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

CINDY ARAICA, individually, and on behalf
of other members of the general public
similarly situated; KEVIN ESTRADA,
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.

DIGITAL ROOM INC., a California
corporation; DIGITAL ROOM LLC, a
California limited liability company; AMC
ACQUISITION LLC, an unknown business
entity; and DOES 2 through 100, inclusive,

Defendants.

Case No.: BC680445

Honorable William Highberger
Department SSC10

CLASS ACTION

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

[Declaration of Class Counsel (Edwin
Aiwazian); Declarations of Class
Representatives (Cindy Araica and Kevin
Estrada); Declaration of Settlement
Administrator (Kevin Lee); and [Proposed]
Final Approval Order and Judgment filed
concurrently herewith]

Date: March 9, 2021
Time: 11:00 a.m.
Department: SSC10

Complaint Filed: October 19, 2017
FAC Filed: January 10, 2020
SAC Filed: November 3, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 9, 2021, at 11:00 a.m., in Department SSC10
2 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012,
3 Plaintiffs Cindy Araica and Kevin Estrada (“Plaintiffs”) will and hereby do move for an order
4 granting final approval of:

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

- 8 • A Net Settlement Amount of approximately **\$905,000** will be fully distributed to the
9 Class Members who did not opt out of the Settlement by submitting a timely and
10 valid request to be excluded from the Settlement (“Participating Class Member”);
- 11 • **No Notices of Objection** were submitted to the settlement administrator, Phoenix
12 Settlement Administrators (“Settlement Administrator”);
- 13 • **No requests for exclusion from the Settlement** were submitted to the Settlement
14 Administrator;

15 2. Payment in the amount of **\$595,000.00** to Lawyers *for* Justice, PC (“Class
16 Counsel”), representing thirty-five percent (35%) of the Gross Settlement Amount, for attorneys’
17 fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-
18 check with a multiplier of 1.63;

19 3. Payment in the amount of **\$23,304.29** to Class Counsel for reimbursement of
20 litigation costs and expenses;

21 4. Payment in the amount of **\$10,000.00** to the Settlement Administrator, Phoenix
22 Settlement Administrators (“Phoenix”), for Settlement Administration Costs;

23 5. Payments in the amount of **\$7,500.00** each to Plaintiffs Cindy Araica and Kevin
24 Estrada, as Service Awards, for their time and effort in representing the Class; and

25 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
26 California Labor Code section 2698, *et seq.*, in the amount of **\$200,000.00**, of which seventy-five
27 percent (75%), or \$150,000.00, will be paid to the California Labor and Workforce Development
28

Agency and twenty-five percent (25%), or \$50,000.00, will be part of the Net Settlement Amount for distribution to the Participating Class Members.

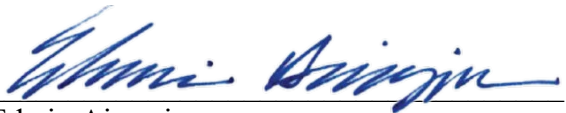
This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based upon the following Memorandum of Points and Authorities; the Declaration of Class Counsel (Edwin Aiwanian), Class Representatives (Cindy Araica and Kevin Estrada), and Settlement Administrator (Kevin Lee of Phoenix) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: February 11, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian

Attorneys for Plaintiffs and the Class

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D. The Lodestar Methodology Also Justifies Approval of the Requested Fees,
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Cindy Araica and Kevin Estrada (“Plaintiffs”) seek final approval of: (1) the Gross Settlement Amount of \$1,700,000.00; (2) Attorneys’ Fees Award in the amount of \$595,000.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$23,304.29 to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$10,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Service Awards in the amount of \$7,500.00 each to Plaintiffs Cindy Araica and Kevin Estrada, for a combined amount of \$15,000.00; and (5) allocation of \$200,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

Plaintiffs seek relief on behalf of the following Class:

Any and all current and former non-exempt employees who worked for any of Defendants, including Digital Room Inc., in the State of California at any time during the time period from October 19, 2013 to November 3, 2020 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, informal discovery, review and analysis of a large volume of documents and data prior to and during mediation conducted by the Honorable Gail Andler (Ret.), and extensive settlement negotiations. This matter has required 541.70 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 Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.²

Plaintiffs move for final approval of the Service Awards in the amount of \$7,500.00 to each of them, to compensate Plaintiffs for the time and effort that they expended spearheading

¹ Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), § 3.

² Applying a modest multiplier of 1.63, the total enhanced lodestar fees are \$596,005.42, and Class Counsel seeks an attorneys’ fees award of \$595,000.00 (equal to 35% of the Gross Settlement Amount).

1 this lawsuit on behalf of the Class. Plaintiffs also move for final approval of the payment to the
2 Settlement Administrator in the amount of \$10,000.00 for Settlement Administration Costs.
3 Plaintiffs also move for final approval of the allocation of \$200,000.00 for the PAGA Payment,
4 of which \$150,000.00 will be paid to the California Labor Workforce and Development Agency
5 (“LWDA”) for its portion of the PAGA Payment (“LWDA Payment”), and \$50,000.00 will be
6 part of the Net Settlement Amount that will be distributed to Class Members who did not opt out
7 of the Settlement by submitting a timely and valid request to be excluded from the Settlement
8 (“Participating Class Members”).

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

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

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

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

2 Defendants Digital Room, LLC, formerly organized as Digital Room Inc. (which has
3 been converted into Digital Room LLC) and AMC Acquisition LLC (collectively referred to as
4 “Defendants”) offer printing services for small and medium-sized businesses in the United
5 States. Plaintiffs Cindy Araica and Kevin Estrada are former employees of Defendants.

6 On October 19, 2017, Plaintiff Araica filed the Class Action Complaint for Damages
7 (“Original Complaint”) against Defendants, individually and on behalf of all current and former
8 non-exempt employees who worked for Defendants within the State of California at any time
9 since October 19, 2013. The action was filed in the Superior Court of California, County of Los
10 Angeles, Case No. BC680445 (the “Action”).

11 On December 11, 2017, Defendants filed an answer to Plaintiff Araica’s Original
12 Complaint.

13 On October 16, 2019, Plaintiff Estrada commenced an action entitled *Estrada v. AMC*
14 *Acquisition LLC*, Case No. 19STCV36875 in the Los Angeles County Superior Court of
15 California (“*Estrada Action*”).³

16 On January 10, 2020, pursuant to stipulation by the parties and the Court’s order granting
17 leave thereon, Plaintiffs filed a First Amended Class Action Complaint for Damages (“First
18 Amended Complaint”), consolidating the plaintiffs and claims from the action filed by Plaintiff
19 Estrada with those of the Action.

20 Plaintiffs’ core allegations, which Defendants deny, are that Defendants violated the
21 California Labor Code and California Business and Professions Code by engaging in a uniform
22 practice and procedure, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to
23 properly pay overtime and minimum wages, failing to provide compliant meal periods and rest
24 periods and associated premium pay, failing to timely pay wages during employment and upon
25 termination, failing to provide compliant wage statements, failing to keep requisite payroll
26 records, and failing to reimburse necessary business expenses, and have thereby engaged in
27 unfair business practices in violation of California Business and Professions Code section 17200,
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³ On June 18, 2020, the *Estrada Action* was dismissed.

1 *et seq* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they and
2 the Class Members are entitled to, *inter alia*, unpaid wages, penalties (including and not limited
3 to, penalties pursuant to PAGA), and attorneys' fees.

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

7 On October 10, 2019, the parties participated in a formal, full-day mediation conducted
8 by the Honorable Gail Andler (Ret.), a well-regarded mediator experienced in mediating
9 complex labor and employment matters. With the aid of the mediator's evaluation and
10 settlement negotiations, the parties ultimately reached the Settlement described herein to resolve
11 the Action in its entirety.

12 On October 13, 2020, Plaintiffs filed a Motion for Preliminary Approval of Class Action
13 Settlement ("Motion for Preliminary Approval") and supporting documents. On November 3,
14 2020, the Court entered the Order Granting Plaintiffs' Motion for Preliminary Approval
15 ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement,
16 the Class Notice, and the proposed administration procedures and associated deadlines, and
17 granting Plaintiffs leave to file the Second Amended Complaint for Damages and Enforcement
18 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Second
19 Amended Complaint" or "Operative Complaint").

20 Plaintiffs now move for final approval of the Settlement, Attorneys' Fees Award,
21 litigation costs and expenses, Service Awards, Settlement Administration Costs, and PAGA
22 Payment.

23 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

24 Under the terms of the Settlement Agreement, Defendants have agreed to pay a Gross
25 Settlement Amount of \$1,700,000.00 on a non-reversionary basis.⁴ Subject to approval by the
26 Court, the Net Settlement Amount will be calculated by deducting the following amounts from
27 the Gross Settlement Amount: (1) Attorneys' Fees Award in the amount of \$595,000.00 to Class
28

⁴ Settlement Agreement, § 15.

Counsel; (2) litigation costs and expenses in the amount of \$23,304.29 to Class Counsel; (3) Service Awards in the amount of \$7,500.00 each to Plaintiffs Cindy Araica and Kevin Estrada, for a combined amount of \$15,000.00; (4) Settlement Administration Costs in the amount of \$10,000.00 to the Settlement Administrator; and (5) LWDA Payment in the amount of \$150,000.00 to the LWDA.⁵ The Net Settlement Amount, which is estimated to be \$905,000.00, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendants.

The Settlement Administrator will calculate each Participating Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"), by dividing each Participating Class Member's number of weeks worked during the Class Period ("Compensable Workweeks") by the total Compensable Workweeks for all Participating Class Members, resulting in a "Payment Ratio" for each Participating Class Member.⁶ The Settlement Administrator will then multiply each Participating Class Member's Payment Ratio by the Net Settlement Amount to determine his or her estimated Individual Settlement Share.⁷

Class Members had forty-five (45) calendar days after the initial mailing of the Class Notice to dispute the number of Compensable Workweeks credited to each of them, opt out of the Settlement, and/or object to the Settlement ("Response Deadline").⁸ The Response Deadline was January 4, 2021.⁹ The Settlement Administrator has not received any written statement of objection ("Notice of Objection") or requests for exclusion from the Settlement from Class Members.¹⁰

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⁵ Settlement Agreement, §§ 19, 50-53.

⁶ *Id.*, §§ 16 & 49(b). "Class Period" means the time period from October 19, 2013 to November 3, 2020. *Id.*, § 7. Compensable Workweeks will be calculated by the Settlement Administrator by determining the number of days between the start/rehire and end dates of employment as an hourly-paid or non-exempt employee for Defendants within the Class Period (using October 19, 2013, and using the date of the Preliminary Approval Order as the end date), dividing the resulting number by seven (7), and rounding to the nearest whole number (i.e., rounding down for numbers ending in .00 to .49 and up for numbers ending .50 to .99). Class Members will be credited with at least one (1) Compensable Workweek. *Id.*, § 8.

⁷ *Id.*, §§ 16 & 49(b).

⁸ *Id.*, § 27.

⁹ Phoenix Decl., ¶ 9, Exh. A.

¹⁰ *Id.*, ¶¶ 10 & 11.

Individual Settlement Shares will be allocated as follows: one-third (1/3) as wages (“Wages Portion”); and two-thirds (2/3) as penalties and interest.¹¹ The Wages Portion of the Individual Settlement Shares will be reported on an IRS Form W-2 and the portions allocated to penalties and interest will be reported on an IRS Form 1099.¹² Participating Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of payroll taxes and withholdings with respect to the Wages Portion (the net payment is their “Individual Settlement Payment”).¹³

The Individual Settlement Payment checks issued to Participating Class Members will remain valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁴ After that time, the funds from any uncashed checks will be delivered by the Settlement Administrator to the Unclaimed Property Fund maintained by the California State Controller’s Office, to be held for the relevant Participating Class Member pursuant to California’s Unclaimed Property Law.¹⁵ Participating Class Members who cash their Individual Settlement Payment checks will be deemed to have opted in for purposes of the Fair Labor Standards (“FLSA”) and will thereby release the Released Parties from the Released Claims which arise under the FLSA.¹⁶

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court’s November 3, 2020 Preliminary Approval Order.

On November 5, 2020, Phoenix received the Court-approved text for the Class Notice.¹⁷

On November 12, 2020, Phoenix received a mailing list from Defendants’ counsel that contained each Class Member’s full name, last known address, last known telephone number, Social Security number, hire date, and rehire and end dates of employment, if applicable

¹¹ Settlement Agreement, § 49(c).

¹² *Ibid.*

¹³ *Id.*, §§ 17 & 49(c).

¹⁴ *Id.*, § 49(e).

¹⁵ *Ibid.*

¹⁶ *Id.*, § 39.

¹⁷ Phoenix Decl., ¶ 3.

(collectively, “Class Information”).¹⁸ The Class Information contained information for six hundred ninety-eight (698) individuals identified as Class Members.¹⁹ Phoenix processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class Information with any updated addresses located.²⁰

On November 19, 2020, Phoenix mailed the Class Notice via first class mail to six hundred ninety-eight (698) individuals identified as Class Members in the Class Information.²¹

As of the date of this Motion, One (1) Class Notice was returned as undeliverable with a forwarding address, and Phoenix promptly re-mailed the Class Notice to the forwarding address.²² Fifty-six (56) Class Notices were returned as undeliverable without forwarding addresses.²³ Phoenix performed a skip-trace search on the fifty-six (56) Class Notices that were returned to Phoenix without forwarding addresses, located an updated address for forty-eight (48) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²⁴ Ultimately, eight (8) Class Notices remain undeliverable because an updated address was not located through skip-tracing.²⁵

As of the date of this Motion, the Settlement Administrator has not received any Notices of Objection or requests for exclusion from the Settlement from Class Members.²⁶

To date, there are six hundred ninety-eight (698) Class Members who did not submit a timely and valid request for exclusion from the Settlement, and are therefore, deemed to be Participating Class Members.²⁷ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$905,000.00 will be distributed to Participating Class Members in accordance with the terms of the Settlement.²⁸ The highest Individual Settlement Share is currently estimated to be approximately \$4,220.43 and the average Individual Settlement Share

¹⁸ Phoenix Decl., ¶ 4.

¹⁹ *Ibid.*

²⁰ *Id.*, ¶ 5.

²¹ *Id.*, ¶ 6.

²² *Id.*, ¶ 7.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Id.*, ¶ 8.

²⁶ *Id.*, ¶¶ 10 & 11.

²⁷ *Id.*, ¶ 13.

²⁸ *Id.*, ¶ 14.

1 is currently estimated to be approximately \$1,296.56.²⁹

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

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

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

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

18 The proponent of the settlement has the burden to show that it is fair and reasonable.
19 *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness
20 exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2)
21 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
22 counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk,*
23 *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any
24 ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.
25 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.
26 The inquiry is not whether the settlement agreement is the best one that class members could
27 have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and
28 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,

²⁹ Phoenix Decl., ¶ 15.

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

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

8 The parties actively litigated the case since it was commenced on October 19, 2017.
9 Counsel for the parties used the pre-mediation time period to investigate the veracity, strength,
10 and scope of the claims, and also to prepare the matter for class certification, representative
11 adjudication, and trial.³⁰ The parties conducted significant informal discovery and investigation
12 into the facts of the case, and also informally exchanged information and data in preparation for
13 mediation.³¹ Class Counsel also interviewed and obtained information from Plaintiffs and Class
14 Members, including and not limited to the names of potential witnesses, and reviewed and
15 analyzed a large volume of documents and data produced by Defendants and obtained through
16 other sources.³² The documents and data reviewed and analyzed by Class Counsel included, and
17 were not limited to: employment records of Plaintiffs and other Class Members, a sampling of
18 Class Members’ pay and time data, multiple iterations of Defendants’ Employee Handbook,
19 agreements (including, but not limited to, AMC – Employee Meal Period Waivers and
20 Proprietary Information & Invention Assignment Agreement), checklists, acknowledgements
21 (including, but not limited to, Employee Handbook Acknowledgement and New Employee
22 Orientation Checklist), internal memoranda, Defendants’ operations and employment practices,
23 forms, procedures and policies (including, but not limited to, Defendants’ California meal and
24 rest period policies and Reimbursement of Business Expenses policy), among other documents
25 and data.³³ Class Counsel researched applicable law, developed damages/valuation models in
26 preparation for mediation, and met and conferred with Defendants’ counsel on numerous

27 ³⁰ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

28 ³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to mediation.³⁴

After conducting significant informal discovery and investigation into the facts of the case, the parties participated in a formal, full-day mediation conducted by the Honorable Gail Andler (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters.³⁵ Prior to and during mediation and settlement discussions, the parties exchanged information and data, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the parties of proceeding with class certification, representative adjudication, and trial, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³⁶ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.³⁷ Arriving at a settlement that was acceptable to the parties was not easy.³⁸ Defendants and their counsel felt very strongly about Defendants' ability to prevail on the merits and to obtain a denial of class certification, while Plaintiffs and Class Counsel believed that class certification would be obtained and Plaintiffs would prevail at trial.³⁹ After conducting significant informal discovery and investigations, extensive 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 Plaintiffs' principal claims, as well as the costs and risks to the parties that would attend further litigation.⁴⁰

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 interviewed, and obtained information from Plaintiffs and other Class Members.⁴¹ Class Counsel also reviewed and analyzed a large volume of documents produced by Defendants

³⁴ *Ibid.*

³⁵ Aiwazian Decl., ¶ 8.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Id.*, ¶ 6.

1 and obtained through other sources, and performed significant research into the law concerning
2 certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-
3 and-hour enforcement, Plaintiffs' claims, and Defendants' defenses, as well as facts
4 discovered.⁴² The Settlement was based on this large volume of facts, evidence, and
5 investigation.⁴³ Additionally, Class Counsel has extensive experience in handling complex
6 wage-and-hour matters, including significant experience in employment class action litigation.⁴⁴

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

9 The Settlement, which provides for a Gross Settlement Amount of \$1,700,000.00,
10 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
11 litigating class and representative claims through certification proceedings, trial, and/or
12 appeals.⁴⁵ The Settlement was calculated using information and data uncovered through
13 extensive case investigation, informal discovery, and the exchange of information in the context
14 of mediation.⁴⁶ Had the Action not settled, Defendants would have vigorously challenged class
15 certification, manageability of representative adjudication, and liability. Defendants contended
16 that individualized questions of fact predominate over any common issues, and these issues
17 would pose challenges to certification and representative adjudication. Defendants would have
18 likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide
19 and/or representative adjudication. On the other hand, Defendants also faced the risk of the
20 Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or
21 representative basis. Additionally, preparation for trial would have been expensive for all
22 parties.

23 It is preferable to reach an early resolution of a dispute because such resolutions save
24 time and money that would otherwise go to litigation. If this matter had settled after further
25 litigation, the settlement amount would have taken into account the additional costs incurred, and
26

27 ⁴² *Ibid.*

⁴³ Aiwazian Decl., ¶¶ 6 & 8.

⁴⁴ *Id.*, ¶¶ 15-18.

⁴⁵ *Id.*, ¶¶ 8 & 21.

⁴⁶ *Id.*, ¶¶ 5-8.

1 there might have been less money available for Class Members after all was said and done. This
2 is not just an abstract contention. The risks and expenses of further litigation outweighed any
3 benefit that might have been gained otherwise. These risks of further litigation include a
4 determination that the claims were unsuitable for class treatment and/or representative
5 adjudication, failure to obtain certification, class de-certification after certification of a class,
6 allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery
7 after years of litigation. Additionally, the parties were moving into the phase of the litigation
8 where they would have to conduct a significant amount of additional discovery, including and
9 not limited to, depositions of Defendants' Person Most Knowledgeable designees, expert
10 witnesses, and percipient witnesses, such as managers, supervisors, and other current and former
11 employees throughout the State of California. Discovery would have certainly arisen, which
12 would have cost the parties additional time and money. In contrast, the Settlement provides real
13 and significant benefits for the Class here and now, while avoiding the further expenses, risks,
14 and delay of prolonged litigation with only the possibility of recovery.

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

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

22 The Settlement, which provides for a Gross Settlement Amount of \$1,700,000.00,
23 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
24 using information and data uncovered through extensive case investigation, informal discovery,
25 and the exchange of information in the context of mediation. The Settlement takes into account
26 the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,
27 considering all of the facts in the case, the Gross Settlement Amount represents a considerable
28 recovery.

Even after deducting attorneys' fees in the amount of \$595,000.00, litigation costs and expenses in the amount of \$25,000.00, Service Awards in the combined amount of \$7,500.00, Settlement Administration Costs in the amount of \$10,000.00, and LWDA Payment in the amount of \$150,000.00 from the Gross Settlement Amount of \$1,700,000.00, the Net Settlement Amount is currently estimated to be \$905,000.00.⁴⁷ Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out without any reversion to Defendants, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Compensable Workweeks credited to him or her. To date, there are six hundred ninety-eight (698) Participating Class Members, representing 100% of the Class Members.⁴⁸ The highest Individual Settlement Share to a Participating Class Member is currently estimated to be approximately \$4,220.43 and the average Individual Settlement Share is currently estimated to be approximately \$1,296.56.⁴⁹ These are significant individual recoveries, particularly in light of the risks of litigation.

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

⁴⁷ Phoenix Decl., ¶ 14.

⁴⁸ *Id.*, ¶ 13.

⁴⁹ *Id.*, ¶ 15.

⁵⁰ Aiwazian Decl., ¶ 21.

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

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

8 **E. There Are No Objections to the Settlement.**

9 The Settlement has been well received by the Class – *not a single Class Member*
10 *objected to or opted out of the Settlement.*⁵³ Specifically, no objections have been made as to
11 the Gross Settlement Amount or requested Attorneys' Fees Award, litigation costs and expenses,
12 Service Awards, Settlement Administration Costs, or PAGA Payment. California courts have
13 consistently found that a small number of objectors indicates the class' support for a settlement
14 and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval
15 granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final
16 approval granted despite 9 objectors).

17 Here, the lack of any objections speaks volumes about the fairness, reasonableness, and
18 adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair,
19 reasonable, and adequate, and the Court should grant final approval of the Settlement in its
20 entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

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

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

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

27 _____
28 ⁵¹ Aiwazian Decl., ¶¶ 15-18.

⁵² *Ibid.*

⁵³ Phoenix Decl., ¶¶ 10 & 11.

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

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

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

28 ///

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

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

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

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

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

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

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

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

23 Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement
24 Amount of \$1,700,000.00 on a non-reversionary basis. The requested attorneys' fees are thirty-
25 five percent (35%) of the total value of the monetary settlement. In light of Class Counsel's
26 successful prosecution and resolution of the case, the requested attorneys' fees are appropriate
27 and reasonable.

28 ///

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. Named plaintiffs' 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 plaintiffs. If the named plaintiffs' have 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 plaintiffs. In this case, Plaintiffs have agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁵⁵

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

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⁵⁵ Aiwazian Decl., ¶ 9.

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

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

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

12 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
13 to be considered in determining whether fee awards are reasonable: (1) the time and labor
14 required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform
15 the legal services properly; (4) the preclusion of other employment by the attorney due to the
16 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
17 limitation imposed by the client or the circumstances; (8) the amount involved and results
18 obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the
19 case; (11) the nature and length of the professional relationship with the client; and (12) awards
20 in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d
21 768, 772.

22 Each and every one of these factors favors the attorneys' fees sought here; however,
23 some of the most relevant factors to this Court's fee determination will be addressed herein. The
24 award of attorneys' fees in the amount of \$595,000.00 (which is 35% of the Gross Settlement
25 Amount) is commensurate with the time, effort, and expense dedicated to the case, the
26 contingent nature of Class Counsel's fee and the risks taken in commencing the Action, the skill
27 and determination required, the results that Class Counsel has achieved, and the value of the
28 settlement that Class Counsel has obtained for the Class Members.

1 **1. *Time & Labor.***

2 Class Counsel used its experience and skills, and dedicated the full extent of resources, to
3 litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as
4 demonstrated in the supporting Declaration of Edwin Aiwazian, Class Counsel has extensive
5 experience in the handling of class actions and complex litigation matters.⁵⁶

6 Prior to commencing the Action, Class Counsel had conducted a significant amount of
7 investigation into the factual and legal issues, Defendants' business, and their operations and
8 employment policies, practices, and procedures.⁵⁷ During the litigation of the Action, Class
9 Counsel interviewed Plaintiffs and other Class Members; reviewed and analyzed a large volume
10 of pages of documents and data produced by Defendants and obtained through other sources; and
11 prepared damages/valuation calculations.⁵⁸ Class Counsel also met and conferred with
12 Defendants' counsel over the issues relating to pleadings, discovery, and production of
13 documents and data, among other things; engaged in extensive settlement negotiations with
14 Defendants' counsel; and prepared for and attended mediation and settlement negotiations.⁵⁹

15 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
16 matter diligently and with maximum efficiency and has fully and actively participated in the
17 litigation process. The Task and Time Chart, which is attached as Exhibit A to the
18 accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that Class Counsel
19 has spent performing tasks on behalf of Plaintiffs and the Class.⁶⁰ The Task and Time Chart is
20 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
21 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
22 chart, which sets forth the history of the work performed by Class Counsel, commencing with
23 the pre-filing analysis and research, and continuing up to settlement and final approval. Class
24 Counsel has spent 541.70 hours performing tasks and to obtain a significant recovery on behalf
25 of Plaintiffs and the Class.⁶¹ These hours were required to bring this matter to its successful

26 ⁵⁶ Aiwazian Decl., ¶¶ 15-18.

27 ⁵⁷ *Id.*, ¶ 6 & Exh. A.

28 ⁵⁸ *Id.*, ¶ 6.

⁵⁹ *Ibid.*

⁶⁰ *Id.*, Exh. A.

⁶¹ Aiwazian Decl., ¶ 11.

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 the same. Defendants retained well-respected counsel to represent their defenses. More specifically, 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 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 Edwin Aiwanian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁶²

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

⁶² *Id.*, ¶¶ 15-18.

litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Participating Class 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 extensive settlement negotiations, Defendants agreed to pay a Gross Settlement Amount of \$1,700,000.00 to settle the matter. After deducting the Attorneys' Fees Award (\$595,000.00), litigation costs and expenses (\$25,000.00), Service Awards (combined, \$15,000.00), Settlement Administration Costs (\$10,000.00), and LWDA Payment (\$150,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$905,000.00.⁶³ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Participating Class Member is currently estimated to be approximately \$4,220.43 and the average Individual Settlement Share is currently estimated to be approximately \$1,296.56.⁶⁴ The Settlement offers significant monetary relief to the Participating Class Members.

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

Plaintiffs entered into contingency fee agreements with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 541.70 hours of time to obtain relief on behalf of Plaintiffs and the Class.⁶⁵ Class Counsel has also incurred litigation costs and expenses in the amount of \$26,026.29.⁶⁶

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁷ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁶⁸ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees Award. Considering the amounts requested, the work performed, and

⁶³ Phoenix Decl., ¶ 14.

⁶⁴ *Id.*, ¶ 15.

⁶⁵ Aiwasian Decl., ¶ 11, Exh. A.

⁶⁶ See Part VII, *infra*.

⁶⁷ Aiwasian Decl., ¶ 19.

⁶⁸ See *id.*, ¶¶ 15-18.

the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

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

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 or opted out of the Settlement.⁶⁹

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 Plaintiffs and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$1,700,000.00.⁷⁰ The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share to a Participating Class Member

⁶⁹ Phoenix Decl., ¶¶ 10 & 11.

⁷⁰ Aiwazian Decl., ¶¶ 5-8.

is currently estimated to be approximately \$4,220.43 and the average Individual Settlement Share is currently estimated to be approximately \$1,296.56.⁷¹

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.⁷²

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.

⁷¹ Phoenix Decl., ¶ 15.

⁷² Aiwazian Decl., ¶¶ 15-18.

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

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

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

23 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
24 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
25 on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁷³ The
26 chart demonstrates that Class Counsel has spent a total of 541.70 hours litigating the case and
27

28

⁷³ See Aiwazian Decl., Exh. A.

1 finalizing the Settlement.⁷⁴ In light of the facts and circumstances of the case, as well as the
2 results that Class Counsel has achieved on behalf of Plaintiffs and the Class Members, Class
3 Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will
4 continue to perform work on this matter through the date of final approval and in connection
5 with the implementation of the Settlement.

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

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

15 Class Counsel has been actively involved in this case, prior to its commencement and all
16 the way up to the present, and Class Counsel's dedication to providing representation in this
17 matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its
18 efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful
19 in reaching a settlement of \$1,700,000.00.

20 As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and
21 experience of Class Counsel support a reasonable hourly rate of compensation of at least \$675
22 per hour for services provided by Class Counsel.⁷⁵ Lawyers for Justice, PC has been awarded
23 attorneys' fees, compensating the firm at the rate of at least \$675 for legal service performed, by
24 courts of this state.⁷⁶ While the circumstances of every case is unique, the fact remains that the

25 ⁷⁴ *Id.*, ¶ 11.

26 ⁷⁵ *Id.*, ¶ 12.

27 ⁷⁶ For example, final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products,*
28 *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*

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

3. The Risks Involved, Skill Required, Complexity of the Matter, and Results Obtained Warrant Upward Enhancement of the Lodestar.

Even when courts have opted to award fees in settlement fund cases based on time reasonably expended on the action, courts have generally awarded these fees based on the actual time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this case.

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

(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 *Samuel Guerra, et al. v. Graphic Packaging International, Inc.* (Sacramento County Superior Court Case No. 34-2016-00203789) was granted on June 5, 2018, and the award of attorneys' fees involved a higher hourly rate of \$600; 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; final approval of the class and representative action settlement in *Rebekah Perez, et al. v. Nestlé USA, Inc., et al.* (Alameda County Superior Court Case No. RG15773654) was granted on August 18, 2017; final approval of the class and representative action settlement in *Elizabeth Ortiz, et al. v. Ghirardelli Chocolate Company* (Alameda County Superior Court Case No. RG15764300) was granted on July 19, 2017; 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. Aiwazian Decl., ¶ 12.

In determining whether or not to enhance the lodestar, California courts take into account multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See, *Cates* at 822-23. Multiple factors warrant enhancement in this case, including the following:

- The time and labor required
- The skill requisite to perform the legal services properly
- The preclusion of other employment by the attorney due to the acceptance of the case
- The contingent nature of the fee
- The amount involved and results obtained
- The experience, reputation, and ability of the attorney
- Awards in similar cases

Ketchum at 1134.

Adjustment of the base lodestar figure to compute an award of attorneys' fees for a claim under the California Labor Code is appropriate. See *Id.*, at 1135-36; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. "The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at 1131-32. The lodestar figure is the "basic fee for comparable legal services in the community" based upon the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Id.*, at 1132-33 (quotation marks and citation omitted).

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendants raised defenses and denied liability, and the case involved gathering and analyzing documents and data not only from Defendants but also from the Class Members. The handling of this matter involved a great amount of effort, and required the exercise of high-level of skill, which Class Counsel has as a result of extensive experience in employment class actions and wage-and-hour litigation. Class Counsel has been actively

involved in the prosecution of this matter, prior to its commencement and Class Counsel's work has continued all the way up to the present. Class Counsel's dedication to the representation of the Class Members has precluded other employment.

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class Counsel was successful in achieving substantial results in the form of a settlement of \$1,700,000.00. Also, Class Counsel's efforts throughout the case demonstrate dedication to the interests of the Class Members.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time summarized above and detailed in the Task and Time Chart, which is attached as Exhibit A to the Declaration of Edwin Aiwazian.⁷⁷ As the chart indicates, Class Counsel has worked 541.70 hours in the pursuit of this matter. The attorney task and time chart presents the entire picture. Applying a reasonable rate of \$675 per hour to 541.70 hours of work performed by Lawyers *for* Justice, PC would place a base lodestar value of \$365,647.50 on Class Counsel's services, and applying a modest multiplier of 1.63, the total enhanced lodestar fees are \$596,005.42.⁷⁸ Class Counsel seeks an attorneys' fee award of \$595,000.00 (equal to 35% of the Gross Settlement Amount based on the Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even**

⁷⁷ Aiwazian Decl., Exh. B.

⁷⁸ Aiwazian Decl., ¶ 11; see n.2, *supra*.

1 **higher.”** *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v.*
2 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at
3 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005)
4 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal.
5 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with
6 cross-check **multipliers ranging from 4.5 to 19.6**).

7 Therefore, application of a modest multiplier of 1.63 is warranted, and the lodestar as a
8 cross-check to the percentage figure sought herein, strongly supports the reasonableness of the
9 requested attorneys’ fees award. Plaintiffs respectfully request that the Court grant final
10 approval of, and award, attorneys’ fees in the amount of \$595,000.00 to Class Counsel.

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

13 The Settlement provides for reimbursement of litigation costs and expenses of up to
14 \$25,000.00. As set forth in the Declaration of Edwin Aiwasian, Class Counsel has incurred a
15 total of \$26,026.29 in litigation costs and expenses.⁷⁹ This amount was reasonable and necessary
16 in the prosecution of the Action and to obtain the Settlement, but Class Counsel is only
17 requesting the maximum amount allocated under the Settlement Agreement.⁸⁰ Accordingly,
18 Plaintiffs request that the Court award litigation costs and expenses in the amount of \$25,000.00
19 to Class Counsel.

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

22 As set forth in the accompanying Phoenix Declaration, the total costs incurred and to be
23 incurred by Phoenix for the notice and settlement administration process are \$10,000.00.⁸¹ The
24 costs incurred and to be incurred include, but are not limited to, expenses for formatting,
25 printing, translating, and mailing the Class Notice to the Class Members in both English and
26 Spanish; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing

27 _____
28 ⁷⁹ *Id.*, ¶ 19.

⁸⁰ *Ibid.*

⁸¹ Phoenix Decl., ¶ 16.

the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing requests for exclusion from the Settlement, Notices of Objection, and Compensable Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and Individual Settlement Payments, and preparing the associated tax forms; and transmitting payments, among other things.⁸²

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party for handling of the notice and settlement process, in the amount of \$10,000.00.

IX. THE REQUESTED SERVICE AWARDS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for Service Awards in the amounts of \$7,500.00 each to Plaintiffs Cindy Araica and Kevin Estrada to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Service Awards are both common and reasonable and should be awarded.

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

The requested Service 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 necessary to attempt to prove the allegations.⁸³ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that would benefit the Class.⁸⁴ Plaintiffs spent numerous hours

⁸² Phoenix Decl., ¶ 2.

⁸³ Aiwazian Decl., ¶ 20; Declaration of Cindy Araica in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Attorneys' Fees, Costs, and Service Awards ("Araica Decl."), ¶¶ 3-5; Declaration of Kevin Estrada in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Attorneys' Fees, Costs, and Service Awards ("Estrada Decl."), ¶ 3-5.

⁸⁴ Aiwazian Decl., ¶ 20; Araica Decl., ¶¶ 3-5; Estrada Decl., ¶¶ 3-5.

1 speaking with Class Counsel about their claims, describing their work experiences with
2 Defendants, and gathering and reviewing documents.⁸⁵ These services merit the requested
3 Service Awards to Plaintiffs, who have not received any compensation for their efforts on behalf
4 of the Class Members to date.⁸⁶

5 The requested Service Awards were fully disclosed in the Class Notice that was mailed to
6 the Class Members. No objections were made with regards to the requested Service Awards.
7 Accordingly, it is appropriate and just for Plaintiffs Cindy Araica and Kevin Estrada to each
8 receive \$7,500.00 as reasonable Service Awards, in addition to their Individual Settlement
9 Payments, for their services on behalf of the Class.

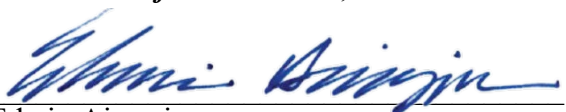
10 **X. CONCLUSION**

11 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final
12 approval of the Settlement, and award the Attorneys' Fees Award, litigation costs and expenses,
13 Service Awards, Settlement Administration Costs, and PAGA Payment, in their entirety, as
14 sought herein; and permit the filing of a memorandum that exceeds the page limit.

15 Dated: February 11, 2021

LAWYERS for JUSTICE, PC

16 By:



Edwin Aiwanian
Attorneys for Plaintiffs and the Class

28 ⁸⁵ Aiwanian Decl., ¶ 20; Araica Decl., ¶¶ 2-5; Estrada Decl., ¶¶ 2-5.

⁸⁶ Araica Decl., ¶ 8; Estrada Decl., ¶ 8.