

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Ovsanna Takvoryan (SBN 217435)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel.: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff Antonio Munoz and the Class

Additional Plaintiffs' Counsel on Next Page

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

ANTONIO MUNOZ, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

FAMILY HEALTHCARE NETWORK, a
California corporation; and DOES 1 to 100,
inclusive;

Defendants.

VERONICA FERRUFINO, on behalf of
herself and all others similarly situated,

Plaintiffs,

v.

FAMILY HEALTHCARE NETWORK, a
California corporation; and DOES 1 to 100,
inclusive,

Defendants.

Lead Case No.: VCU282194
Consolidated with Case No.: VCU283726

Honorable Nathan D. Ide
Department 2

CLASS ACTION

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

[Declarations of Class Counsel (Edwin
Aiwasian, Kevin T. Barnes, and Walter L.
Haines); Declaration of Settlement
Administrator (Abigail Schwartz); and
[Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: October 24, 2022
Time: 8:30 a.m.
Department: 2

Munoz Complaint filed: February 24, 2020
Trial Date: None Set

Ferrufino Complaint filed: July 29, 2020
Trial Date: None Set

Kevin T. Barnes (SBN 138477)
Gregg Lander (SBN 194018)
LAW OFFICES OF KEVIN T. BARNES
1635 Pontius Avenue, Second Floor
Los Angeles, CA 90025-3361
Tel.: (323) 549-9100 / Fax: (323) 549-0101

Walter L. Haines (SBN 71075)
UNITED EMPLOYEES LAW GROUP, PC
4276 Katella Avenue, #301
Los Alamitos, CA 90720
Tel.: (310) 652-2242 / Fax: (310) 652-2242

Attorneys for Plaintiff Veronica Ferrufino and the Class

1 **PLEASE TAKE NOTICE** that on October 24, 2022 at 8:30 a.m., in Department 2 of the
2 above-entitled Court, located at 221 South Mooney Blvd., Visalia, California 93291, Plaintiffs
3 Antonio Munoz and Veronica Ferrufino (“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 and Release
6 (“Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the Settlement is
7 fair, adequate, and reasonable because:

- 8 • A Net Settlement Amount of approximately **\$2,826,631.00** will be fully distributed to
9 the Class Members who did not timely opt out of the Settlement (“Participating Class
10 Member”);
- 11 • **No Objections** were submitted to the settlement administrator, Rust Consulting, Inc.
12 (“Settlement Administrator”);
- 13 • **Only Two (2) Requests for Exclusion** were submitted to the Settlement
14 Administrator;

15 2. Payment in the amount of **\$1,500,000.00** to Lawyers for Justice, PC, Law Offices
16 of Kevin T. Barnes, and United Employees Law Group, PC (together, “Class Counsel”),
17 representing thirty-three and one-third percent (33.33%) of the Maximum Settlement Amount,
18 for attorneys’ fees, which is reasonable and justified on a percentage-basis and also based on a
19 lodestar cross-check with a multiplier of 1.68;

20 3. Payment in the amount of **\$22,727,01** to Class Counsel for reimbursement of
21 litigation costs and expenses;

22 4. Payment in the amount of **\$28,369.00** to the Settlement Administrator, Rust
23 Consulting, Inc. (“Rust Consulting”), for Settlement Administration Costs;

24 5. Payments in the amount of **\$7,500.00** each to Plaintiffs Antonio Munoz and
25 Veronica Ferrufino, as Class Representative Service Awards, for their time and effort in
26 representing the Settlement Class; and

27 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
28 California Labor Code section 2698, *et seq.*, in the amount of \$100,000.00, of which seventy-five

percent (75%), or **\$75,000.00**, will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or **\$25,000.00**, will be distributed to Class Members who were employed by Defendant from July 21, 2019 through January 31, 2022 (“Participating PAGA Members”).

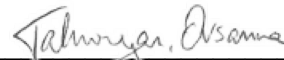
This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Edwin Aiwazian, Kevin T. Barnes, and Walter L. Haines), and Settlement Administrator (Abigail Schwartz of Rust Consulting, Inc.) in support thereof; the pleadings and other records on file with the Court in this matter (including, but not limited to, the declarations of Class Representatives (Antonio Munoz and Veronica Ferrufino) filed on January 6, 2022, in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement); and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: September 30, 2022

LAWYERS for JUSTICE, PC
LAW OFFICES OF KEVIN T. BARNES

By:



Ovsanna Takvoryan
Kevin T. Barnes
Attorneys for Plaintiffs and the Class

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	3
III.	SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION.	5
IV.	THE SETTLEMENT ADMINISTRATION PROCESS.....	7
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.....	10
B.	The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.	12
C.	The Settlement Is Fair, Reasonable, and Adequate.....	13
D.	The Class Was Represented by Competent Counsel.....	15
E.	There Are No Objections to the Settlement.....	15
VI.	THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.	16
A.	Legal Standard for Attorneys’ Fees in a Class Action Settlement.	16
B.	A Fee Award of a Percentage of the Entire Fund Is Appropriate.....	17
C.	The Attorneys’ Fees Award Requested by Class Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.	20
	1. Time & Labor.	21
	2. The Skill Required to Perform Legal Services Properly.	22
	3. The Value of the Settlement for the Class Members.	23
	4. Whether the Fee Is Fixed or Contingent.	24
	5. The Amount Involved and the Results Achieved.	25
	6. The Reputation and Ability of the Attorneys.	25
D.	The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Have Performed Work That Is of Significant Value Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.	26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. *The Number of Hours Spent on the Litigation was Reasonable.* 26

3. *The Risks Involved, Skill Required, Complexity of the Matter, and Results Obtained Warrant Upward Enhancement of the Lodestar.* 29

VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED..... 33

VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED..... 33

IX. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED. 34

X. CONCLUSION 35

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4 th 1135	9, 15
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195 .	17
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472.....	17, 20
<i>Cates v. Chiang</i> (2013) 213 Cal.App.4 th 791.....	24
<i>Cellphone Termination Fee Cases</i> (2009) 180 Cal.App.4 th 1110.....	16
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4 th 43	8, 9, 17, 32
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78.....	29
<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4 th 545	16
<i>County of San Bernardino</i> (C.D. Cal. 2006) 624 F.Supp.2d 1113	32
<i>Crampton v. Takegoshi</i> (1993) 17 Cal.App.4 th 308.....	18
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4 th 1794	9, 15, 16
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4 th 553.....	30
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126.....	17
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127	
F.Supp.2d 418	14
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494.....	17
<i>Ketchum v. Moses</i> (2001) 24 Cal.4 th 1122	16, 26, 27, 29, 30, 31
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5 th 480	16, 18, 26
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4 th 19	16, 19, 20
<i>Paul, Johnson, Alston & Hunt v. Gaulty</i> (1989) 886 F.2d 268	17
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	17
<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4 th 495	29
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	17

1	<i>Vincent v. Hughes Air West, Inc.</i> (9 th Cir. 1977) 557 F.2d 759	17, 18
2	<i>Vizcaino v. Microsoft</i> (9 th Cir. 2002) 290 F.3d 1043	18
3	<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4 th 440	26
4	<i>Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.</i> (2d Cir. 2005) 396 F.3d 96	32
5	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4 th 224.....	9, 15, 20, 29, 31, 32
6	<i>Winslow v. Harold G. Ferguson Corp.</i> (1944) 25 Cal.2d 274.....	19
7		
8	Statutes	
9	Cal. Lab. Code § 2698.....	1
10	Other Authorities	
11	A. Conte, <i>Attorney Fee Awards</i> (2d Ed., 1993).....	18
12	<u>California Practice Guide</u> , <i>Civil Procedure Before Trial</i> , Chapter 14.....	16
13	Conte & Newberg, <i>Newberg on Class Actions</i> (4 th Ed., 2002) § 11.47	15, 25
14	Conte & Newberg, <i>Newberg on Class Actions</i> (4 th Ed., 2002) § 14.03.....	17
15	<i>Court Awarded Attorney Fees, Report of the Third Circuit Task Force</i> (October 8, 1985) 108	
16	F.R.D. 237	25
17	R. Pearle, <i>California Attorney Fee Awards</i> (CEB, 1993) § 7A.....	18
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Antonio Munoz and Veronica Ferrufino (“Plaintiffs”) seek final approval of: (1) the Maximum Settlement Amount of \$4,500,000.00; (2) attorneys’ fees in the amount of \$1,500,000.00, which is thirty-three and one-third percent (33.33%) of the Maximum Settlement Amount, and reimbursement of litigation costs and expenses in the combined amount of \$22,727,01 (together, “Class Counsel Award”) to Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and United Employees Law Group, PC (together, “Class Counsel”); (3) Settlement Administration Costs in the amount of \$28,369.00 to Rust Consulting, Inc. (“Rust Consulting” or “Settlement Administrator”); (4) Class Representative Service Awards in the amount of \$7,500.00 each to Plaintiffs Antonio Munoz and Veronica Ferrufino, for a combined amount of \$15,000; and (5) allocation of \$100,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

Plaintiffs seek relief on behalf of the following Settlement Class:

All hourly paid, non-exempt persons employed by Defendant in the State of California from February 24, 2016 through January 31, 2022 (“Settlement Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by Hon. Howard R. Broadman (Ret.), and extensive settlement negotiations. This matter has required 1,143.6 hours of attorney time between multiple law firms serving as Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-three and one-third percent (33.33%) of the Maximum Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.²

¹ Amended Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶6

² Applying a modest multiplier of 1.68, the total enhanced lodestar fees are \$1,504,037.64, and Class Counsel seek an attorneys’ fees award of \$1,500,000.00 (equal to 33.33% of the Maximum Settlement Amount).

1 Plaintiffs move for final approval of the Class Representative Service Awards in the
2 amount of \$7,500.00 to each of them, to compensate Plaintiffs for the time and effort that they
3 expended spearheading this lawsuit on behalf of the Settlement Class. Plaintiffs also move for
4 final approval of the payment to the Settlement Administrator in the amount of \$28,369.00 for
5 Settlement Administration Costs. Plaintiffs also move for final approval of the allocation of
6 \$100,000.00 for the PAGA Payment, of which \$75,000.00 will be paid to the California Labor
7 Workforce and Development Agency (“LWDA”) for its portion of the PAGA Payment (“LWDA
8 Payment”), and \$25,000.00 will be distributed to Class Members who were employed by
9 Defendant from July 21, 2019 through January 31, 2022 (“Participating PAGA Members”).

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

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

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

28 ///

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

2 Defendant Family Healthcare Network (“Defendant”) is a multi-site primary health care
3 network serving 289,311 patients in California. Defendant operates 41 locations throughout
4 Tulare, Kings, and Fresno Counties. Plaintiffs Antonio Munoz and Veronica Ferrufino are
5 former employees of Defendant.

6 On February 24, 2020, Plaintiff Antonio Munoz (“Plaintiff Munoz”), individually, and on
7 behalf of all current and former hourly-paid or non-exempt employees who worked for
8 Defendant within the State of California at any time since February 24, 2016, filed a Class
9 Action Complaint for Damages, thereby commencing the action entitled *Antonio Munoz v.*
10 *Family HealthCare Network*, County of Tulare Superior Court Case No. VCU282194 (the
11 “Munoz Action”). Plaintiff Munoz’s core allegation is that Defendant has violated the California
12 Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs and the
13 Class Members, of, *inter alia*, failing to pay minimum and overtime wages, failing to provide
14 compliant meal and rest periods and associated premium pay, failing to timely pay wages and
15 associated waiting time penalties, failing to maintain accurate payroll records, failing to provide
16 compliant wage statements, and failing to reimburse necessary business-related expenses, and
17 thereby engaged in unfair business practices under the California Business and Professions Code.

18 On July 21, 2020, Plaintiff Veronica Ferrufino (“Plaintiff Ferrufino”) submitted a letter
19 to the California Labor Workforce Development Agency (“LWDA”) pursuant to Labor Code
20 §2699.3, seeking to exhaust Plaintiff Ferrufino’s administrative remedies under the Labor Code
21 Private Attorneys General Act of 2004, Cal. Lab. Code §§2698, *et seq.*

22 On July 29, 2020, Plaintiff Ferrufino commenced a putative class action entitled
23 *Veronica Ferrufino v. Family HealthCare Network*, County of Tulare Superior Court Case No.
24 VCU283726 (the “Ferrufino Action”), based on the following claims: failure to pay all wages due
25 to illegal rounding; failure to authorize and permit all paid rest periods; failure to provide all
26 paid off premises rest periods; failure to timely furnish accurate itemized wage statements;
27 violations of Labor Code §203; and Violation of California *Business and Professions Code*
28 17200, *et seq.*

On October 26, 2020, the *Munoz* Action was consolidated with *Ferrufino* Action, with the *Munoz* Action designated as the lead case.

On November 25, 2020, Plaintiff Ferrufino filed a First Amended Complaint adding an additional cause of action under the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. (“PAGA”).

On June 18, 2021, Plaintiffs filed a First Amended Consolidated First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et. Seq. (the “Operative Complaint”)

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the case, and further denies that the case is appropriate for class or representative treatment for any purpose other than for settlement purposes only.

The parties have actively litigated the matter since the *Munoz* Action was commenced on February 24, 2020. The parties have conducted significant formal and informal discovery and investigation into the claims, and exchanged thousands of pages of documents and data. The parties engaged in extensive discussions about the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses thereto, to try to resolve the Action. Ultimately, the Parties reached the proposed Settlement described herein to resolve the Action in its entirety.

On January 29, 2021, the parties participated in a full-day mediation before Hon. Howard R. Broadman (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters. The matter did not settle at the formal mediation, and a second formal, full-day mediation was set before the same mediator for September 1, 2021, where a Mediator’s Proposal was made which settled the Action in its entirety, which is confirmed in the Settlement Agreement.

On January 6, 2022, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On January 31, 2022, a hearing was held on Plaintiffs’ Motion for Preliminary Approval, during which the Court raised certain points of inquiry. On February 18, 2022, Plaintiffs filed supplemental papers in support of the Motion for Preliminary Approval. On March 2, 2022, the Court entered an Order Granting Plaintiffs’ Motion for

Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of the Settlement, Class Counsel Award, Class Representative Service Awards, Settlement Administration Costs, and allocation for PAGA Payment.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Maximum Settlement Amount of \$4,500,000.00 on a non-reversionary basis.³ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Class Counsel Award, consisting of attorneys’ fees in the amount of \$1,500,000.00 and reimbursement of litigation costs and expenses in the amount of \$22,727.01 to Class Counsel; (2) Class Representative Service Awards in the amount of \$7,500.00 each to Plaintiffs Antonio Munoz and Veronica Ferrufino, for a combined amount of \$15,000.00; (3) Settlement Administration Costs in the amount of \$28,369.00 to Rust Consulting; and (4) PAGA Payment in the amount of \$100,000.00.⁴ The Net Settlement Amount, which is estimated to be \$2,826,631.00, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁵

The Settlement Administrator will calculate each Participating Class Member’s share of the Net Settlement Amount (“Individual Settlement Payment”), by multiplying each individual Class Member’s number of weeks that he or she was employed by Defendant as an hourly paid employee in California during the period from February 24, 2016 through January 31, 2022

³ Settlement Agreement; ¶55.a.

⁴ *Id.*, ¶¶ 18, 19, 55, 56

⁵ This amount is higher than the amount stated in Paragraph 19 of the accompanying Administrator’s Declaration (“Rust Declaration” or “Rust Decl.”) because the Settlement Administrator’s calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$30,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$22,727.01 for reimbursement of litigation costs and expenses, and the difference of \$7,272.99 will remain part of the Net Settlement Amount.

1 (“Workweeks”) by the Workweek Value (the Net Settlement amount divided by the total number
2 of Workweeks).⁶

3 The Settlement Administrator will calculate each Class Member’s Individual PAGA
4 Payment by dividing the 25% of the PAGA Payment to be distributed to eligible Class Members
5 by the total number of Workweeks from July 21, 2019 through January 31, 2022 (“PAGA
6 Workweeks”) resulting in the PAGA Workweek Value, and then multiplying the PAGA
7 Workweek Value by the number of PAGA Workweeks worked by each Class Member. ⁷

8 Class Members had sixty (60) calendar days after the initial mailing of the Class Notice
9 to Class Members to dispute the number of Workweeks credited to each of them, opt out of the
10 Settlement, and/or object to the Settlement (“Response Deadline”).⁸ The Response Deadline was
11 September 12, 2022.⁹ Prior to the Response Deadline, the settlement administrator received two
12 (2) written requests for exclusion from the Settlement (“Requests for Exclusion”).¹⁰ The
13 Settlement Administrator has not received any objections to the Settlement (“Objections”) from
14 Class Members.¹¹

15 Individual Settlement Payments will be allocated as one-third (1/3) wages, to be reported
16 on IRS Form W-2; and thirty-three and two-thirds (2/3) interest, penalties, and non-wage
17 damages, to be reported on IRS Form 1099 (if applicable).¹² Individual Settlement Payments
18 will be paid out to Participating Class Members subject to reduction for the employee’s and
19 employer’s share of taxes, withholdings, and contribution with respect to the wages portion of
20 the Individual Settlement Payments.¹³

21 Any and all Individual Settlement Payment check and/or Individual PAGA Payment
22 checks issued by the Settlement Administrator will remain valid for one hundred and eighty
23 (180) days from the date of mailing.¹⁴ Thereafter, Individual Settlement Payment checks and
24

25 ⁶ Settlement Agreement, ¶ 55.a.i.

26 ⁷ *Id.*, ¶ 55.a.ii.

27 ⁸ *Id.*, ¶ 33.

28 ⁹ Rust Decl., ¶ 10, Exh. A.

¹⁰ *Id.*, ¶ 15.

¹¹ *Id.*, ¶ 16.

¹² Settlement Agreement, ¶55.a.vii.

¹³ *Ibid.*

¹⁴ *Id.*, ¶ 55.a.viii.

Individual PAGA Payment checks that are not negotiated within the 180-day period will be void, and the funds associated with such voided checks will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Procedure Code § 1500 et seq., for the benefit of those Class Members whose check is cancelled, until such time that they claim their property.¹⁵

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Rust Consulting, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's March 2, 2022 Preliminary Approval Order.

On or about June 15, 2022, Rust Consulting received the Court-approved text for the Class Notice.¹⁶

On or about July 5, 2022, Rust Consulting received a mailing list from Defendant's counsel that contained the names, last known addresses, Social Security numbers, telephone numbers, and applicable employment information for individuals identified as Class Members ("Class List").¹⁷ The Class List contained information for 2,447 individuals identified as Class Members.¹⁸ Rust Consulting processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.¹⁹

On July 14, 2022, Rust Consulting mailed the Class Notice via first class mail to 2,447 individuals identified as Class Members in the Class List.²⁰

As of the date of this Motion, fifty (50) Class Notices were returned as undeliverable without forwarding addresses.²¹ Rust Consulting performed a skip-trace search on the fifty (50) Class Notices that were returned to Rust Consulting without forwarding addresses, located an updated address for forty-four (44) Class Members, and promptly re-mailed the Class Notice to

¹⁵ Settlement Agreement, ¶55.a.viii.

¹⁶ Rust Decl., ¶ 7.

¹⁷ *Id.*, ¶ 8.

¹⁸ *Ibid.*

¹⁹ *Id.*, ¶ 9.

²⁰ *Id.*, ¶ 10.

²¹ *Id.*, ¶ 11.

1 the updated addresses.²² Of the fifty (50) traces performed, Rust Consulting did not obtain
2 updated addresses for six (6) undeliverable Class Notices.²³ Of the forty-four (44) Class Notices
3 mailed to a more current address identified from the tracing performed by Rust Consulting, two
4 (2) Class Notices were returned as undeliverable a second time.²⁴ As of the date of this Motion,
5 eight (8) Class Notices remain undeliverable.²⁵

6 As of the date of this Motion, one Class Member submitted a dispute regarding
7 Workweeks, the Settlement Administrator forwarded the dispute to Counsel for the Defendant
8 for review, and the dispute is currently pending resolution.²⁶

9 As of the date of this Motion, two (2) Class Member submitted Requests for Exclusion to
10 the Settlement Administrator.²⁷ Both Requests for Exclusion were submitted with a postmark on
11 or before September 12, 2022.²⁸

12 As of the date of this Motion, the Settlement Administrator has not received any
13 objections from Class Members to the Settlement.²⁹

14 Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately
15 \$2,826,631.00 will be distributed to Participating Class Members in accordance with the terms of
16 the Settlement.³⁰ The highest Individual Settlement Payment is currently estimated to be
17 \$2,991.76 and the average Individual Settlement Payment is currently estimated to be
18 \$1,156.09.³¹

19 ///

20 ///

22 ²² Rust Decl., ¶ 11.

23 ²³ Ibid.

24 ²⁴ Ibid.

25 ²⁵ Ibid.

26 ²⁶ *Id.*, ¶ 14.

27 ²⁷ *Id.*, ¶ 15.

28 ²⁸ Ibid.

29 ²⁹ *Id.*, ¶ 16.

30 ³⁰ *Id.*, ¶ 19; see n.5, *supra*.

31 ³¹ *Id.*, ¶ 18. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Rust Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$30,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$7,272.99, will be part of the Net Settlement Amount). See n.5, *supra*.

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

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

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

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar

to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties have actively litigated the matter since the *Munoz* Action was commenced on February 24, 2020. Counsel for the Parties conducted significant investigation of the facts and law during the prosecution of the cases, and engaged in extensive settlement negotiations to try to resolve the cases. These efforts included preparing for and attending a formal mediation on January 29, 2021, conducted by the Hon. Howard R. Broadman (Ret.), preparing for a second formal mediation that was scheduled to take place in June 2021 but then re-scheduled, and then finally, preparing for and attending the second formal mediation on September 1, 2021, conducted by the Hon. Howard R. Broadman (Ret.).³² The mediator is a well-respected mediator who is experienced in mediating complex labor and employment matters. The second mediation resulted in the issuance of a Mediator’s Proposal, and with the aid of the mediator’s evaluations, the parties ultimately reached a settlement of the *Munoz* Action and the *Ferrufino* Action (together, the “Actions”).³³ During all settlement discussions, the parties conducted their negotiations at arm’s length in an adversarial position. The claims asserted in the Actions are highly disputed and arriving at a settlement that was acceptable to the parties was not easy. Collectively, Class Counsel extensively investigated and considered the veracity, strength, and scope of the claims, and engaged in extensive litigation in anticipation of class certification and trial, prior to reaching the Settlement.³⁴

Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data obtained from Plaintiffs, Defendant, and other sources.³⁵ Counsel for Plaintiff Munoz, Lawyers for Justice, PC, propounded multiple sets of

³² Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 8.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Id.*, ¶ 10.

1 formal written discovery requests onto Defendant, reviewed Defendant's responses thereto,
2 noticed the depositions of Defendant's Person(s) Most Knowledgeable designees (regarding
3 organizational structure, job duties, wage and hour policies and practices, and Defendant's
4 affirmative defenses), reviewed Defendant's objections to notices of deposition, reviewed
5 Defendant's original and amended objections and responses to written discovery requests, and
6 worked with Plaintiff Munoz to provide responses to multiple sets of discovery requests that
7 were propounded by Defendant.³⁶ The volume of data and documents that Class Counsel
8 reviewed and analyzed included and was not limited to: employment records of Plaintiffs, a
9 detailed sampling of Class Members' time and pay records, redacted class data and list, job
10 position lists, employee handbooks, company policy acknowledgements, forms, internal
11 memoranda, job descriptions, and operations and employment policies, practices, and
12 procedures, among other information and documents.³⁷ Class Counsel interviewed Plaintiffs,
13 putative class members, and other percipient witnesses to gather facts and to identify potential
14 witnesses.³⁸ Counsel for the Parties also met and conferred on numerous occasions, e.g., to
15 discuss issues relating to the pleadings, discovery, motion practice, and the production of
16 documents and data prior to the mediations. Class Counsel also drafted pleadings, discovery
17 motion papers, and the mediation brief, and prepared for and attended court proceedings,
18 mediations, and settlement negotiations, among other tasks.

19 Prior to reaching the Settlement, the parties undertook extensive formal and informal
20 discovery and exchange of class information, and engaged in extensive discussions regarding
21 their evaluations of the cases and various aspects of the cases, including but not limited to, the
22 risks and delays of further litigation, the risks to the parties of proceeding with class certification
23 and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods,
24 wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced
25 and analyzed, and the possibility of appeals, among other things.³⁹ Defendant and its counsel felt
26

27 ³⁶ Aiwazian Decl., ¶ 10.

28 ³⁷ Ibid.

³⁸ Ibid.

³⁹ Id., ¶ 9.

1 strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class
2 Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁰ With
3 the aid of the mediator's evaluations, the Parties have agreed that the matter is well-suited for
4 settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and
5 risks to all sides that would attend further litigation.⁴¹ The Settlement is a fair, reasonable, and
6 adequate resolution of Plaintiffs and Participating Class Members' Released Claims against the
7 Released Parties and Plaintiffs and Class Members' PAGA Released Claims against the Released
8 Parties.

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

11 The Settlement, which provides for a Maximum Settlement Amount of \$4,500,000.00,
12 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
13 litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴²
14 The Settlement was calculated using information and data uncovered through extensive case
15 investigation, formal and informal discovery, and the exchange of information in the context of
16 mediation.⁴³ Had the Actions not settled, Defendant would have vigorously challenged class
17 certification, manageability of representative adjudication, and liability. Defendant contended
18 that individualized questions of fact predominate over any common issues, and these issues
19 would pose challenges to certification and representative adjudication. Defendant would have
20 likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide
21 and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court
22 certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or
23 representative basis. Additionally, preparation for trial would have been expensive for all
24 parties.

25
26 ⁴⁰ Aiwazian Decl., ¶ 9.

27 ⁴¹ Ibid.

28 ⁴² Aiwazian Decl., ¶¶ 9 & 23; Declaration of Kevin T. Barnes ("Barnes Decl."), ¶ 10; Declaration of Walter L. Haines ("Haines Decl.") ¶ 11.

⁴³ Aiwazian Decl., ¶¶ 8-10.

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

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

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

25 The Settlement, which provides for a Maximum Settlement Amount of \$4,500,000.00,
26 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
27 using information and data uncovered through extensive case investigation, formal and informal
28 discovery, and the exchange of information in the context of mediation. The Settlement takes

1 into account the potential risks and rewards inherent in any case and, in particular, in this matter.
2 Moreover, considering all of the facts in these cases, the Maximum Settlement Amount
3 represents a considerable recovery.

4 Even after deducting attorneys' fees in the amount of \$1,500,000.00, litigation costs and
5 expenses in the amount of \$22,727,01, Class Representative Service Awards in the combined
6 amount of \$15,000.00, Settlement Administration Costs in the amount of \$28,369.00, and the
7 PAGA Payment in the amount of \$100,000.00 from the Maximum Settlement Amount of
8 \$4,500,000.00, the Net Settlement Amount is currently estimated to be \$2,826,631.00.⁴⁴ Under
9 the Settlement Agreement, the Maximum Settlement Amount will be fully paid out without any
10 reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section
11 III, *supra*, each Class Member will be paid a *pro rata* share of the Net Settlement Amount, based
12 on the number of Workweeks credited to him or her. To date, there are 2,445 Participating Class
13 Members, representing 99.92% of the Settlement Class.⁴⁵ The highest Individual Settlement
14 Payment to a Class Member is currently estimated to be \$2,991.76 and the average Individual
15 Settlement Payment is currently estimated to be \$1,156.09.⁴⁶ These are significant individual
16 recoveries, particularly in light of the risks of litigation.

17 At the final approval stage, "[a]n allocation formula need only have a reasonable, rational
18 basis [to warrant approval], particularly if recommended by experienced and competent class
19 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
20 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to
21 distribute the net Settlement Amount. In light of the above considerations, Class Counsel believe
22 that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the
23 Class Members.⁴⁷ Although the recommendations of Class Counsel are not conclusive, the Court
24 can properly take the recommendations into account, particularly if Class Counsel appear to be
25 competent, have experience with this type of litigation, and significant discovery and
26

27 ⁴⁴ Rust Decl., ¶ 19; see n.5 *supra*.

⁴⁵ *Id.*, ¶ 17.

28 ⁴⁶ *Id.*, ¶ 18; see n.30, *supra*.

⁴⁷ Aiwazian Decl., ¶ 23; Barnes Decl., ¶ 10; Haines Decl. ¶ 11.

investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel have extensive experience in employment class action law and complex wage-and-hour litigation.⁴⁸ The law firms of Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and United Employees Law Group, PC have been appointed class counsel in numerous complex wage-and-hour cases, and have recovered millions of dollars for individuals in California.⁴⁹ Defendant's as well as Plaintiffs' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Settlement Class – ***not a single Settlement Class Member objected to Settlement.***⁵⁰ Specifically, no objections have been made as to the Maximum Settlement Amount or requested Class Counsel Award, Class Representative Service Awards, Settlement Administration Costs, or the allocation for PAGA Payment. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

///

⁴⁸ Aiwazian Decl., ¶¶ 15-20; Barnes Decl., ¶¶ 2-7; Haines Decl. ¶ 2.

⁴⁹ Ibid.

⁵⁰ Rust Decl., ¶ 16.

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

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

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

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

“The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long

as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

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

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulity* (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, 34.⁵¹ 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

⁵¹ 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 settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7
2 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the
3 other parties enjoying the benefit of the settlement). Both state and federal courts have embraced
4 this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th
5 308, 317; *Vincent, supra*, 557 F.2d at 769.

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

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

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

Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement Amount of \$4,500,000.00 on a non-reversionary basis. The requested attorneys' fees are thirty-three and one-third percent (33.33%) of the total value of the monetary settlement. In light of Class Counsels' successful prosecution and resolution of the Actions, the requested attorneys' fees are appropriate and reasonable.

Compensating class counsel in class litigation on a percentage basis makes good sense because: (1) it is consistent with the private marketplace where contingent fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the action; 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.

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

In *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, in determining reasonable attorneys’ fees, the Court of Appeal valued a settlement based on the total value of the settlement made available to class members by the efforts of counsel, decided in favor of

granting fees as a percentage of the total value of the settlement, and rejected an objection that the fees be awarded based on the exact amount claimed by class members. *Id.* At 247.

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

C. The Class Counsel Award Requested by Class Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.

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

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$1,500,000.00 (which is 33.33% of the Maximum Settlement Amount) is commensurate with the time, effort, and expense dedicated to the action, the contingent nature of Class Counsel's fee and the risks taken in commencing the action, the skill and determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for the Class Members.

///

///

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

2 Multiple law firms combined their experience and skills, and dedicated the full extent of
3 resources, to litigate and bring this matter to a successful conclusion on behalf of the Settlement
4 Class. Moreover, as demonstrated in the supporting declarations, Class Counsel has extensive
5 experience in the handling of class actions and complex litigation matters.⁵²

6 As outlined in the Declarations of Edwin Aiwarzian, Kevin T. Barnes, and Walter L.
7 Haines, Class Counsel has fully and actively participated in litigation of these cases.⁵³ Prior to
8 commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into
9 the factual and legal issues, Defendant's business, and its operations and employment policies,
10 practices, and procedures.⁵⁴ During the litigation of the Actions, Class Counsel interviewed
11 Plaintiffs and other Class Members; propounded formal written discovery requests and reviewed
12 Defendant's responses thereto; worked with Plaintiffs to provide responses to discovery requests
13 that were propounded by Defendant; reviewed and analyzed thousands of pages of pages of
14 documents and data produced by Defendant and obtained through other sources; and prepared
15 damages/valuation calculations.⁵⁵ Class Counsel also met and conferred with Defendant's
16 counsel over the issues relating to pleadings, case management, discovery, and production of
17 documents and data, among other things; engaged in extensive settlement negotiations with
18 Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement
19 negotiations.⁵⁶

20 Class Counsel has devoted a considerable number of hours to this matter over the course
21 of the litigation process. The task and time charts, which are attached as exhibits to the
22 accompanying declarations of Edwin Aiwarzian, Kevin T. Barnes, and Walter L. Haines, set forth
23 in detail the hours that Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and United
24 Employees Law Group, PC have spent performing tasks on behalf of Plaintiffs and the
25

26 _____
27 ⁵² Aiwarzian Decl., ¶¶ 15-18; Barnes Decl., ¶¶ 2-7; Haines Decl., ¶ 2.

28 ⁵³ Aiwarzian Decl., Exh. A; Barnes Decl., Exh. 1; Haines Decl., Exh. 1.

⁵⁴ Aiwarzian Decl., ¶ 6 & Exh. A.

⁵⁵ Aiwarzian Decl., ¶ 10.

⁵⁶ Ibid.

Settlement Class.⁵⁷ The task and time charts are thorough and comprehensive, and were prepared so that the Court can peruse them without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the charts, which set forth the history of the work performed by Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and United Employees Law Group, PC, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Collectively, Class Counsel has spent 1,143.60 hours, with 890.60 hours spent by Lawyers for Justice, PC, 224.90 hours spent by Law Offices of Kevin T. Barnes, and 28.10 hours spent by United Employees Law Group, PC, performing tasks and to obtain a significant recovery on behalf of Plaintiffs and the Settlement Class.⁵⁸ 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 the same. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiffs and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing 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 Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declarations of Edwin Aiwasian, Kevin T. Barnes, and Walter L. Haines, Class Counsel used their extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁵⁹

⁵⁷ Aiwasian Decl., Exh. A; Barnes Decl., Exh. 1; Haines Decl., Exh. 1.

⁵⁸ Aiwasian Decl., ¶ 13; Barnes Decl., ¶ 11; Haines Decl., ¶ 7.

⁵⁹ Aiwasian Decl., ¶¶ 15-18; Barnes Decl., ¶¶ 2-7; Haines Decl., ¶ 2.

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

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

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

16 As a result of this litigation and extensive settlement negotiations, Defendant agreed to
17 pay a Maximum Settlement Amount of \$4,500,000.00 to settle the matter. After deducting the
18 attorneys' fees (\$1,500,000.00), litigation costs and expenses (\$22,727.01), Class Representative
19 Service Awards (combined, \$15,000.00), Settlement Administration Costs (\$28,369.00), and
20 PAGA Payment (\$100,000.00) from the Maximum Settlement Amount, it is currently estimated
21 that the Net Settlement Amount is approximately \$2,826,631.00.⁶⁰ The Net Settlement Amount
22 will be fully distributed in accordance with the terms of the Settlement. The highest Individual
23 Settlement Payment is currently estimated to be \$2,991.76 and the average Individual Settlement
24 Payment is currently estimated to be \$1,156.09.⁶¹ The Settlement offers significant monetary
25 relief to the Class Members.

26 ///

27
28 ⁶⁰ Rust Decl., ¶ 19; see n.5 *supra*.

⁶¹ *Id.*, ¶ 18; see n.30, *supra*.

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

2 Plaintiffs entered into contingency fee agreements with Class Counsel, and the
3 representation of the Settlement Class provided by Class Counsel has been wholly contingent.
4 Class Counsel took on the action without knowing whether any recovery would be obtained.
5 Class Counsel have collectively invested 1,143.6 hours of time to obtain relief on behalf of
6 Plaintiffs and the Settlement Class.⁶² Class Counsel have also collectively incurred litigation
7 costs and expenses in the amount of \$22,727,01.⁶³

8 Class Counsel have borne all of the risks and costs of litigation and will not receive any
9 compensation until recovery is obtained.⁶⁴ Class Counsel are well-experienced in wage-and-hour
10 class action and complex litigation and used that experience to obtain a great result.⁶⁵ The skill
11 and determination that Class Counsel have shown, along with the results obtained, justify the
12 requested Class Counsel Award. Considering the amounts requested, the work performed, and
13 the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

16 A contingent fee must be higher than a fee for the same legal services paid as they
17 are performed. The contingent fee compensates the lawyer not only for the legal
18 services he renders but for the loan of those services. A lawyer who both bears the
19 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.

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

25 ///
26

27 ⁶² Aiwasian Decl., ¶ 13, Exh. A; Barnes Decl., ¶ 11, Exh. 1; Haines Decl., ¶ 7, Exh. 1.

28 ⁶³ See Part VII, *infra*.

⁶⁴ Aiwasian Decl., ¶ 21.

⁶⁵ See *id.*, ¶¶ 15-18; Barnes Decl., ¶¶ 2-7; Haines Decl., ¶ 2.

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

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
4 from the Settlement Class —no Class Members objected to the Settlement.⁶⁶

5 The court in *Camden* noted that, “a key element of the common fund case is that fees are
6 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
7 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
8 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
9 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

10 Here, the results achieved and obtained on behalf of Plaintiffs and the Settlement Class
11 are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s
12 efforts have resulted in a settlement that provides for a Maximum Settlement Amount of
13 \$4,500,000.00.⁶⁷ The Maximum Settlement Amount will be fully paid out, in accordance with
14 the terms of the Settlement Agreement. The highest Individual Settlement Payment is currently
15 estimated to be \$2,991.76 and the average Individual Settlement Payment is currently estimated
16 to be \$1,156.09.⁶⁸

17 **6. *The Reputation and Ability of the Attorneys.***

18 Both Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and United Employees
19 Law Group, PC are recognized class action law firms that employed their attorneys’ knowledge,
20 skills, and experience in bringing this case to a successful conclusion. Class Counsel have years
21 of complex and class action litigation experience, have recovered millions of dollars on behalf of
22 thousands of individuals in California, and have successfully handled numerous significant
23 wage-and-hour class action and complex cases.⁶⁹

24 ///

25 ///

26
27 ⁶⁶ Rust Decl., ¶ 16.

⁶⁷ Aiwasian Decl., ¶¶ 8-10.

⁶⁸ Rust Decl., ¶ 18; see n.30, *supra*.

⁶⁹ Aiwasian Decl., ¶¶ 15-18; Barnes Decl., ¶¶ 2-7; Haines Decl., ¶ 2.

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

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

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

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. Defendant 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. Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel have as a result of their 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 Defendant's Person Most Knowledgeable designees, percipient witnesses, and experts, propounding discovery requests and conducting additional document production, and engaging in extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter through mediation.

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

As discussed above in Part VI.C.1, *infra*, attached to the Declarations of Edwin Aiwazian, Kevin T. Barnes, and Walter L. Haines are task and time charts that set forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Settlement Class, and the time required for completing those tasks.⁷⁰ The charts demonstrate that Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and United Employees Law Group, PC have spent a total of 1,143.6 hours litigating the Actions and finalizing the Settlement.⁷¹ In light of the facts and circumstances of the case, as well as the results that Class Counsel have achieved on behalf of Plaintiffs and the Class Members, Class Counsel have spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights

⁷⁰ See Aiwazian Decl., Exh. A; Barnes Decl., Exh. 1; Haines Decl., Exh. 1.

⁷¹ Aiwazian Decl., ¶ 13; Barnes Decl., ¶ 11; Haines Decl., ¶ 7.

1 and protections like those at issue in this action. See *Ketchum, supra*, 24 Cal.4th at 1132-33. In
2 awarding attorneys’ fees, the aim is to mirror “the established practice in the private legal market
3 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
4 normal hourly rates for winning contingency cases.” See *id.*

5 Class Counsel have been actively involved in this case, prior to its commencement and
6 all the way up to the present, and Class Counsel’s dedication to providing representation in this
7 matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of
8 their efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was
9 successful in reaching a settlement of \$4,500,000.00.

10 As set forth in the Declarations of Edwin Aiwazian, Kevin T. Barnes, and Walter L.
11 Haines, the professional backgrounds and experience of Class Counsel support a reasonable
12 blended hourly rate of compensation at the rate of \$785 per hour for services provided by
13 Lawyers for Justice, PC, \$795 per hour for services performed by Kevin T. Barnes and \$750 per
14 hour for services performed by Gregg Lander of the Law Offices of Kevin T. Barnes, and \$725
15 per hour for the services performed by United Employees Law Group, PC.⁷² Lawyers for
16 Justice, PC has been awarded attorneys’ fees, compensating the firm at the rate of at least \$785
17 for legal service performed, by courts of this state.⁷³ While the circumstances of every case is
18 unique, the fact remains that the work performed and efforts undertaken by Class Counsel on
19 behalf of the Settlement Class justify the requested attorneys’ fees.

20 Lawyers for Justice, PC, Law Offices of Kevin T. Barnes, and United Employees Law
21 Group, PC have collectively spent a total of 1,143.60 hours, with 890.60 hours spent by Lawyers
22 for Justice, PC, 224.90 hours spent by the Law Offices of Kevin T. Barnes, and 28.10 hours
23 spent by United Employees Law Group, PC, performing tasks and obtaining recovery in the
24 cases. The base lodestar for the three firms is \$895,260.50. Applying a modest multiplier of
25 1.68, the total enhanced lodestar fees are \$1,504,037.64. Class Counsel seek attorneys’ fees in
26

27
28 ⁷² Aiwazian Decl., ¶ 14; Barnes Decl., ¶ 11; Haines Decl., ¶ 6.

⁷³ Aiwazian Decl., ¶ 14.

the amount of \$1,500,000.00, which is thirty-three and one third percent (33.33%) of the total recovery, as provided for by the Settlement Agreement.

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

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys’ fees in the amount of \$1,500,000.00 to Class Counsel.

**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.

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 822-823. 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 1135-1136; *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 1131-1132. The lodestar figure

1 is the “basic fee for comparable legal services in the community” based upon the “hourly amount
2 to which attorneys of like skill in the area would typically be entitled.” *Id.*, at 1132-1133
3 (quotation marks and citation omitted).

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

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

23 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
24 surrounding the matter is well within the range of reasonableness. While handling this matter,
25 Class Counsel devoted the hours in legal time summarized above and detailed in the task and
26 time charts, which are attached as exhibits to the Declarations of Edwin Aiwanian, Kevin T.
27
28

Barnes, and Walter L. Haines.⁷⁴ As the charts indicate, the law firms have collectively worked 1,143.60 hours in the pursuit of this matter.

The attorney task and time charts present the entire picture. As the charts indicate, the law firms have collectively worked 1,143.60 hours in the pursuit of this matter, with 890.60 hours spent by Lawyers for Justice, PC, 224.90 hours spent by the Law Offices of Kevin T. Barnes, and 28.10 hours spent by United Employees Law Group, PC, performing tasks and obtaining recovery in the cases.⁷⁵ Applying a reasonable blended hourly rate of \$785 per hour to 890.60 hours of work performed by Lawyers for Justice, PC, would place a base lodestar value of \$699,121.00 on Lawyers for Justice, PC's services.⁷⁶ Applying a reasonable hourly rate of \$795 per hour for Kevin T. Barnes' services and \$750 per hour for Gregg Lander's services to 224.90 hours of work performed by the Law Offices of Kevin T. Barnes, would place a base lodestar value of \$175,767.00 on the Law Offices of Kevin T. Barnes' services.⁷⁷ Applying a reasonable hourly rate of \$725 per hour to 28.10 hours of work performed by United Employees Law Group, PC, would place a base lodestar value of \$20,372.50 on United Employees Law Group, PC's services.⁷⁸

The base lodestar for the three firms is \$895,260.50. Applying a modest multiplier of 1.68, the total enhanced lodestar fees are \$1,504,037.64. Class Counsel seek an attorneys' fee award of \$1,500,000.00 (equal to 33.33% of the Maximum Settlement Amount based on the Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005)

⁷⁴ Aiwasian Decl., Exh. A; Barnes Decl., Exh. 1; Haines Decl., Exh. 1.

⁷⁵ Aiwasian Decl., ¶ 13, Exh. A; Barnes Decl., ¶ 11, Exh. 1; Haines Decl., ¶ 7, Exh. 1.

⁷⁶ Aiwasian Decl., ¶ 13.

⁷⁷ Barnes Decl., ¶ 11.

⁷⁸ Haines Decl., ¶ 7.

396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

Therefore, application of a modest multiplier of 1.68 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of **\$1,500,000.00** to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$30,000.00. As set forth in the Declarations of Edwin Aiwasian, Kevin T. Barnes, and Walter L. Haines, Class Counsel have collectively incurred a total of \$22,727.01 in litigation costs and expenses.⁷⁹ This amount was reasonable and necessary in the prosecution of the Actions and to obtain the Settlement.⁸⁰ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$22,727.01 to Class Counsel, of which \$17,537.81 will be paid to Lawyers for Justice, PC, \$5,185.20 will be paid to the Law Offices of Kevin T. Barnes, and \$4.00 will be paid to United Employees Law Group, PC.⁸¹

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

As set forth in the accompanying Declaration of Abigail Schwartz for Rust Consulting, Inc., the total costs incurred and to be incurred by Rust Consulting for the notice and settlement administration process are \$28,369.00.⁸² The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing,

⁷⁹ Aiwasian Decl., ¶ 21, Exh. B; Barnes Decl., ¶ 16, Exh. 3; Haines Decl., ¶ 10, Exh. 2.

⁸⁰ Aiwasian Decl., ¶ 21.

⁸¹ Aiwasian Decl., ¶ 21, Exh. B; Barnes Decl., ¶ 16, Exh. 3; Haines Decl., ¶ 10, Exh. 2

⁸² Rust Decl., ¶ 20.

and processing Requests for Exclusion, objections, and Workweeks disputes; handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments, Individual PAGA Payments, and preparing the associated tax forms; and transmitting payments, among other things.⁸³

Accordingly, the Court should grant final approval of payment to Rust Consulting, a necessary third-party for handling of the notice and settlement process, in the amount of \$28,369.00.

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

The Settlement provides for Class Representative Service Awards in the amount of \$7,500.00 each to Plaintiffs Antonio Munoz and Veronica Ferrufino to compensate Plaintiffs for the time and effort that they expended on behalf of the Settlement Class. The requested Class Representative 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 Class Representative 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, including and not limited to, by way of working with Class Counsel to prepare responses to written discovery requests that were propounded on each of them by Defendant.⁸⁴ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and

⁸³ *Id.*, ¶ 3.

⁸⁴ Aiwazian Decl., ¶ 22; *see also* Declarations of Class Representatives (Antonio Munoz and Veronica Ferrufino) filed on January 6, 2022, in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

gave, information that would benefit the Settlement Class.⁸⁵ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.⁸⁶ These services merit the requested Class Representative Service Awards to Plaintiffs, who have not received any compensation for their efforts on behalf of the Settlement Class to date.⁸⁷

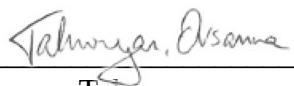
The requested Class Representative Service Awards were fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Class Representative Service Awards. Accordingly, it is appropriate and just for Plaintiffs Antonio Munoz and Veronica Ferrufino to each receive \$7,500.00 as reasonable Class Representative Service Awards, in addition to their Individual Settlement Payment and Individual PAGA Payment, for their services on behalf of the Settlement Class.

X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Class Counsel Award, Class Representative Service Awards, Settlement Administration Costs, and allocation for the PAGA Payment, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: September 30, 2022

LAWYERS for JUSTICE, PC
LAW OFFICES OF KEVIN T. BARNES

By: 
Ovsanna Takvoryan
Kevin T. Barnes
Attorneys for Plaintiffs and the Class

⁸⁵ Aiwazian Decl., ¶ 22; *see also* Declarations of Class Representatives (Antonio Munoz and Veronica Ferrufino) filed on January 6, 2022, in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

⁸⁶ *Ibid.*

⁸⁷ *See* Declarations of Class Representatives (Antonio Munoz and Veronica Ferrufino) filed on January 6, 2022, in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.