieved Employees.³⁸ 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 &

³⁶ Parker-Fawley Decl., ¶ 21.

³⁷ Settlement Agreement, ¶¶ 15 & 16.

³⁸ Parker-Fawley Decl., ¶ 20.

Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement Agreement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation. Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.³⁹ Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendants and the benefits of the Settlement Agreement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement Agreement has been well received by the Class thus far – *not a single Class Member has objected to the Class Settlement to date.*⁴⁰ Specifically, no objections have been made as to the Total Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Awards, Settlement Administration Costs, or PAGA Penalty Amount. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

VI. THE ATTORNEYS' FEES AND COSTS REQUESTED ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

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

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,

³⁹ Parker-Fawley Decl., ¶¶ 13-17

⁴⁰ *Id.*, ¶ 23, Exh. D.

1 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
2 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where
3 the amount of a settlement is a “certain easily calculable sum of money,” California courts may
4 calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown, California
5 Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert*
6 *Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk*, 48 Cal.App.4th at 1808. The percentage-of-the-
7 benefit approach is preferred in class and representative actions because “it better approximates
8 the workings of the marketplace than the lodestar approach.” *Lealao*, 82 Cal.App.4th at 49.

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

18 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
19 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
20 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th
21 1253, 1270). It is not an abuse of discretion to choose one method over another as long as the
22 method chosen is applied consistently using percentage figures and/or rates that accurately reflect
23 the marketplace. In cases where class members present claims against a settlement amount and the
24 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of
25 the same, use of that percentage method is appropriate. *Lealao*, 82 Cal.App.4th at 32.

26 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
27 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
28 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. Grauly* (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, 34.⁴¹ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d at 769.

The propriety of calculating and awarding attorneys' fees as a percentage of a monetary settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he percentage [...] method survives in California." *Id.* (internal quotes omitted). In *Lealao*, the Court of Appeal expressly held that a percentage-based fee "may be calculated on the basis of the total fund made available rather than the actual payments made to the class." *Lealao*, 82 Cal.App.4th at 51; *see also Boeing*, 444 U.S. at 478 ("a litigant or a lawyer who recovers" a

⁴¹ 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 settlement “for the benefit of persons other than himself or his client is entitled to a reasonable
2 attorneys’ fee from the fund as a whole”). In *Wershba v. Apple Computer, Inc.*, (2001) 91
3 Cal.App.4th 224, in determining reasonable attorneys’ fees, the Court of Appeal valued a
4 settlement based on the total value of the settlement made available to class members by the efforts
5 of counsel, decided in favor of granting fees as a percentage of the total value of the settlement,
6 and rejected an objection that the fees be awarded based on the exact amount claimed by class
7 members. *Id.* at 247.

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

15 Under the terms of the Settlement Agreement, Defendants will pay a Total Settlement
16 Amount of \$250,000.00 on a non-reversionary basis. The requested attorneys’ fees are 35% of the
17 total value of the monetary settlement.

18 Class Counsel has obtained a substantial recovery on behalf of Plaintiffs, the Class,
19 Aggrieved Employees, and the State of California, and the results achieved justify an attorneys’
20 fees award that is the equivalent of the standard market fee and that is consistent with the
21 contingency-fee agreement entered into by and between Plaintiffs and Class Counsel. In light of
22 Class Counsel's successful prosecution and resolution of the case, the requested attorneys’ fees are
23 appropriate and reasonable.

24 **C. The Attorneys’ Fees Requested Is Reasonable Based on the Factors**
25 **Considered in Determination of Fee Awards.**

26 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
27 to be considered in determining whether fee awards are reasonable: (1) the time and labor required;
28 (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal

services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The Attorneys' Fees in the amount of \$87,500.00 (which is 35% of the Total Settlement Amount) is more than justified by the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel have achieved, and the value of the settlement that Class Counsel have obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. As outlined in the Declaration of Elizabeth Parker-Fawley, Class Counsel has fully and actively participated in the litigation of the Action.⁴² Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation cases.⁴³

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Elizabeth Parker-Fawley, sets forth in detail the hours that Lawyers for Justice, PC has spent performing tasks on behalf of Plaintiffs and the Class.⁴⁴ 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

⁴² Parker-Fawley Decl., ¶ 5.

⁴³ *Id.*, ¶¶ 13-17.

⁴⁴ *Id.*, Exh. A.

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 407 hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs, the Class, the Aggrieved Employees, and the State of California.⁴⁵ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

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

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to the mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Elizabeth Parker-Fawley, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Agreement with maximum efficiency.⁴⁶

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

The Settlement Agreement 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

⁴⁵ *Id.*, ¶¶ 11 & 12.

⁴⁶ Parker-Fawley Decl., ¶¶ 13-17.

1 class and allowed a jury to decide the claims. Additionally, preparing the cases for trial would have
2 been expensive for the Parties.

3 The Settlement Agreement at this stage is preferred over continued litigation because such
4 resolutions save time and money that would otherwise go to litigation. The risks and expenses of
5 further litigation outweighed any benefit that might have been gained otherwise. The Settlement
6 Agreement provides an immediate recovery, as opposed to an uncertain result in the future after
7 prolonged litigation involving expert discovery, trial preparation, class certification proceedings,
8 and appellate review of those proceedings.

9 The Net Settlement Amount is approximately \$95,955.28.⁴⁷ The Net Settlement Amount
10 will be fully distributed in accordance with the terms of the Settlement Agreement.

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

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

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

20 *Cates v. Chiang* (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Plaintiffs
21 entered into a contingency fee agreement with Class Counsel, and the representation of the Class
22 provided by Class Counsel has been wholly contingent. Class Counsel took on the case without
23 knowing whether any recovery would be obtained. Class Counsel has invested over 407 hours of
24 time to obtain relief on behalf of Plaintiffs, Class Members, the State of California, and Aggrieved
25 Employees.⁴⁸ Class Counsel has also incurred litigation costs and expenses in the amount of
26 \$17,544.72.⁴⁹ Class Counsel has borne all the risks and costs of litigation and will not receive any
27 compensation until recovery is obtained.⁵⁰ Considering the work performed and the risks incurred,
28 the requested fees and costs are reasonable and should be awarded.

⁴⁷ Parker-Fawley Decl., ¶ 21.

⁴⁸ *Id.*, ¶ 11, Exh. A.

⁴⁹ *Id.*, ¶ 18, Exh. B.

⁵⁰ *Id.*, ¶ 18.

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

The court in *Camden* noted that, “a key element of the common fund case is that fees are [...] taken from the fund [...] and a common fund is itself the measure of success ... [and] represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768, fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8, 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)). The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement Agreement has yielded a positive response from the Class Members—no Class Members have yet objected to the Class Settlement.⁵¹

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 matter to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁵²

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

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

⁵¹ Parker-Fawley Decl., ¶ 23, Exh. D.

⁵² *Id.*, ¶¶ 13-17.

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

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

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

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendants made it clear very early on that it disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendants raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data not only from 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 Defendants’ 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 information, documents and data that were obtained from Defendants, Plaintiffs, and through other sources. Class Counsel conducted extensive review and analysis of the information, documents and data to strategize the action and to prepare for mediation and engage in settlement discussions.

As discussed above, attached to the Declaration of Elizabeth Parker-Fawley is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁵³ The chart demonstrates

⁵³ Parker-Fawley Decl., Exh. A.

that Class Counsel has spent at least 407 hours litigating the case and finalizing the Settlement Agreement.⁵⁴ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved in this case, 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*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." See *id.*

Class Counsel has been actively involved in this matter, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this case has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$250,000.00.

As set forth in the Declaration of Elizabeth Parker-Fawley, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of at least \$850 per hour for services provided by Class Counsel.⁵⁵ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$850 per hour for legal services performed, by courts throughout this state.⁵⁶ 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.

⁵⁴ Parker-Fawley Decl., ¶¶ 11 & 12, Exh. A.

⁵⁵ *Id.*, ¶ 12.

⁵⁶ *Ibid.*

Applying the rate of \$850 per hour to 407 hours for services provided by Class Counsel would place a reasonable value of \$345,950.00 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 35% of the total recovery, as provided for by the Settlement Agreement.

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of \$87,500.00 to Class Counsel.

E. Attorneys' Costs Are Fair and Reasonable and Should Be Approved.

The Settlement Agreement provides for Attorneys' Costs of up to \$35,000.00. As set forth in the Declaration of Elizabeth Parker-Fawley, Class Counsel seeks reimbursement of \$17,544.72 in litigation costs and expenses incurred in this case.⁵⁷ This amount was reasonable and necessary in the prosecution of the case and to obtain the Agreement.⁵⁸ The cost savings of \$17,455.28 will be part of the Net Settlement Amount, which will be distributed to Settlement Class Members in accordance with the Agreement.⁵⁹ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$17,544.72 to Class Counsel.

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

The total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$9,000.00.⁶⁰ The costs incurred and to be incurred include, but are not limited to, (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiffs, Class Counsel, Settlement Class Members, and Aggrieved Employees; (d) printing and mailing the Class Notice to Class Members; (e) receiving and validating Requests for Exclusion, Objections, and Workweeks Disputes submitted by Class Members and Aggrieved Employees; (f) calculating the Employer Taxes and providing appropriate forms and calculations

⁵⁷ Parker-Fawley Decl., ¶¶ 18, Exh. B.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Settlement Agreement, ¶ 13.

to Defendants; (g) mailing Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks to Aggrieved Employees, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders Phoenix to perform.

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of \$9,000.00.

VIII. THE REQUESTED ENHANCEMENT AWARDS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement Agreement provides for Enhancement Awards in the amount of \$5,000.00 each to Plaintiffs Christian Wirth, Brandon Treiber, and Giancarlo Monroy (for a total of \$15,000.00) to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Enhancement Awards are common and reasonable and should be awarded. In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative).

The requested Enhancement Awards are fair and appropriate because Plaintiffs spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence to support the prosecution of the claims.⁶¹ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information to support the pursuit of the case.⁶²

Accordingly, it is appropriate and just for Plaintiffs Christian Wirth, Brandon Treiber, and

⁶¹ Parker-Fawley Decl., ¶ 19; Declaration of Christian Wirth (“Wirth Decl.”); Declaration of Brandon Treiber (“Treiber Decl.”); Declaration of Giancarlo Monroy (“Monroy Decl.”).

⁶² Parker-Fawley Decl., ¶ 19; Wirth Decl., ¶¶ 3-5; Treiber Decl., ¶¶ 3-5; Monroy Decl., ¶¶ 3-5.

Giancarlo Monroy to each receive \$5,000.00 as reasonable Enhancement Awards in addition to their Individual Settlement Payments and Individual PAGA Payments.

IX. CONCLUSION

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

Dated: October 24, 2024

LAWYERS for JUSTICE, PC



By: _____

Elizabeth Parker-Fawley
Attorneys for Plaintiff